

*Compliance-Related Texts and Decisions of
Selected Multilateral Environmental Agreements*



UNITED NATIONS ENVIRONMENT PROGRAMME



**Compliance-Related Texts and Decisions
of Selected Multilateral Environmental
Agreements**

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Introduction

1. OBJECTIVE

The objective of this publication is to assist and facilitate the role of negotiators of multilateral environmental agreements (MEAs) in the development of formal non-compliance mechanisms and procedures. It complements the earlier publication entitled “Compliance Mechanisms Under Selected Multilateral Environmental Agreements” published by UNEP in 2007.

As described in this earlier publication, there is no existing authoritative definition for compliance mechanisms and procedures. This publication will follow the broad definition given in the earlier publication which states that compliance mechanisms and procedures include:

1. A requirement for information in reviewing national performance of MEA obligations
2. Institutionalized multilateral procedures to consider instances of non-compliance
3. Multilateral measures adopted to respond to non-compliance, and
4. Dispute settlement procedures.

This new publication seems to be timely, as at the moment deliberations and negotiations concerning formal non-compliance mechanisms take place under a number of MEAs. The negotiations on an international regime on Access and Benefit-Sharing under the Convention on Biological Diversity include issues related to compliance. Under the International Treaty on Plant Genetic Resources for Food and Agriculture, an ad hoc working group has been established in the beginning of June 2009, which is mandated to negotiate and finalize procedures and operational mechanisms to promote compliance and address issues of non-compliance. In 2010, the sixteenth Conference of the Parties to the United Nations Framework Convention on Climate Change and this body serving as the Meeting of the Parties to the Kyoto Protocol will deal with compliance in the negotiations for a post-2012 instrument. The fifth Conference of the Parties to the Stockholm Convention on Persistent Organic Pollutants in spring 2010 resumes considerations on a proposal for a non-compliance mechanism. In 2011, at the fifth Conference of the Parties to the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, a compliance regime may be established as well¹. In addition, negotiations for a treaty on mercury are just starting off under which the establishment of non-compliance mechanism may also be considered.

The earlier publication “Compliance Mechanisms Under Selected Multilateral Environmental Agreements” presents a comparative study of different compliance mechanisms, especially concerning reporting and verification procedures and tries to identify possible synergies in compliance mechanisms among different MEAs. From a negotiator’s perspective, the publication provides a useful overview of different

1 For the proposal see Decision RC-4/7.

approaches towards designing a new non-compliance mechanism. Once negotiators have identified the general concept of a compliance mechanism, the focus will be placed on drafting concrete provisions and decisions. In order to avoid reinventing the wheel every time,² negotiators may let themselves be inspired by existing regimes, their provisions and institutions. This publication tries to facilitate that drafting process by providing a comprehensive compilation of texts and decisions from existing non-compliance regimes.

2. BACKGROUND

UNEP not only supports and facilitates the conclusion of new international environmental agreements by convening diplomatic conferences and providing platforms for consultations, it also assists in the process of developing international environmental agreements or soft law instruments through the preparation of background documents and draft texts.

Concerning the development of non-compliance measures, UNEP has a broad mandate, as the fourth Montevideo Programme for the Development and Periodic Review of Environmental Law asks UNEP not only to “promote the effective implementation of environmental law through, inter alia, the widest possible participation in multilateral environmental agreements and the development of relevant strategies, mechanisms and national laws”, but also to “encourage international action to address gaps and weaknesses in existing international environmental law and to respond to new environmental challenges”.³

The Montevideo Programme is rooted in the mandate of UNEP in the field of environment as reflected in Agenda 21,⁴ the Nairobi Declaration on the Role and Mandate of the United Nations Environment Programme,⁵ the Malmoe Ministerial Declaration and the Programme for the Further Implementation of Agenda 21 adopted by the General Assembly at its nineteenth special session in resolution S-19/2.

3. SCOPE AND STRUCTURE

This compilation contains decisions, reports and other relevant texts of Conferences of the Parties (COPs), Conferences of the Parties serving as the Meeting of the Parties (CMPs), Meetings of the Parties (MOPs) and other bodies of MEAs concerned with compliance mechanisms. Each text can be found under a separate sub-heading listed in the table of contents with an indication of the year in which the text was adopted.

2. Palmer, *New Ways to Make International Environmental Law*, *American Journal of International Law* 86 (1992), 259, 263.
3. Doc. UNEP/GC/25/INF/15, section I.A. and I.E.
4. Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992 (United Nations publication, Sales No. E.93.I.8 and corrigenda), vol. I: Resolutions adopted by the Conference, resolution 1, annex II.
5. Governing Council decision SS.VI/1, annex.

The general structure of the book follows the structure of the earlier publication “Compliance Mechanisms under Selected Multilateral Environmental Agreements”. Therefore, the book is divided into 12 chapters describing 12 different MEAs. Within the chapters, information is structured under four subjects:

1. Texts regarding the requirement of national performance information reviewing with respect to MEA obligations;
2. Texts regarding institutionalized multilateral procedures to consider instances of non-compliance and multilateral measures adopted to respond to non-compliance;
3. Texts regarding technical and financial assistance; and
4. Texts regarding dispute settlement procedures.

However, not all MEAs have relevant texts adopted under all four headings. Therefore, only the headings corresponding to the selected texts for each chapter are included. This practice leads to a slightly different structure for every chapter. The structure and content of each chapter were developed in close collaboration with each of the relevant convention secretariats, which also provided a selection of relevant texts for their particular MEA.

While the publication on “Compliance Mechanisms under Selected Multilateral Environmental Agreements” covered all ‘major’ MEAs at the time of its drafting, the scope of the book at hand is narrower. As this volume focuses especially on texts regarding formal non-compliance mechanisms and procedures, primarily those MEAs contained in the publication on “Compliance Mechanisms under Selected Multilateral Environmental Agreements” which adopted such a mechanism were selected. These MEAs are:

- Convention on International Trade in Endangered Species of Wild Flora and Fauna 1973 (CITES)
- Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal 1989
- Cartagena Protocol on Biosafety to the Convention on Biological Diversity 2000
- Montreal Protocol on Substances that Deplete the Ozone Layer 1987
- Kyoto Protocol to the United Nations Framework Convention on Climate Change 1997
- Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1996, and
- Ramsar Convention on Wetlands 1971

Furthermore, texts of the United Nations Convention on the Law of the Sea 1982 are included, as this convention includes extraordinary provisions on dispute resolution, which might be interesting for negotiators drafting such provisions. Additionally, texts of a related agreement, the 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 1995, are also included.

Moreover, as the selection of MEAs in the publication on “Compliance Mechanisms under Selected Multilateral Environmental Agreements” was not exhaustive, a small number of additional conventions are considered in this volume. The texts of these conventions regarding non-compliance mechanisms were regarded as appropriate for the inclusion in this book. These are:

- Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters 1998
- Bern Convention on the Conservation of European Wildlife and Natural Habitats 1979, and
- Espoo Convention on Environmental Impact Assessment in a Transboundary Context 1991

UNEP hopes that this book which complements the earlier publication on “Compliance under Selected Multilateral Environmental Agreements” will be a useful tool both for negotiators of new non-compliance regimes as well as implementers of MEAs in promoting their compliance.



Texts, Decisions and Amendments

1. CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FLORA AND FAUNA 1973 (CITES)

1.1 Performance Review Information

1.1.1 Convention Text - Article IV

3. A Scientific Authority in each Party shall monitor both the export permits granted by that State for specimens of species included in Appendix II and the actual exports of such specimens. Whenever a Scientific Authority determines that the export of specimens of any such species should be limited in order to maintain that species throughout its range at a level consistent with its role in the ecosystems in which it occurs and well above the level at which that species might become eligible for inclusion in Appendix I, the Scientific Authority shall advise the appropriate Management Authority of suitable measures to be taken to limit the grant of export permits for specimens of that species.

1.1.2 Convention Text - Article VIII

Measures to Be Taken by the Parties

1. The Parties shall take appropriate measures to enforce the provisions of the present Convention and to prohibit trade in specimens in violation thereof. These shall include measures:
 - (a) to penalize trade in, or possession of, such specimens, or both; and
 - (b) to provide for the confiscation or return to the State of export of such specimens.
2. In addition to the measures taken under paragraph 1 of this Article, a Party may, when it deems it necessary, provide for any method of internal reimbursement for expenses incurred as a result of the confiscation of a specimen traded in violation of the measures taken in the application of the provisions of the present Convention.
3. As far as possible, the Parties shall ensure that specimens shall pass through any formalities required for trade with a minimum of delay. To facilitate such passage, a Party may designate ports of exit and ports of entry at which specimens must be presented for clearance. The Parties shall ensure further that all living specimens, during any period of transit, holding or shipment, are properly cared for so as to minimize the risk of injury, damage to health or cruel treatment.

4. Where a living specimen is confiscated as a result of measures referred to in paragraph 1 of this Article:
 - (a) the specimen shall be entrusted to a Management Authority of the State of confiscation;
 - (b) the Management Authority shall, after consultation with the State of export, return the specimen to that State at the expense of that State, or to a rescue centre or such other place as the Management Authority deems appropriate and consistent with the purposes of the present Convention; and
 - (c) the Management Authority may obtain the advice of a Scientific Authority, or may, whenever it considers it desirable, consult the Secretariat in order to facilitate the decision under sub-paragraph (b) of this paragraph, including the choice of a rescue centre or other place.
5. A rescue centre as referred to in paragraph 4 of this Article means an institution designated by a Management Authority to look after the welfare of living specimens, particularly those that have been confiscated.
6. Each Party shall maintain records of trade in specimens of species included in Appendices I, II and III which shall cover:
 - (a) the names and addresses of exporters and importers; and
 - (b) the number and type of permits and certificates granted; the States with which such trade occurred; the numbers or quantities and types of specimens, names of species as included in Appendices I, II and III and, where applicable, the size and sex of the specimens in question.
7. Each Party shall prepare periodic reports on its implementation of the present Convention and shall transmit to the Secretariat:
 - (a) an annual report containing a summary of the information specified in sub-paragraph (b) of paragraph 6 of this Article; and
 - (b) a biennial report on legislative, regulatory and administrative measures taken to enforce the provisions of the present Convention.
8. The information referred to in paragraph 7 of this Article shall be available to the public where this is not inconsistent with the law of the Party concerned.

1.1.3 COP Decisions 14.21 to 14.24 - National wildlife trade policy reviews (2007)

Directed to Parties

- 14.21 Exporting and importing countries are invited to carry out national wildlife policy reviews in order to facilitate a better understanding of the effects of wildlife trade policies on the international wildlife trade.

14.22 Parties that undertake a wildlife trade policy review on a voluntary basis are invited to share relevant details of their reviews and lessons learned with other Parties.

Directed to Parties and intergovernmental and non-governmental organizations

14.23 Parties and intergovernmental and non-governmental organizations should provide feedback on the draft of the wildlife trade policy review framework, as well as financial and technical assistance for conducting the national trade policy reviews.

Directed to the Secretariat

14.24 Contingent on the availability of external funding, the Secretariat shall, in collaboration with relevant international organizations such as the United Nations Environment Programme or the United Nations Conference on Trade and Development, and with interested exporting and importing Parties:

- a) facilitate a review of their national policies regarding the use of and trade in specimens of CITES-listed species, taking into account environmental, social and economic issues and relevant policy instruments;
- b) compile information voluntarily provided by the Parties regarding their national wildlife trade policy reviews and make this information available to other Parties;
- c) report at the 57th and subsequent meetings of the Standing Committee and at the 15th meeting of the Conference of the Parties on the progress made with regard to the implementation of this Decision; and
- d) seek external financial support from bilateral, multilateral and other interested donors and partners to support further wildlife trade policy reviews and related capacity-building activities.

1.1.4 COP Decisions 14.31 and 14.32 - Gathering and analysis of data on illicit trade (2007)

Directed to the Secretariat

14.31 The Secretariat shall convene, subject to external funding, a meeting of the CITES Enforcement Expert Group to identify measures to improve the gathering of data on illicit trade from and by relevant international, regional and national law enforcement organizations, CITES Management Authorities and the CITES Secretariat, and to discuss ways in which such data could be analysed to provide a clearer understanding of illicit trade in specimens of CITES-listed species. The Secretariat shall report to the Standing Committee on the outcome of the meeting and any recommendations made by the Group.

Directed to the Standing Committee

- 14.32 The Standing Committee shall consider the report of the Secretariat and also consider:
- a) endorsing any relevant recommendation that could be implemented prior to the 15th meeting of the Conference of the Parties; and
 - b) requesting the Secretariat to prepare a report for consideration at the 15th meeting of the Conference of the Parties.

1.1.5 COP Decisions 14.33 and 14.34 - Enforcement Expert Group (2007)

Directed to the Secretariat

- 14.33 The Secretariat shall:
- a) convene a meeting of the CITES Enforcement Expert Group to:
 - i) assess progress in implementing the recommendations made by the Group at its meeting in Shepherdstown in 2004; and
 - ii) assess available information relating to any national action plans recommended in Resolution Conf. 11.3 (Rev. CoP14);
 - b) seek external funds to enable a meeting of the Group;
 - c) notify Parties and publish the outcomes of the meeting, including any recommendations, on the CITES website, seeking additional comments; and
 - d) report on this matter at the 58th meeting of the Standing Committee.

Directed to the Standing Committee

- 14.34 The Standing Committee should review the Secretariat's report at its 58th meeting and, if appropriate, adopt any recommendations directing the Secretariat to prepare a discussion document or proposed amendments to Resolution Conf. 11.3 (Rev. CoP14) for consideration at the 15th meeting of the Conference of the Parties.

1.1.6 COP Decisions 14.35 and 14.36 - E-commerce of specimens of CITES-listed species (2007)

Directed to the Secretariat

- 14.35 The Secretariat shall:
- a) request, through a Notification issued after the 14th meeting of the Conference of the Parties, information from Management Authorities regarding:

- i) the scale and nature of wildlife trade arranged via the Internet that apparently involves their country;
 - ii) perceived problems relating to such trade, including illicit trade;
 - iii) the effectiveness of any measures that Parties have taken to address the trade in wildlife via the Internet, including the use of codes of conduct; and
 - iv) any changes in trade routes and methods of shipment that have been observed as a result of increased use of the Internet to promote trade in wildlife;
- b) using the services of a suitably-qualified consultant, review the information submitted by Parties and prepare a background document for consideration at a workshop;
 - c) seek external funding to convene a workshop on wildlife trade via the Internet, to which the following should be invited to participate: CITES Management Authority and enforcement officials from Parties with emerging or existing wildlife trade arranged via the Internet; experts on Internet trade; owners of relevant websites and Internet service providers; ICPO-Interpol and the World Customs Organization; and representatives of other intergovernmental and non-governmental organizations;
 - d) publish the outcomes of the workshop, including any recommendations, on the CITES website, seeking additional comments; and
 - e) report on this matter at the 58th meeting of the Standing Committee.

Directed to the Standing Committee

14.36 The Standing Committee should review the Secretariat's report at its 58th meeting and determine whether additional measures are necessary including, if appropriate, directing the Secretariat to prepare a discussion document and draft resolution for consideration at the 15th meeting of the Conference of the Parties.

1.1.7 COP Decisions 14.37 and 14.38 - National Reports (2007)

Directed to the Standing Committee

14.37 The Standing Committee, with the assistance of the Secretariat, the UNEP World Conservation Monitoring Centre and IUCN – The World Conservation Union, shall undertake a review of the recommendations to Parties to provide special reports under the Convention, assess whether they have been or might be effectively incorporated into the annual and biennial reports and consider how the biennial report format might be revised to facilitate such

incorporation. It shall report at the 15th meeting of the Conference of the Parties on its conclusions and recommendations.

Directed to the Secretariat

14.38 The Secretariat shall:

- a) continue to collaborate with the secretariats of other biodiversity-related conventions, UNEP and other bodies in order to facilitate the harmonization of knowledge management and reporting;
- b) identify additional ways to reduce the reporting burden on Parties, inter alia, in the context of its ongoing review of the Resolutions and Decisions of the Conference of the Parties, its support to the Standing Committee on electronic permitting and its work with IUCN or other organizations to compile and analyse CITES-related reports; and
- c) report at the 15th meeting of the Conference of the Parties on the results of this work.

1.1.8 COP Decisions 14.42 to 14.47 - Incentives for the implementation of the Convention (2007)

Directed to Parties

- 14.42 Parties that develop incentive measures for the effective implementation of the Convention are encouraged to include relevant details in their biennial reports.
- 14.43 Parties are encouraged to consider the adoption of standard operating procedures to complete the formalities required for trade in CITES-listed species in an efficient manner. Management Authorities are encouraged to liaise with national ministries and agencies responsible for regulation and promotion of exports and imports in their countries to benefit from the expertise and support they offer in this area.
- 14.44 The Parties shall consider practical ways to enhance stakeholder engagement in the implementation of the Convention (e.g. promoting good practices and codes of conduct that facilitate the work of CITES authorities, help to reduce time-frames for the completion of CITES procedures and enhance the role of the private sector in intelligence gathering to identify and prosecute illegal traders).

Directed to the Secretariat

- 14.45 Using inter alia information provided by Parties in their biennial reports, the Secretariat should conduct a survey of the fees for CITES permits and cost of

CITES-related administrative services, and provide basic guidance to Parties on how cost-recovery programmes can be designed and used for internalizing the cost of implementing the Convention in this regard.

- 14.46 Subject to external funding, the Secretariat shall continue its cooperation with the BioTrade Initiative of the United Nations Conference on Trade and Development under a signed Memorandum of Understanding to ensure the conservation of wild species subject to international trade and promote private sector compliance with CITES requirements and national legislation.
- 14.47 The Secretariat shall report on the progress made with regard to the implementation of Decisions 14.45 and 14.46 at the 15th meeting of the Conference of the Parties.

1.2 Multilateral Procedures to Consider Non-Compliance and Non-Compliance Response Measures

1.2.1 Resolution 11.3 - Compliance and Enforcement (2000/2007)

Amended at the 13th and 14th meetings of the Conference of the Parties

Compliance and enforcement

RECALLING Resolutions Conf. 6.3 and Conf. 7.5, adopted by the Conference of the Parties at its sixth and seventh meetings (Ottawa, 1987; Lausanne, 1989), Resolution Conf. 2.6 (Rev.), adopted at its second meeting (San José, 1979) and amended at its ninth meeting (Fort Lauderdale, 1994), Resolution Conf. 3.9 (Rev.), adopted at its third meeting (New Delhi, 1981) and amended at its ninth meeting, Resolution Conf. 6.4 (Rev.), adopted at its sixth meeting and amended at its ninth meeting, and Resolution Conf. 9.8 (Rev.), adopted at its ninth meeting and amended at its 10th meeting (Harare, 1997);

RECOGNIZING the concerns expressed by various Parties that trade in plants and animals listed in Appendices II and III of the Convention may be detrimental to the survival of some species;

AWARE that, in the past, several cases of violation of the Convention have occurred because of inadequate or insufficient implementation by Management Authorities in both exporting and importing countries regarding surveillance, issuance of documentation and control of compliance with the provisions regulating trade in live and dead animal and plants, and their parts and derivatives;

CONSIDERING that it is of utmost moral, biological, ecological and economic interest for all Parties to the Convention that such violations not re-occur and that the mechanisms established for the Convention to this end are fully implemented, so as to

ensure their normal and efficient functioning to control trade in, and afford effective protection to, endangered animal and plant species;

AWARE that there is considerable variability among Parties in their capacity to implement and enforce the provisions of the Convention;

RECOGNIZING that the developing countries, because of their special socio-economic, political, cultural and geographic circumstances have major difficulties in meeting appropriate control requirements, even though this does not exempt them from observing the highest possible degree of effectiveness;

RECOGNIZING the extreme difficulties that all producer countries are facing in implementing their own CITES controls, and that such difficulties exacerbate enforcement problems in other Parties, while there are still consumer countries that continue allowing illegal imports as a result of a lack of adequate CITES control;

RECOGNIZING that illegal exports from producing countries of specimens of species included in the Appendices cause serious damage to the valuable resources of wildlife, and reduce the effectiveness of their management programmes;

ATTENTIVE to the fact that the reservations made by importing countries allow loopholes through which specimens illegally acquired in the countries of origin can find legal markets without any control whatsoever;

OBSERVING that some importing countries that maintain reservations refuse to take into consideration the recommendations of the Conference of the Parties in Resolution Conf. 4.25 (Rev. CoP14), adopted at its fourth meeting (Gaborone, 1983) and amended at its 14th meeting (The Hague, 2007), weakening in that way the conservation policies of producing countries that wish to protect their wildlife resources;

RECOGNIZING that illegal trafficking in wild fauna and flora continues to be a major concern;

CONSIDERING that the countries that import these illegally obtained resources are directly responsible for encouraging illegal trade world-wide, and in this way the natural heritage of producing countries is damaged;

CONSIDERING that it is essential for the success of the Convention that all Parties implement and comply effectively with all the regulations established by the Convention;

CONVINCED that enforcement of the Convention must be a constant concern of the Parties at the highest level if they are to succeed in fulfilling the objectives of the Convention;

CONVINCED of the need to strengthen enforcement of the Convention to address serious problems caused by the illegal trafficking of wild fauna and flora, and that

the available resources for enforcement are negligible when compared to the profits gained from such trafficking;

RECALLING that Article VIII, paragraph 1, of the Convention provides that the Parties shall take appropriate measures to enforce the provisions of the Convention and to prohibit trade in specimens in violation thereof, and that these shall include measures to provide for the confiscation or return to the States of export of specimens illegally traded;

RECOGNIZING that the Preamble of the Convention states that international cooperation is essential for the protection of certain species of wild fauna and flora against over-exploitation through international trade;

AFFIRMING the obligation of Parties to collaborate closely in the application of the Convention, through expeditious exchange of information on cases and situations related to wildlife trade suspected to be fraudulent, so as to enable other Parties concerned to apply legal sanctions;

WELCOMING the adoption of a resolution on law enforcement cooperation at the Asian regional meeting in Israel in March 1994;

WELCOMING the Beijing Statement on the Control of Wildlife Trade in the Asian Region, made at a workshop on the subject in Beijing in October 1995, which stated that efforts would be made to create a mechanism for cooperation in law enforcement in the Asian region;

WELCOMING recognition by the United Nations Commission on Crime Prevention and Criminal Justice that illicit international trafficking in forest products, including timber, wildlife and other forest biological resources is often perpetrated by individuals and groups, including organized criminal groups that may operate transnationally and that may also be engaged in other illicit activities; and that the UN Convention against Transnational Organised crime and the UN Convention against Corruption provide additional legal frameworks for international co-operation to combat wildlife crime;

RECOGNIZING the contribution to enhancing enforcement of CITES made by the Lusaka Agreement on Cooperative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora;

AWARE of the need for improved cooperation and coordination among CITES authorities and wildlife-law enforcement agencies at the national, regional and international levels;

NOTING the conclusions and recommendations of the CITES Enforcement Expert Group at its meeting in Shepherdstown (United States of America) in February 2004;

CONSIDERING that Article XIII does not specify a time-limit for a Party to respond to a request for information from the Secretariat, and that such a deadline is necessary in order that the absence of response not be interpreted as a refusal to respond;

CONSIDERING that the use of certain terms to designate the parts and derivatives of wildlife may give rise to certain offences;

RECOGNIZING the important role the Secretariat can play in the enforcement process, and the means provided by Article XIII of the Convention;

CONSCIOUS of the Secretariat's role in promoting enforcement of the Convention, as provided by Article XIII, and of the measures that the Secretariat has taken with the International Criminal Police Organization (ICPO-Interpol) and the World Customs Organization to facilitate the exchange of information between enforcement bodies and for training purposes;

AWARE that, with the limited funding available, Parties and the Secretariat should make the maximum use of existing inter-governmental enforcement mechanisms and resources, for example mechanisms provided for under the UN Office on Drugs and Crime;

AGREEING on the need for additional measures to reduce further the illegal trade in species covered by the Convention;

ACKNOWLEDGING that, owing to such high levels of trade in wildlife, it is incumbent upon consumer nations together with producer countries to ensure that trade is legal and sustainable and that enforcement measures adopted and implemented by Parties support conservation in producer countries;

RECOGNIZING that illegal trade in specimens of species included in the Appendices of the Convention can cause serious damage to wildlife resources, reduce the effectiveness of wildlife management programmes, undermine and threaten legal and sustainable trade particularly in the developing economies of many producing countries;

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Regarding compliance, control and cooperation

URGES all Parties to strengthen, as soon as possible, the controls on trade in wildlife in the territories under their jurisdiction, and in particular controls on shipments from producing countries, including neighbouring countries, and to strictly verify the documents originating from such countries with the respective Management Authorities; and

RECOMMENDS that:

- a) all Parties:
 - i) recognize the seriousness of illegal trade in wild fauna and flora and identify it as a matter of high priority for their national law enforcement agencies;
 - ii) if appropriate, consider formulating national and regional action plans, incorporating timetables, targets and provisions for funding, designed to enhance enforcement of CITES, achieve compliance with its provisions, and support wildlife-law enforcement agencies;
 - iii) provide officials who have wildlife-law enforcement responsibilities with equivalent training, status and authority to those of their counterparts in Customs and police;
 - iv) ensure strict compliance and control in respect of all mechanisms and provisions of the Convention relating to the regulation of trade in animal and plant species listed in Appendix II, and of all provisions ensuring protection against illegal traffic for the species included in the Appendices;
 - v) in case of violation of the above-mentioned provisions, immediately take appropriate measures pursuant to Article VIII, paragraph 1, of the Convention in order to penalize such violation and to take appropriate remedial action; and
 - vi) inform each other of all circumstances and facts likely to be relevant to illegal traffic and also of control measures, with the aim of eradicating such traffic;
- b) Parties should advocate sanctions for infringements that are appropriate to their nature and gravity;
- c) Parties that are not yet signatories to, or have not yet ratified, the UN Convention against Transnational Organized crime and the UN Convention against Corruption consider doing so;
- d) importing Parties in particular not accept under any circumstances or pretext, export or reexport documents issued by any authority, irrespective of its hierarchical level, other than the Management Authority officially designated as competent by the exporting or reexporting Party and duly notified to the Secretariat;

- e) if an importing country has reason to believe that specimens of an Appendix-II or -III species are traded in contravention of the laws of any country involved in the transaction, it:
 - i) immediately inform the country whose laws were thought to have been violated and, to the extent possible, provide that country with copies of all documentation relating to the transaction; and
 - ii) where possible, apply stricter domestic measures to that transaction as provided for in Article XIV of the Convention; and
- f) Parties remind their diplomatic missions, their delegates on mission in foreign countries and their troops serving under the flag of the United Nations that they are not exempted from the provisions of the Convention;

Regarding application of Article XIII

RECOMMENDS that:

- a) when, in application of Article XIII, the Secretariat requests information on an alleged infraction, Parties reply within a time-limit of one month or, if this is impossible, acknowledge within the month and indicate a date, even an approximate one, by which they consider it will be possible to provide the information requested;
- b) when, within a one year time-limit, the information requested has not been provided, Parties provide the Secretariat with justification of the reasons for which they have not been able to respond;
- c) if major problems with implementation of the Convention by particular Parties are brought to the attention of the Secretariat, the Secretariat work together with the Party concerned to try to solve the problem and offer advice or technical assistance as required;
- d) if it does not appear a solution can be readily achieved, the Secretariat bring the matter to the attention of the Standing Committee, which may pursue the matter in direct contact with the Party concerned with a view to helping to find a solution; and
- e) the Secretariat keep the Parties informed as fully as possible, through Notifications, of such implementation problems and of actions taken to solve them, and include such problems in its report of alleged infractions;

Regarding enforcement activities of the Secretariat

URGES the Parties, intergovernmental and non-governmental organizations to provide additional financial support for the enforcement of the Convention, by providing funds for the enforcement assistance work of the Secretariat;

DIRECTS the Secretariat to utilize such funds towards the following priorities:

- a) the appointment of additional officers to the Secretariat to work on enforcement-related matters;
- b) assistance in the development and implementation of regional law-enforcement agreements; and
- c) training and technical assistance to the Parties;

URGES the Parties to offer secondment of enforcement officers to assist the Secretariat in addressing law-enforcement issues; and

DIRECTS the Secretariat to pursue closer international liaison between the Convention's institutions, national enforcement agencies, and existing intergovernmental bodies, particularly the World Customs Organization, the UN Office on Drugs and Crime and ICPO-Interpol;

Regarding communication of information and coordination

RECOMMENDS that:

- a) Management Authorities coordinate with governmental agencies responsible for enforcement of CITES, including Customs and Police, and, where appropriate, sectoral NGOs, by arranging training activities and joint meetings, and facilitating the exchange of information;
- b) Parties establish inter-agency committees at the national level, bringing together Management Authorities and governmental agencies responsible for the enforcement of CITES, including Customs and the police;
- c) Parties, as a matter of urgency, inform the Secretariat of contact details of their relevant national law-enforcement agencies responsible for investigating illegal trafficking in wild fauna and flora;
- d) Parties, when informed by the Secretariat of the fraudulent use of documents issued by them, carry out an inquiry to identify the instigators of the crime, calling on ICPO-Interpol where necessary;
- e) when presented with a false document, Parties do everything in their power to determine where the specimens are and where the false document originated and inform the Secretariat and other Parties involved where appropriate;
- f) Parties work together within their regions to develop appropriate mechanisms for cooperation and coordination between wildlife-law enforcement agencies at the regional level;
- g) the Secretariat, in consultation with the Standing Committee, establish ad hoc CITES enforcement task forces as needed focusing initially on species included in Appendix I;

- h) Parties that have not already done so consider nominating officials from relevant national enforcement and prosecuting agencies to participate in the Interpol Wildlife Crime Working Group;
- i) Parties provide to the Secretariat detailed information on significant cases of illegal trade; and
- j) Parties inform the Secretariat, when possible, about convicted illegal traders and persistent offenders; and

DIRECTS the Secretariat to communicate such information quickly to the Parties; and

Regarding additional actions to promote enforcement

RECOMMENDS further that the Parties:

- a) take the necessary measures to develop a comprehensive strategy for border controls, audits and investigations, by:
 - i) taking into account the different procedures for Customs clearance of goods and Customs procedures such as transit, temporary admission, warehouse storage, etc.;
 - ii) ensuring that officers in charge of control are aware of and trained in CITES matters regarding, for example, CITES requirements, identification of specimens and the handling of live animals;
 - iii) implementing document control in order to ensure the authenticity and validity of CITES permits and certificates, especially, if necessary, by requesting the Secretariat to confirm their validity;
 - iv) conducting physical examinations of goods, based on a policy of risk assessment and targeting;
 - v) increasing the quality of controls at the time of export and re-export; and
 - vi) providing the necessary resources in order to achieve these objectives;
- b) promote incentives to secure the support and cooperation of local and rural communities in managing wildlife resources and thereby combating illegal trade;
- c) where appropriate, evaluate and utilize for enforcement purposes, information from non-governmental sources while maintaining standards of confidentiality;
- d) consider the formation, at national level, of specialized wildlife-law enforcement units or teams;
- e) explore innovative means of increasing and improving national enforcement capacity;

- f) carry out focused national and regional capacity-building activities with particular focus on fostering inter-agency cooperation and improving knowledge of legislation; species identification; risk analysis and investigation of criminal actions; and
- g) whenever appropriate and possible, liaise closely with CITES Management Authorities and law enforcement agencies in consumer, source and transit countries to help detect, deter and prevent illicit trade in wildlife through the exchange of intelligence, technical advice and support;

URGES the Parties, intergovernmental and non-governmental organizations to provide, as a matter of urgency, funds and expertise to enable enforcement-related training or the provision of training materials, focusing on developing countries and countries with economies in transition, preferably on a regional or sub-regional basis, and provide funds to ensure that wildlife-law enforcement personnel in such countries are adequately trained and equipped;

ENCOURAGES Parties to give priority to the enforcement of CITES and prosecution of violations of the Convention;

ENCOURAGES States to offer rewards for information on illegal hunting and trafficking of specimens of Appendix-I species leading to the arrest and conviction of the offenders;

URGES ICPO-Interpol to support the attendance of a representative from the Interpol Wildlife Crime Working Group at meetings of the Conference of the Parties to CITES; and

INSTRUCTS the Secretariat to:

- a) cooperate with the World Customs Organization, ICPO-Interpol and competent national authorities to:
 - i) prepare and distribute appropriate training material; and
 - ii) facilitate the exchange of technical information between the authorities in charge of border controls; and
- b) submit a report on enforcement matters at each Standing Committee meeting and each regular meeting of the Conference of the Parties; and

REPEALS the Resolutions or parts thereof listed hereunder:

- a) Resolution Conf. 2.6 (Rev.) (San José, 1979, as amended at Fort Lauderdale, 1994) – Trade in Appendix-II and -III species – paragraph b) and paragraph under ‘REQUESTS’;

- b) Resolution Conf. 3.9 (Rev.) (New Delhi, 1981, as amended at Fort Lauderdale, 1994) – International compliance control;
- c) Resolution Conf. 6.3 (Ottawa, 1987) – The Implementation of CITES;
- d) Resolution Conf. 6.4 (Rev.) (Ottawa, 1987, as amended at Fort Lauderdale, 1994) – Controls on illegal trade;
- e) Resolution Conf. 7.5 (Lausanne, 1989) – Enforcement; and
- f) Resolution Conf. 9.8 (Rev.) (Fort Lauderdale, 1994, as amended at Harare, 1997) – Enforcement.

1.2.2 Resolution 11.17 - Reporting with reference to Resolution 11.3 (2000/2007)

RECALLING Resolution Conf. 9.4 (Rev.), adopted by the Conference of the Parties at its ninth meeting (Fort Lauderdale, 1994) and amended at its 10th meeting (Harare, 1997), relating to annual reports and monitoring of trade;

CONSIDERING the obligation of Parties to submit periodic reports under the provisions of Article VIII, paragraph 7, of the Convention;

RECOGNIZING the importance of the annual reports and biennial reports as the only available means of monitoring the implementation of the Convention and the level of international trade in specimens of species included in the Appendices;

ACKNOWLEDGING the necessity for the annual reports and biennial reports of the Parties to be as complete as possible and to be comparable;

CONSIDERING that the provisions of Article XII, paragraph 2 (d), of the Convention require the Secretariat to study the periodic reports of Parties;

APPRECIATING the valuable assistance in meeting this responsibility provided by the UNEP World Conservation Monitoring Centre under contract to the Secretariat;

NOTING that the use of computers can help to ensure that trade statistics and information on Convention implementation are dealt with more effectively;

CONCERNED that many Parties have not followed the recommendations of the Conference of the Parties and of the Secretariat that the annual reports be submitted by 31 October following the year for which they are due and following the guidelines for the preparation of such reports;

FURTHER CONCERNED that many Parties have not regularly submitted biennial reports;

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URGES all Parties to submit their annual reports required under the provisions of Article VIII, paragraph 7(a), in accordance with the most recent version of the Guidelines for the preparation and submission of CITES annual reports distributed by the Secretariat and as may be amended with the concurrence of the Standing Committee;

URGES all Parties to submit their biennial reports required under the provisions of Article VIII, paragraph 7 (b), by 31 October following the year for which they are due and in accordance with the Biennial report format distributed by the Secretariat, as may be amended by the Secretariat from time to time with the concurrence of the Standing Committee;

ALSO URGES all Parties to submit biennial reports covering the same two-year periods beginning with the period from 1 January 2003 to 31 December 2004;

FURTHER URGES Parties with multiple Management Authorities to submit a coordinated annual and biennial report to the extent possible;

ACKNOWLEDGES that the Conference of the Parties may request that Parties provide special reports not required by the Convention, if additional information is needed that cannot be sought via the annual or biennial report;

RECOMMENDS that each Party to the Convention, if a member of a regional trade agreement within the meaning of Article XIV, paragraph 3, of the Convention, include in its annual reports information on trade in specimens of species included in Appendices I, II and III with other member States of that regional trade agreement, unless the record-keeping and reporting duties of Article VIII are in direct and irreconcilable conflict with the provisions of the regional trade agreement;

RECOMMENDS that, when compiling their annual reports in accordance with Article VIII, paragraph 7, of the Convention and this Resolution, Parties pay particular attention to the reporting of trade in specimens of species subject to annual export quotas. For these species, the report should indicate the level of the quota and the amount actually exported. In cases where trade is authorized in the reporting year in specimens obtained under a quota for the previous year, this should be reflected in the annual report;

URGES every Party to consider whether the preparation of its statistical and implementation reports could be computerized and the submission of such reports made in electronic format;

FURTHER URGES Parties experiencing problems with the regular preparation and submission of annual or biennial reports to seek assistance from the Secretariat to produce those reports;

RECOMMENDS that Parties studying or developing computer programmes for licensing and reporting trade as well as managing other information under the Convention consult with each other, and with the Secretariat, in order to ensure optimal harmonization and compatibility of systems;

DECIDES that:

- a) failure to submit an annual report by 31 October of the year following the year for which the report was due constitutes a major problem with the implementation of the Convention, which the Secretariat shall refer to the Standing Committee for a solution in accordance with Resolution Conf. 11.3 (Rev. CoP14); and
- b) the Secretariat may approve a valid request from a Party for a reasonable extension of time to the 31 October deadline for the submission of annual or biennial reports provided the Party submits to the Secretariat a written request, containing adequate justification, before that deadline;

INSTRUCTS the Standing Committee to determine, on the basis of reports presented by the Secretariat, which Parties have failed, for three consecutive years and without having provided adequate justification, to provide the annual reports required under Article VIII, paragraph 7 (a), of the Convention within the deadline (or any extended deadline) provided in the present Resolution;

RECOMMENDS that Parties not authorize trade in specimens of CITES-listed species with any Party that the Standing Committee has determined has failed, for three consecutive years and without having provided adequate justification, to provide the annual reports required under Article VIII, paragraph 7 (a), of the Convention within the deadline (or any extended deadline) provided in the present Resolution;

APPEALS to all Parties, and to non-governmental organizations interested in furthering the objectives of the Convention, to make financial contributions to the Secretariat to support the trade and other monitoring work of the Secretariat and that of the UNEP World Conservation Monitoring Centre undertaken under contract to the Secretariat; and

REPEALS Resolution Conf. 9.4 (Rev.) (Fort Lauderdale, 1994, as amended at Harare, 1997) – Annual reports and monitoring of trade.

1.2.3 COP Decision 12.84 - Compliance with the Convention (2002)

Directed to the Secretariat

On the basis of document CoP12 Doc. 26 and related discussions during the 12th meeting of the Conference of the Parties, the Secretariat shall draft a set of Guidelines on Compliance with the Convention for consideration by the Standing Committee at its 49th meeting.

1.2.4 50th meeting of the Standing Committee, summary report (2004)

27. Guidelines on compliance with the Convention

The Secretariat introduced document SC50 Doc. 27 and provided a brief chronology of the actions that had led to its development since the 45th meeting of the Standing Committee (Paris, June 2001). During the Committee's discussions, most Standing Committee members expressed their appreciation for the Secretariat's efforts to incorporate Parties' comments and to improve the document since the 49th meeting of the Standing Committee (Geneva, April 2003). Members and observers, however, proposed a variety of further amendments to address, *inter alia*, deadlines, the respective roles of Convention bodies, the extent of procedural detail, the balance between facilitating and securing compliance and the guidelines' consistency with the text of the Convention, Resolutions in effect and existing practice, and drew attention to comments already made but not incorporated. Although there was general agreement that compliance guidelines were important, it was pointed out that there seemed to be a disagreement concerning what constitutes 'guidelines' that needed to be resolved.

Noting that it would not be able to reach an agreement at the present meeting, the Committee established an intersessional working group and process to create a document for consideration at its 53rd meeting. The Committee acknowledged, however, that any Party could submit the issue of compliance guidelines for discussion at CoP13. It agreed that, if there were discussions on compliance at CoP13, they should take into consideration document SC50 Doc. 27, Annex 3, with the understanding that this document was not agreed and was still under deliberation by the Committee.

The Committee considered the importance of eliciting additional input on the revised draft guidelines from Parties, intergovernmental organizations and non-governmental organizations as well as the possibility that a broadly participatory process might be unwieldy. It agreed that the working group established at this meeting, comprising the representatives of Africa (the United Republic of Tanzania), Asia (Malaysia), Central and South America and the Caribbean (Ecuador), Europe (Germany and Norway), North America and Oceania, would be the nucleus of an open-ended Working Group on Compliance which would determine how best to advance its work in an open and transparent manner. The Committee instructed the Secretariat to keep Parties informed about the progress of the Working Group by posting the result of its work on the CITES website.

The Committee discussed whether and how the Conference of the Parties should be involved in the finalization or adoption of guidelines for compliance with the Convention. It agreed that, if a document were finalized at its 53rd meeting, it would then decide on the recommendations to be forwarded to the 14th meeting of the Conference of the Parties. The observer from Ireland, on behalf of the European Union, reserved the right to submit a proposal on the issue at CoP13.

During discussion of this item, interventions were also made by the representatives of Africa (Cameroon and the United Republic of Tanzania), Asia (China and Malaysia), Central and South America and the Caribbean (Ecuador and Saint Lucia), Europe (Germany and Norway), North America, Oceania, the Depositary Government and the Previous Host Country, and the observers from Argentina, Japan, the European Commission, the David Shepherd Wildlife Foundation, IWC and IWMC-World Conservation Trust.

1.2.5 Resolution 14.3 - CITES Compliance Procedures (2007)

RECALLING Decision 12.84, whereby the Conference of the Parties instructed the Secretariat to draft a set of guidelines on compliance with implementation of the Convention for consideration by the Standing Committee;

RECALLING FURTHER that the Standing Committee at its 50th meeting (Geneva, March 2004) decided to establish an open-ended working group to draft such guidelines;

THE CONFERENCE OF THE PARTIES TO THE CONVENTION TAKES NOTE of the Guide to CITES compliance procedures annexed to this Resolution; and

RECOMMENDS that the Guide be referred to, when dealing with compliance matters.

Annex

Guide to CITES compliance procedures

Objective and scope

1. The objective of this Guide is to inform Parties and others of CITES procedures concerning promoting, facilitating and achieving compliance with obligations under the Convention and, in particular, assisting Parties in meeting their obligations regarding such compliance. Specifically, the Guide describes existing procedures in order to facilitate consistent and effective handling of compliance matters relating to obligations under the Convention, taking into account relevant Resolutions and Decisions, in both specific and general compliance matters.

This Guide is non-legally binding.

2. This Guide addresses compliance matters relating to the obligations under the Convention, taking into account relevant Resolutions and Decisions. Particular attention should be paid to the following:
 - a) designating Management Authority(ies) and Scientific Authority(ies) (Article IX);

- b) permitting trade in CITES-listed specimens only to the extent consistent with the procedures laid down in the Convention (Articles III, IV, V, VI, VII and XV);
 - c) taking appropriate domestic measures to enforce the provisions of the Convention and prohibit trade in violation thereof (Article VIII, paragraph 1);
 - d) maintaining records of trade and submitting periodic reports (Article VIII, paragraphs 7 and 8); and
 - e) responding as soon as possible to communications of the Secretariat related to information that a species included in Appendix I or II is being adversely affected by trade in specimens of that species or that the provisions of the Convention are not being effectively implemented (Article XIII).
3. The procedures described in this Guide are without prejudice to any rights and obligations and to any dispute settlement procedure under the Convention.

General principles

- 4. A supportive and non-adversarial approach is taken towards compliance matters, with the aim of ensuring long-term compliance.
- 5. Compliance matters are handled as quickly as possible. Such matters are considered and ensuing compliance measures are applied in a fair, consistent and transparent manner.
- 6. Generally, findings, reports and communications in compliance matters are not treated confidentially. However, communications between the Secretariat and individual Parties on specific compliance matters are generally confidential.
- 7. Decisions on whether to close or keep open debates in compliance matters are taken according to the Rules of Procedure of the body considering the matter and generally reasons are given.
- 8. The Secretariat communicates compliance-related decisions to the relevant authorities.

The various bodies and their compliance-related tasks

- 9. Compliance matters are handled by the following CITES bodies. Their main compliance-related tasks are listed below.
- 10. The Conference of the Parties:
 - a) provides general policy guidance on compliance issues;
 - b) directs and oversees the handling of compliance matters particularly through the identification of key obligations and procedures;

- c) reviews as needed decisions of the Standing Committee related to specific compliance matters; and
 - d) may delegate certain authority to the Standing Committee or other CITES bodies in accordance with the Convention.
11. When the Conference of the Parties decides to carry out itself the tasks delegated to the Standing Committee, it follows the same procedures as those described below for the Standing Committee.
12. The Standing Committee, acting in accordance with instructions from and authority delegated by the Conference of the Parties, handles general and specific compliance matters, including:
- a) monitoring and assessing overall compliance with obligations under the Convention;
 - b) advising and assisting Parties in complying with obligations under the Convention;
 - c) verifying information; and
 - d) taking compliance measures as described below.
13. The Animals and Plants Committees, acting in accordance with instructions from and authority delegated by the Conference of the Parties, advise and assist the Standing Committee and the Conference of the Parties with regard to compliance matters, inter alia, by undertaking necessary reviews, consultations, assessments and reporting. These Committees are entrusted with specific tasks in the handling of matters related to the Review of Significant Trade.
14. The Secretariat:
- a) assists and supports the Animals and Plants Committees, the Standing Committee and the Conference of the Parties in carrying out their functions concerning compliance matters as described in this Guide and, where applicable, according to the procedures set out in relevant Resolutions and Decisions;
 - b) receives, assesses and communicates to the Parties information on compliance matters;
 - c) advises and assists Parties in complying with obligations under the Convention;
 - d) makes recommendations for achieving compliance; and
 - e) monitors the implementation of compliance-related decisions.

Handling of specific compliance matters

A. Identification of potential compliance matters

15. Annual and biennial reports, legislative texts as well as other special reports and responses to information requests, for example within the Review of Significant Trade or the National Legislation Project, provide the primary, but not exclusive, means of monitoring compliance with obligations under the Convention.
16. The Secretariat provides a Party concerned with information it receives about that Party's compliance, and communicates with the Party regarding this matter.
17. In response, the Party informs the Secretariat as soon as possible of any relevant facts in so far as its laws permit and, where appropriate, proposes remedial action. Where the Party considers that an inquiry is desirable, such inquiry may be carried out by one or more persons expressly authorized by the Party.
18. Any Party concerned over matters related to trade in specimens of CITES-listed species by another Party may bring the matter up directly with that Party and/or call upon the Secretariat for assistance.
19. Parties themselves are encouraged to give the Secretariat early warning of any compliance matter, including the inability to provide information by a certain deadline, and indicate the reasons and any need for assistance.
20. Where compliance matters are identified, the Parties concerned are given every opportunity to correct them within reasonable time limits, if necessary with the assistance of the Secretariat.

B. Consideration of compliance matters

21. If the Party fails to take sufficient remedial action within a reasonable time limit, the compliance matter is brought to the attention of the Standing Committee by the Secretariat, in direct contact with the Party concerned.
22. If a compliance matter is otherwise brought to the attention of the Standing Committee in accordance with the Rules of Procedure, the Standing Committee:
 - a) refers the matter to the Secretariat for action according to the procedure in paragraphs 16-20 above; or
 - b) rejects it as trivial or ill-founded; or
 - c) in exceptional circumstances, after consultation with the Party concerned, follows the procedures as described below.
23. When compliance matters are brought to the attention of the Standing Committee, it is generally done in writing and includes details as to which specific obligations are concerned and an assessment of the reasons why the Party concerned may be unable to meet those obligations.

24. When a compliance matter is brought to the attention of the Standing Committee, the Secretariat immediately informs the Party or Parties concerned.
25. The Standing Committee rejects compliance matters which it considers are trivial or illfounded.

Where the Standing Committee has decided that the submission is not trivial or ill-founded, the Party concerned is given the opportunity to provide comments within a reasonable time limit.

26. The Standing Committee decides whether to gather or request further information on a compliance matter whenever such information may be found and whether to seek an invitation from the Party concerned to undertake the gathering and verification of information in the territory of that Party or wherever such information may be found.
27. The Party concerned has the right to participate in discussions with respect to its own compliance, in accordance with the Rules of Procedure of the relevant body.
28. If a Party cannot access the financial resources needed to participate in CITES meetings where its own compliance is being considered, it is able to request assistance from the Secretariat or the Standing Committee in identifying such resources.

C. Measures to achieve compliance

29. If a compliance matter has not been resolved, the Standing Committee decides to take one or more of the following measures:
 - a) provide advice, information and appropriate facilitation of assistance and other capacity-building support to the Party concerned;
 - b) request special reporting from the Party concerned;
 - c) issue a written caution, requesting a response and offering assistance;
 - d) recommend specific capacity-building actions to be undertaken by the Party concerned;
 - e) provide in-country assistance, technical assessment and a verification mission, upon the invitation of the Party concerned;
 - f) send a public notification of a compliance matter through the Secretariat to all Parties advising that compliance matters have been brought to the attention of a Party and that, up to that time, there has been no satisfactory response or action;
 - g) issue a warning to the Party concerned that it is in non-compliance, e.g. in relation to national reporting and/or the National Legislation Project; and

- h) request a compliance action plan to be submitted to the Standing Committee by the Party concerned identifying appropriate steps, a timetable for when those steps should be completed and means to assess satisfactory completion.
30. In certain cases, the Standing Committee decides to recommend the suspension of commercial or all trade in specimens of one or more CITES-listed species, consistent with the Convention. Such a recommendation may be made in cases where a Party's compliance matter is unresolved and persistent and the Party is showing no intention to achieve compliance or a State not a Party is not issuing the documentation referred to in Article X of the Convention. Such a recommendation is always specifically and explicitly based on the Convention and on any applicable Resolutions and Decisions of the Conference of the Parties¹.
31. The list of measures above is not necessarily an exhaustive list of measures applied to date.
32. When the Standing Committee decides upon one or more of the measures mentioned above, it takes into account:
- a) the capacity of the Party concerned, especially developing countries, and in particular the least developed and small island developing States and Parties with economies in transition;
 - b) such factors as the cause, type, degree and frequency of the compliance matters;
 - c) the appropriateness of the measures so that they are commensurate with the gravity of the compliance matter; and
 - d) the possible impact on conservation and sustainable use with a view to avoiding negative results. These considerations are clearly set out in the Standing Committee's recommendations.

D. Monitoring and implementation of measures to achieve compliance

33. The Standing Committee, with the assistance of the Secretariat, monitors the actions taken by the Party concerned to implement measures taken. In this regard, the Standing Committee may, *inter alia*:
- a) request the Party concerned to submit progress reports in accordance with a schedule; and
 - b) arrange, upon the invitation of the Party concerned, for an in-country technical assessment and for a verification mission.

In the light of progress, the Standing Committee decides whether to adjust the measures it has taken, or to take other measures.

34. Existing recommendations to suspend trade are generally reviewed at each Standing Committee meeting. They are also monitored intersessionally by the Secretariat. A recommendation to suspend trade is withdrawn as soon as the compliance matter has been resolved or sufficient progress has been made. The Secretariat notifies Parties of any such withdrawal as soon as possible.
35. The general guidelines in paragraphs 33 and 34 above are in some cases supplemented by more precise provisions regarding specific categories of compliance matters, e.g. in the case of significant trade in specimens of Appendix-II species, as laid out in the Resolutions and Decisions related thereto.

Reporting and review

36. The Standing Committee reports to the Conference of the Parties on compliance matters. The Secretariat reports to the Standing Committee and the Conference of the Parties on compliance matters.
37. The Conference of the Parties may review this document periodically and revise it where appropriate.

1.3 Technical and Financial Assistance

1.3.1 Convention Text - Article XII

2. The functions of the Secretariat shall be:
 - (f) to publish periodically and distribute to the Parties current editions of Appendices I, II and III together with any information which will facilitate identification of specimens of species included in those Appendices;

1.3.2 Resolution 3.4 - Technical cooperation (1981)

NOTING that more than two thirds of the present membership of the Convention are developing countries;

RECOGNIZING the special difficulties of developing countries in the establishment, staffing, training and equipment of Management Authorities as required by the Convention;

ACKNOWLEDGING with appreciation the technical assistance to developing countries in this field, already provided by the World Wildlife Fund and the People's Trust for Endangered Species;

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CALLS on all Parties to ensure the inclusion of the technical assistance, in matters relating to this Convention, in the bilateral and multilateral programmes of development aid in which they participate;

URGES Parties to make special funding and qualified staff available, possibly by way of 'associate expert' assignments to the Secretariat and to developing countries, to carry out such technical assistance projects for the benefits of the other Parties; and

REQUESTS the Secretariat in consultation with the Standing Committee to continue to seek external funding for this purpose, and to execute the projects so funded, on behalf of the Parties.

1.3.3 Resolution 8.4 - National laws for implementation of the Convention (1992/2007)

RECALLING that Article VIII requires all Parties to take appropriate measures to enforce the provisions of the Convention and to prohibit trade in specimens in violation thereof, and that Article IX requires that each Party designate at least one Management Authority and one Scientific Authority;

RECALLING Resolution Conf. 11.3 (Rev. CoP14), adopted by the Conference of the Parties at its 11th meeting (Gigiri, 2000) and amended at its 13th and 14th meetings (Bangkok, 2004; The Hague, 2007), which expresses the Parties' conviction that enforcement of the Convention must be of constant concern to the Parties if the objectives of the Convention are to be fulfilled;

NOTING that the Environmental Law Centre of IUCN has prepared a report for the Secretariat on guidelines for the development of model legislation for CITES implementation;

BELIEVING that a substantial number of Parties have not taken the appropriate measures to enforce the provisions of the Convention;

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DIRECTS the Secretariat, within available resources:

- a) to identify those Parties whose domestic measures do not provide them with the authority to:
 - i) designate at least one Management Authority and one Scientific Authority;
 - ii) prohibit trade in specimens in violation of the Convention;
 - iii) penalize such trade; or
 - iv) confiscate specimens illegally traded or possessed;

- b) to seek from each Party so identified information indicating the procedures, action and time frames that are needed in order to establish the measures necessary to properly enforce the provisions of the Convention; and
- c) to report its findings, recommendations or progress to the Standing Committee and at each meeting of the Conference of the Parties;

URGES all Parties that have not adopted the appropriate measures to fully implement the Convention to do so and inform the Secretariat when such measures have been adopted;

DIRECTS the Secretariat to seek external funding to enable it to provide technical assistance to Parties in the development of their measures to implement the Convention; and

INVITES all Parties, governmental, intergovernmental and non-governmental organizations and other sources to provide financial and/or technical assistance for the development of such measures.

1.4 Dispute Settlement

1.4.1 Convention Text - Article XVIII

Resolution of Disputes

1. Any dispute which may arise between two or more Parties with respect to the interpretation or application of the provisions of the present Convention shall be subject to negotiation between the Parties involved in the dispute.
2. If the dispute can not be resolved in accordance with paragraph 1 of this Article, the Parties may, by mutual consent, submit the dispute to arbitration, in particular that of the Permanent Court of Arbitration at The Hague, and the Parties submitting the dispute shall be bound by the arbitral decision.

2. BASEL CONVENTION ON THE CONTROL OF TRANSBOUNDARY MOVEMENTS OF HAZARDOUS WASTES AND THEIR DISPOSAL 1989

2.1 Performance Review Information

2.1.1 Convention Text - Article 13

Transmission of Information

3. The Parties, consistent with national laws and regulations, shall transmit, through the Secretariat, to the Conference of the Parties established under Article 15, before the end of each calendar year, a report on the previous calendar year, containing the following information:
 - (a) Competent authorities and focal points that have been designated by them pursuant to Article 5;
 - (b) Information regarding transboundary movements of hazardous wastes or other wastes in which they have been involved, including:
 - (i) The amount of hazardous wastes and other wastes exported, their category, characteristics, destination, any transit country and disposal method as stated on the response to notification;
 - (ii) The amount of hazardous wastes and other wastes imported, their category, characteristics, origin, and disposal methods;
 - (iii) Disposals which did not proceed as intended;
 - (iv) Efforts to achieve a reduction of the amount of hazardous wastes or other wastes subject to transboundary movement;
 - (c) Information on the measures adopted by them in implementation of this Convention;
 - (d) Information on available qualified statistics which have been compiled by them on the effects on human health and the environment of the generation, transportation and disposal of hazardous wastes or other wastes;
 - (e) Information concerning bilateral, multilateral and regional agreements and arrangements entered into pursuant to Article 11 of this Convention;
 - (f) Information on accidents occurring during the transboundary movement and disposal of hazardous wastes and other wastes and on the measures undertaken to deal with them;
 - (g) Information on disposal options operated within the area of their national jurisdiction;

- (h) Information on measures undertaken for development of technologies for the reduction and/or elimination of production of hazardous wastes and other wastes; and
- (i) Such other matters as the Conference of the Parties shall deem relevant.

2.1.2 COP Decision VI/27 – Implementation of decision V/14 on transmission of information (2002)

The Conference of the Parties,

Recalling its decision V/14 on transmission of information and its decision V/15 on information management and dissemination and the development of the information system on hazardous wastes and their management,

Taking note of the revised questionnaire on transmission of information (UNEP/CHW.6/29, annex) with its pre-filling feature and the manual to assist Parties in completing the revised questionnaire,

Welcoming the efforts made by the secretariat, in consultation with Parties, to revise the questionnaire and to prepare the manual,

Welcoming the assistance provided by Finland in the preparation of the revised questionnaire and its manual,

Taking note of the database designed for processing and dissemination of data and information reported by Parties,

Taking note also of the compilation documents and country fact sheets prepared by the secretariat, based on the information reported by Parties for the years 1998 and 1999 in accordance with articles 13 and 16 of the Convention,

Taking note further of the progress of work within the Member countries of the Organisation for Economic Cooperation and Development on the development of waste prevention indicators,

1. Adopts the revised questionnaire on transmission of information with its pre-filling feature and manual;
2. Requests the Parties to use the revised questionnaire and its manual to report data and information to the secretariat in accordance with articles 13 and 16 of the Convention;
3. Requests the secretariat to provide training to developing countries and other countries that are in need of assistance to meet their reporting obligations by organizing workshops through the Basel Convention Regional Centres or by other appropriate means;

4. Urges Parties that have not yet done so to report on articles 13 and 16 for the calendar year 2000, and earlier years, as soon as possible using the revised questionnaire, bearing in mind that, in accordance with the provisions of article 13, Parties are requested to transmit, before the end of each calendar year, a report on the previous calendar year;
5. Recalls that such information has to be provided by Parties to the secretariat for the calendar year 2001 before the end of the calendar year 2002;
6. Invites Parties to assist the secretariat in providing training as referred to in operative paragraph 3 above;
7. Requests the secretariat to make the database on articles 13 and 16 available on the web site of the secretariat;
8. Also requests the secretariat to analyse the information collected from the questionnaire on transmission of information to identify cases where notification in accordance with article 3, paragraphs 1 and 2 of the Convention would be necessary;
9. Further requests the secretariat to prepare the compilation documents and country fact sheets for the years 2000 and 2001 and to make such information available on a regular basis to the Parties and to non-Parties;
10. Requests the secretariat to continue to explore the possibilities of developing indicators on hazardous wastes, which shall take into account the different socio-economic conditions of Parties, to facilitate decision-making and to report thereon to the Conference of the Parties at its seventh meeting.

2.2 Multilateral Procedures to Consider Implementation and Non-Compliance, Non-Compliance Response Mechanism

2.2.1 Convention Text – Article 15

Conference of the Parties

1. A Conference of the Parties is hereby established. The first meeting of the Conference of the Parties shall be convened by the Executive Director of UNEP not later than one year after the entry into force of this Convention. Thereafter, ordinary meetings of the Conference of the Parties shall be held at regular intervals to be determined by the Conference at its first meeting.
2. Extraordinary meetings of the Conference of the Parties shall be held at such other times as may be deemed necessary by the Conference, or at the written request of any Party, provided that, within six months of the request being communicated to them by the Secretariat, it is supported by at least one third of the Parties.

3. The Conference of the Parties shall by consensus agree upon and adopt rules of procedure for itself and for any subsidiary body it may establish, as well as financial rules to determine in particular the financial participation of the Parties under this Convention.
4. The Parties at their first meeting shall consider any additional measures needed to assist them in fulfilling their responsibilities with respect to the protection and the preservation of the marine environment in the context of this Convention.
5. The Conference of the Parties shall keep under continuous review and evaluation the effective implementation of this Convention, and, in addition, shall:
 - (a) Promote the harmonization of appropriate policies, strategies and measures for minimizing harm to human health and the environment by hazardous wastes and other wastes;
 - (b) Consider and adopt, as required, amendments to this Convention and its annexes, taking into consideration, inter alia, available scientific, technical, economic and environmental information;
 - (c) Consider and undertake any additional action that may be required for the achievement of the purposes of this Convention in the light of experience gained in its operation and in the operation of the agreements and arrangements envisaged in Article 11;
 - (d) Consider and adopt protocols as required; and
 - (e) Establish such subsidiary bodies as are deemed necessary for the implementation of this Convention.
6. The United Nations, its specialized agencies, as well as any State not Party to this Convention, may be represented as observers at meetings of the Conference of the Parties. Any other body or agency, whether national or international, governmental or non-governmental, qualified in fields relating to hazardous wastes or other wastes which has informed the Secretariat of its wish to be represented as an observer at a meeting of the Conference of the Parties, may be admitted unless at least one third of the Parties present object. The admission and participation of observers shall be subject to the rules of procedure adopted by the Conference of the Parties.
7. The Conference of the Parties shall undertake three years after the entry into force of this Convention, and at least every six years thereafter, an evaluation of its effectiveness and, if deemed necessary, to consider the adoption of a complete or partial ban of transboundary movements of hazardous wastes and other wastes in light of the latest scientific, environmental, technical and economic information.

2.2.2 COP Decision V/16 – Monitoring the implementation of and compliance with the obligations set out by the Basel Convention (1999)

The Conference

Requests 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 present decision.

Annex

Monitoring the implementation of and compliance with the obligations set out by the Basel Convention

1. The mechanism, to be administered by an existing or a new body, should monitor implementation of and compliance with the Basel Convention with a view to recommending the best way to promote full implementation of the provisions of the Convention. The mechanism should be transparent, costeffective, preventive in nature, simple, flexible, non-binding and oriented in the direction of helping Parties to implement the provisions of the Basel Convention. It will pay particular attention to the needs of developing countries.

A. Composition and tenure

2. An existing body or a new body can administer the mechanism. If a new body is to be established:
 - (a) The number of its members should be limited and small (between 14 and 20);
 - (b) It may be composed of independent experts and/or State representatives, taking into account an equitable geographical distribution (e.g., ensuing representation from both developing and developed countries, from both hazardous waste exporting/producing and importing countries, and from different geographical regions);
 - (c) Members could be elected by the Conference of the Parties;
 - (d) The body should meet as often as necessary;
 - (e) The term of the body could range between one and three years or from one meeting of the Conference of the Parties to the next meeting of the Conference of the Parties, and possibly be renewable.

B. Functions

3. The body could have the following functions:
 - (a) To provide Parties with advice, recommendations and information relating to:
 - (i) Establishing and strengthening of domestic regulatory regimes;
 - (ii) Enforcing and implementing laws, including border controls;
 - (iii) Ensuring the environmentally sound management and disposal of hazardous wastes;
 - (iv) Training customs and other personnel;
 - (v) Procuring technical and financial assistance from external sources;
 - (vi) Establishing and developing means of detecting and eradicating illegal traffic, including investigating, sampling and testing;
 - (b) To consult with Parties on ways to facilitate their implementation of and compliance with the obligations set out by the Basel Convention;
 - (c) To monitor, assess and facilitate reporting under article 13 of the Basel Convention;
 - (d) To monitor and assist individual Parties in their efforts to implement decisions of the Conference of the Parties on compliance;
 - (e) To consult other bodies as required;
 - (f) To make recommendations on monitoring and compliance issues, including priorities;
 - (g) To report to the Conference of the Parties and its subsidiary bodies.
4. In addition to performing the functions listed under subparagraphs 3 (a)-(g) above, the body may provide assistance in individual cases when specific implementation and compliance questions are raised. In these cases, the assistance of the body may be invoked:
 - (a) By a Party (or Parties) with respect to its (their) own activities or activities of other Parties in which it is (they are) directly involved;
 - (b) By the Conference of the Parties, and its subsidiary bodies where so mandated by the Conference of the Parties.

2.2.3 COP Decision VI/12 - Establishment of a mechanism for promoting implementation and compliance (2002)

The Conference of the Parties,

Bearing in mind the provisions of the Basel Convention,

Taking note of decision V/16, in which the Conference of the Parties requested the Legal Working Group to prepare a draft decision establishing a mechanism for promoting the implementation of and compliance with the obligations set out under the Basel Convention,

Also noting the requirement for environmentally sound management of hazardous and other wastes as defined by the Convention,

Seeking to promote the identification, as early as possible, of implementation and compliance difficulties encountered by Parties,

Desiring to improve its understanding of the root causes of such difficulties,

Seeking to promote the adoption of and recommendations on the most appropriate and effective solutions for resolving those difficulties,

Seeking also to assist Parties to develop and implement the most appropriate and effective solutions for resolving those difficulties,

1. Decides, pursuant to article 15, paragraph 5 (e) of the Basel Convention to adopt the terms of reference for the mechanism for promoting implementation and compliance set out in the appendix to the present decision.

Appendix

Mechanism for Promoting Implementation and Compliance

Terms of reference

Objectives

1. The objective of the mechanism is to assist Parties to comply with their obligations under the Convention and to facilitate, promote, monitor and aim to secure the implementation of and compliance with the obligations under the Convention.

Nature of the mechanism

2. The mechanism shall be non-confrontational, transparent, cost-effective and preventive in nature, simple, flexible, non-binding and oriented in the direction of helping parties to implement the provisions of the Basel Convention. It will pay particular attention to the special needs of developing countries and countries with economies in transition, and is intended to promote cooperation between all Parties. The mechanism should complement work performed by other Convention bodies and by the Basel Convention Regional Centres.

Composition and tenure

3. A Committee for administrating this mechanism (“the Committee”) is hereby established. It shall consist of 15 Members nominated by the Parties, serving in accordance with paragraph 4, and based on equitable geographical representation of the five regional groups of the United Nations, elected by the Conference of the Parties.
4. If a Member of the Committee resigns or is otherwise unable to complete his or her term of office or to perform his or her functions, the Party who nominated that member shall nominate an alternate to serve for the remainder of the mandate.
5. Members of the Committee will serve objectively and in the best interest of the Convention. They shall have expertise relating to the subject matter of the Convention in areas including scientific, technical, socio-economic and/or legal fields.
6. At the meeting at which the decision establishing the mechanism is adopted, the Conference of the Parties shall elect five members, one from each region, for one term, and ten members, two from each region, for two terms. The Conference of the Parties shall, at each ordinary meeting thereafter, elect for two full terms new members to replace those members whose period of office has expired, or is about to expire. Members shall not serve for more than two consecutive terms. For the purposes of the present terms of reference “term” means the period that begins at the end of one ordinary meeting of the Conference of the Parties and ends at the end of the next ordinary meeting of the Parties.
7. The Committee shall elect its officers – a Chair, three Vice-chairs and a Rapporteur – based on equitable geographical representation of the five regional groups of the United Nations.
8. The Committee shall meet at least once between each regular meeting of the Conference of the Parties, and in conjunction with meetings of other Convention bodies. The secretariat shall arrange for and service the meetings of the Committee.

Procedures for specific submissions

9. Submissions may be made to the Committee by:
 - (a) A Party that concludes that, despite its best efforts, it is or will be unable to fully implement or comply with its obligations under the Convention;
 - (b) A Party that has concerns or is affected by a failure to comply with and/or implement the Convention’s obligations by another Party with whom it is directly involved under the Convention. A Party intending to make a submission under this subparagraph shall inform the Party whose

compliance is in question, and both Parties should then try to resolve the matter through consultations;

- (c) The secretariat, if, while acting pursuant to its functions under articles 13 and 16, it becomes aware of possible difficulties of any Party in complying with its reporting obligations under article 13, paragraph 3 of the Convention, provided that the matter has not been resolved within three months by consultation with the Party concerned.
10. Any submission, except one made under paragraph 9 (c), shall be addressed in writing to the secretariat, and shall set out:
 - (a) The matter of concern;
 - (b) The relevant provisions of the Convention; and
 - (c) Where paragraph 9 (b) applies, information substantiating the submission.
11. Where a submission is made under paragraph 9 (a), the secretariat shall forward the submission, within two weeks of its receiving the submission, to the Committee for consideration at its next meeting.
12. The Party whose compliance is in question may present responses and/or comments at every step of the proceedings described in this decision.
13. In cases of a submission other than by a Party with respect to its own compliance, the secretariat shall send, within two weeks of its receiving the submission, a copy to the Party whose compliance with the Convention is in question and to the Committee for consideration at its next meeting.
14. Without prejudice to paragraph 12, additional information provided in response by the Party whose compliance is in question should be forwarded to the secretariat within three months of the date of the receipt of the submission by the Party in question, unless the circumstances of a particular case require an extended period of time. Such information will be immediately transmitted to the members of the Committee for consideration at its next meeting. Where a submission has been made pursuant to paragraph 9 (b), the information shall also be forwarded by the secretariat to the Party that made the submission.
15. Where a Party is identified in a submission or itself makes a submission, it shall be invited to participate in the consideration of the submission by the Committee. Such a Party, however, shall not take part in the elaboration and adoption of the conclusions or recommendations by the Committee. Conclusions and recommendations shall be shared with the Party concerned for consideration and an opportunity to comment. Any such comments shall be forwarded with the report of the Committee to the Conference of the Parties.
16. Meetings dealing with specific submissions relating to the compliance of an individual Party shall not be open to other Parties or the public, unless the Committee and the Party whose compliance is in question agree otherwise.

17. Under the compliance mechanism, a Party may also consider and use relevant and appropriate information provided by civil society on compliance difficulties.
18. The Committee may decide not to proceed with a submission which it considers is:
 - (a) de minimis; or
 - (b) manifestly ill-founded.

Facilitation procedure

19. The Committee shall consider any submission made to it in accordance with paragraph 10 with a view to determining the facts and root causes of the matter of concern and, assist in its resolution. As part of this process, the Committee may provide a Party, after coordination with that Party, with advice, non-binding recommendations and information relating to, inter alia;
 - (a) Establishing and/or strengthening its domestic/regional regulatory regimes;
 - (b) Facilitation of assistance in particular to developing countries and countries with economies in transition, including on how to access financial and technical support, including technology transfer and capacity-building;
 - (c) Elaborating, as appropriate and with the cooperation of the Party or Parties faced with the compliance problems, voluntary compliance action plans, and review their implementation. A voluntary compliance action plan may include benchmarks, objectives and indicators of the plan, as well as an indicative timeline for its implementation;
 - (d) Any follow -up arrangements for progress reporting to the Committee, including through the national reporting procedure under article 13.

Advice, non-binding recommendations and information other than those listed in subparagraphs (a) to (d) above should be provided in agreement with that Party. Recommendation to the Conference of the Parties on additional measures
20. If, after undertaking the facilitation procedure in paragraph 19 above and taking into account the cause, type, degree and frequency of compliance difficulties, as well as the capacity of the Party whose compliance is in question, the Committee considers it necessary in the light of paragraphs 1 and 2 to pursue further measures to address a Party's compliance difficulties, it may recommend to the Conference of the Parties that it consider:
 - (a) Further support under the Convention for the Party concerned, including prioritization of technical assistance and capacity-building and access to financial resources; or

- (b) Issuing a cautionary statement and providing advice regarding future compliance in order to help Parties to implement the provisions of the Basel Convention and to promote cooperation between all Parties.

Any such action shall be consistent with article 15 of the Convention.

General review

21. The Committee shall, as directed by the Conference of Parties, review general issues of compliance and implementation under the Convention relating to, inter alia:

- (a) Ensuring the environmentally sound management and disposal of hazardous and other wastes;
- (b) Training customs and other personnel;
- (c) Accessing technical and financial support, particularly for developing countries, including technology transfer and capacity-building;
- (d) Establishing and developing means of detecting and eradicating illegal traffic, including investigating, sampling and testing;
- (e) Monitoring, assessing and facilitating reporting under article 13 of the Convention; and
- (f) The implementation of, and compliance with, specified obligations under the Convention.

Consultation and information

22. In carrying out its functions, the Committee may, inter alia:

- (a) Request further information from all Parties, through the secretariat, on general issues of compliance and implementation under its consideration;
- (b) Consult with other bodies of the Convention;
- (c) Request further information from any sources and draw upon outside expertise, as it considers necessary and appropriate, either with the consent of the Party concerned or as directed by the Conference of the Parties;
- (d) Undertake, with the agreement of a Party(ies), information gathering in its or their territory for the purpose of fulfilling the functions of the Committee;
- (e) Consult with the secretariat and draw upon its experience and knowledge base compiled under article 16 of the Convention and request through the secretariat information, where appropriate in the form of a report, on matters under the Committee's consideration; and

- (f) Review the national reports of Parties provided under article 13 of the Convention.

Reporting

23. The Committee shall report to each ordinary meeting of the Conference of the Parties on the work it has carried out to fulfil its functions under paragraphs 19 and 20 for the information and/or the consideration of the Conference of the Parties.
24. The Committee shall also report to each ordinary meeting of the Conference of the Parties on any conclusions and/or recommendations it has developed under paragraph 21 and on its suggestions for any future work that may be required on general issues of compliance and implementation, for the consideration and approval of the Conference of the Parties.

Decision-making

25. The Committee shall make every effort to reach agreement on all matters of substance by consensus. Where this is not possible, the report and recommendations shall reflect the views of all the Committee members. If all efforts to reach consensus have been exhausted and no agreement has been reached, any decision shall, as a last resort, be taken by a two-third majority of the members present and voting or by eight members, whichever is the greater. Ten members of the Committee shall constitute a quorum.

Confidentiality

26. The Committee, any Party or others involved in its deliberations shall protect the confidentiality of information received in confidence.

Relationship with provisions of the Convention

27. The present mechanism shall be without prejudice to the provisions of article 20 on settlement of disputes.
28. In performing its functions under paragraphs 19, 20 and 21, the Committee shall take into account any specific procedures provided for under the Convention concerning failures to meet Convention obligations.

2.2.4 COP Decision VI/13 - Interim procedure for electing the members of the committee for administering the mechanism for promoting implementation and compliance (2002)

The Conference of the Parties,

Bearing in mind decision VI/12 of the sixth meeting of the Conference of the Parties on the establishment of the mechanism for promoting implementation and compliance,

Noting in particular that the Committee for administering the mechanism shall consist of 15 members nominated by the Parties and based on equitable geographical representation of the five regional groups of the United Nations,

Noting also that paragraph 6 of the appendix to decision VI/12 requires the election of five members, one from each region, for one term, and ten members, two from each region, for two terms,

Recognizing the necessity to allow further time for such election,

1. Calls upon the Parties to nominate candidates meeting the requirements of paragraph 5 of the appendix to decision VI/12 for membership of the Committee;
2. Requests the Parties to submit their nominations to the secretariat two months before the first meeting of the Open-ended Working Group;
3. Further requests the secretariat to distribute the nominations together with the provisional agenda and supporting documents for that meeting;
4. Decides that the Open-ended Working Group shall elect the members of the Committee on behalf of the Conference of the Parties.

2.2.5 COP Decision VII/30 - Mechanism for Implementation and Compliance: Work programme for 2005–2006

The Conference of the Parties,

Bearing in mind the provisions of the Basel Convention,

Recalling decision VI/12, in which the Conference of the Parties established a mechanism for promoting implementation of and compliance with the Basel Convention,

Recalling also the terms of reference of the mechanism set forth in the appendix to decision VI/12, and, particularly paragraph 21 providing for the review by the committee for administering the mechanism for promoting implementation and compliance of general issues of compliance and implementation as directed by the Conference of the Parties,

Also noting the requirement for environmentally sound management of hazardous and other wastes as defined by the Convention,

1. Approves the work programme for 2005-2006 of the Committee for Administering the Mechanism for Promoting the Implementation of and Compliance with the Basel Convention, contained in the annex to the present decision;
2. Requests the committee to establish priorities and work methods and schedules as regards the issues identified in the work programme, and to coordinate with the Open-ended Working Group so as to avoid duplication of activities;
3. Recognizes the need to provide the committee with sufficient funding in order to enable it to function effectively and to carry out its work programme;
4. Requests the committee to report to the eighth meeting of the Conference of the Parties at its eighth meeting on the work it has carried out to fulfil its functions in accordance with paragraphs 23 and 24 of the terms of reference of the mechanism for promoting implementation of and compliance with the Basel Convention;
5. Calls upon Parties to make use of the mechanism for promoting implementation of and compliance with the Basel Convention, noting that it is non-confrontational, transparent, cost-effective and preventive in nature, simple, flexible, non-binding and oriented in the direction of helping parties to implement the provisions of the Basel Convention, that it pays particular attention to the special needs of developing countries and countries with economies in transition, and that it is intended to promote cooperation between all Parties;
6. Requests the Secretariat of the Basel Convention to compile the views of the Parties as regards the general issues of compliance and implementation and their priorities that the Parties consider the committee should review, and provide them to the committee for its consideration in connection with the draft work programme for 2007-2008.

Annex: Work programme for 2005–2006 of the Committee for Administering the Mechanism for Promoting the Implementation and Compliance of the Basel Convention

1. During the biennium 2005-2006, the committee shall review the following general issues in accordance with paragraph 21 of the terms of reference and in accordance with the priorities and budget decided by the Conference of the Parties:
 - (a) Identification and analysis of difficulties relating to reporting obligations under the Basel Convention;

- (b) Identification and analysis of difficulties relating to designation and functioning of national competent authorities and focal points;
 - (c) Identification and analysis of difficulties relating to development of national legislation to implement effectively the Basel Convention.
2. In doing so, the committee shall take full account of the previous discussions and decisions by the Basel Convention bodies on the relevant issues, and shall also take account of its mandate to complement the work performed by other bodies of the Basel Convention and by the Basel Convention regional centres.
3. When the committee receives specific submissions in accordance with paragraph 9 of the terms of reference, it shall give priority to dealing with such submissions.

2.2.6 COP Decision VIII/32 - Mechanism for promoting implementation and compliance: work programme for 2007–2008 (2006)

The Conference of the Parties,

Noting the report of the committee on its work during the period 2005–2006 and the recommendations contained therein,

1. Approves the work programme of the Committee for Administering the Mechanism for Promoting Implementation and Compliance for 2007–2008 contained in the annex to the present decision;
2. Requests the Committee to establish priorities and work methods and schedules regarding the issues identified in the work programme and to coordinate with the Open-ended Working Group, the secretariat and the Basel Convention regional centres so as to avoid duplication of activities;
3. Recognizes the need to provide the Committee with sufficient funding in order to enable it to function effectively and to carry out its work programme;
4. Calls upon all Parties that are in a position to do so to make financial or in-kind contributions to assist the Committee to carry out its work programme;
5. Requests the Committee to report to the Conference of the Parties at its ninth meeting on the work it has carried out to fulfil its functions in accordance with paragraphs 23 and 24 of the terms of reference for the Mechanism for Promoting Implementation and Compliance;
6. Calls upon Parties to make use of the Mechanism for Promoting Implementation and Compliance.

Annex: Work programme for 2007–2008 of the Committee for Administering the Mechanism for Promoting Implementation and Compliance

1. During the biennium 2007–2008, the Committee for Administering the Mechanism for Promoting Implementation and Compliance shall review the following general issues in accordance with paragraph 21 of the terms of reference for the mechanism contained in the annex to decision VI/12 of the Conference of the Parties and in accordance with the priorities and budget decided by the Conference of the Parties:
 - (a) The Committee shall further develop its understanding of national reporting issues by building on the work undertaken pursuant to its work programme for 2005–2006, with a view to providing guidance on how national reporting could be improved, given that it underpins the operation of the Convention;
 - (b) The Committee shall undertake work on the issue of illegal traffic, which could include identifying available existing resources from a number of institutions, working in collaboration with such institutions and the Basel Convention regional centres, and assisting Parties through training, taking into account that such work would assist in ensuring the environmentally sound management of wastes.
2. In undertaking its work, the Committee shall take full account of the previous discussions and decisions by Basel Convention bodies on the relevant issues and shall also take account of its mandate to complement the work performed by other bodies of the Basel Convention and by the Basel Convention regional centres.
3. The Committee shall also continue to monitor any developments on the other issues addressed under its work programme for 2005–2006.
4. When the Committee receives specific submissions in accordance with paragraph 9 of the terms of reference, it shall give priority to dealing with such submissions.

2.2.7 COP Decision IX/2 - Work programme for the Committee for Administering the Mechanism for Promoting Implementation and Compliance of the Basel Convention for the period 2009–2011 (2008)

The Conference of the Parties,

Noting the report of the Committee for Administering the Mechanism for Promoting Implementation and Compliance of the Basel Convention on its work and the recommendations contained therein,

Recognizing the need to provide the Committee with sufficient funding in order to enable it to function effectively and to carry out its work programme,

1. Approves the work programme of the Committee for 2009–2011 set out in the annex to the present decision;
2. Requests the Committee to establish priorities, work methods and schedules with regard to the issues identified in the work programme and to coordinate with the Open-ended Working Group, the Secretariat and the Basel Convention regional centres in order to avoid duplication of activities;
3. Calls upon all Parties that are in a position to do so to make financial or in-kind contributions to enable the Committee to carry out its work programme;
4. Requests the Committee to report to the Conference of the Parties at its tenth meeting on the work it has carried out to fulfil its functions in accordance with paragraphs 23 and 24 of the terms of reference for the Mechanism for Promoting Implementation and Compliance of the Basel Convention;
5. Calls upon Parties to make use of the Mechanism for Promoting Implementation and Compliance of the Basel Convention;
6. Decides to enlarge the scope of the Trust Fund to Assist Developing Countries and other Countries in Need of Technical Assistance in the Implementation of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Technical Cooperation Trust Fund) to establish an implementation fund to assist any Party that is a developing country or country with an economy in transition and is the subject of a submission made in accordance with paragraph 9 of the terms of reference of the Committee;
7. Authorizes the Committee to recommend use of the implementation fund referred to in paragraph 6 above, subject to the availability of resources, to assist Parties in the context of the facilitation procedure established under paragraph 20 of the Committee's terms of reference;
8. Urges Parties that are in a position to do so to provide contributions to the implementation fund referred to in paragraph 6 above to support the activities referred to in paragraph 7 above.

Annex to decision IX/2

Work programme for 2009–2011 of the Committee for Administering the Mechanism for Promoting Implementation and Compliance

I. Review of general issues of compliance and implementation under the Convention

1. During the biennium 2009–2011 the Committee for Administering the Mechanism for Promoting Implementation and Compliance shall review the general issues identified in tables 1 and 2 below in accordance with paragraph 21 of the terms of reference for the mechanism contained in the annex to decision VI/12 of the Conference of the Parties and in accordance with the priorities and budget decided by the Conference of the Parties at its ninth meeting.
2. In doing so the Committee shall take full account of previous discussions and decisions by Basel Convention bodies on relevant issues and shall also take account of its mandate to complement the work performed by other bodies of the Basel Convention and by the Basel Convention regional centres.
3. The Committee shall also continue to monitor any developments on other issues addressed under its earlier work programmes.
4. In undertaking the review of general issues of compliance, the Committee may refer to, and cooperate with, all sources of information and expertise set forth in paragraph 22 of the terms of reference, including through collaboration with regional and international bodies with monitoring and enforcement responsibilities in respect of hazardous wastes.

II. Specific submissions regarding Party implementation and compliance

5. The Committee shall give priority to dealing with specific submissions regarding Party implementation and compliance received in accordance with paragraph 9 of the terms of reference.
6. At the time of the convening of the sixth session of the Committee on 28 February 2008, the Committee had not received any specific submissions from Parties. In the light of this fact the Committee shall address existing shortcomings and limitations in relation to the lack of specific submissions to the Committee, as described in the Committee's report for the ninth meeting of the Conference of the Parties, with a view to developing recommendations for the consideration of the Conference of the Parties at its tenth meeting on appropriate actions to address those shortcomings and limitations. In undertaking this element of its work programme, the Committee may refer to the sources of information set forth in paragraph 22 of its terms of reference.

Table 1: Monitoring, assessing and facilitating reporting under article 13 of the Basel Convention

Objective	Activity
<p>Ensure and improve effective and complete national reporting.</p>	<ul style="list-style-type: none"> (a) Review information held by the Secretariat under article 13 of the Convention. (b) Compile: <ul style="list-style-type: none"> (i) A list of Parties which have submitted annual reports; (ii) A list of Parties which have not submitted annual reports; (iii) A list of Parties which have submitted complete reports; (iv) A list of Parties which have submitted reports that are obviously only partially complete. (c) Assess the status of reporting, identifying the difficulties faced by Parties in fulfilling their national annual reporting obligations and their needs for assistance with respect to reporting. (d) Classify and publish Parties' compliance performance with respect to the annual national reporting obligations. (e) Develop further guidance documents on best practices in national reporting, including mechanisms for coordination among relevant governmental and other entities, procedures for the collection and exchange of information, data collection techniques and technical resources and relevant methods necessary to optimize the completion of national reports. (f) Promote and facilitate the exchange of information on best available practices and best available techniques between developed countries and developing countries, including countries with economies in transition, on development of national reporting.

Table 2: Implementation of, and compliance with, specified obligations under the Basel Convention

Objective	Activity
<p>Ensure and improve implementation of, and compliance with, specified obligations under articles 3, 4, 5 and 6 of the Convention.</p>	<ul style="list-style-type: none"> (a) Review notifications transmitted by Parties to the Secretariat on national definitions of hazardous waste under Article 3 of the Convention. (b) Review notifications transmitted by Parties which prohibit the import of hazardous wastes or other wastes for disposal, and those which prohibit or do not permit the export of hazardous wastes and other wastes, under paragraphs 1 (a) and (b) of article 4 of the Convention. (c) Review Parties' compliance with the duty to designate competent authorities and focal points under article 5 of the Convention. (d) Compile: <ul style="list-style-type: none"> (i) A list of Parties which have designated competent authorities and focal points; (ii) A list of Parties which have not designated competent authorities or focal points. (e) Identify difficulties faced by Parties in designating competent authorities and focal points and their needs for assistance to meet this requirement. (f) Review and assess the application of the control system for the transboundary movement of wastes (notification document and movement document) and the difficulties that Parties face in implementing the system. (g) Review the status of existing national legislation and other legal or administrative measures, including implementation regulations, and identify needs for assistance. (h) Assess the compliance and implementation status of specified obligations of the Parties under articles 3, 4, 5 and 6 of the Basel Convention and publish the conclusions resulting from such assessment. <ul style="list-style-type: none"> (i) Provide general information and guidance on the Basel Convention website, or through publications, to facilitate, promote, and aim to secure the implementation of Parties' obligations under articles 3, 4, 5 and 6 of the Convention. The Secretariat may identify to the Committee those difficulties in implementation that Parties have frequently identified in their communications with the Secretariat.

2.3 Technical and Financial Assistance

2.3.1 Convention Text - Article 10

International Co-operation

1. The Parties shall co-operate with each other in order to improve and achieve environmentally sound management of hazardous wastes and other wastes.
2. To this end, the Parties shall:
 - (a) Upon request, make available information, whether on a bilateral or multilateral basis, with a view to promoting the environmentally sound management of hazardous wastes and other wastes, including harmonization of technical standards and practices for the adequate management of hazardous wastes and other wastes;
 - (b) Co-operate in monitoring the effects of the management of hazardous wastes on human health and the environment;
 - (c) Co-operate, subject to their national laws, regulations and policies, in the development and implementation of new environmentally sound low-waste technologies and the improvement of existing technologies with a view to eliminating, as far as practicable, the generation of hazardous wastes and other wastes and achieving more effective and efficient methods of ensuring their management in an environmentally sound manner, including the study of the economic, social and environmental effects of the adoption of such new or improved technologies;
 - (d) Co-operate actively, subject to their national laws, regulations and policies, in the transfer of technology and management systems related to the environmentally sound management of hazardous wastes and other wastes. They shall also co-operate in developing the technical capacity among Parties, especially those which may need and request technical assistance in this field;
 - (e) Co-operate in developing appropriate technical guidelines and/or codes of practice.
3. The Parties shall employ appropriate means to co-operate in order to assist developing countries in the implementation of subparagraphs a, b, c and d of paragraph 2 of Article 4.
4. Taking into account the needs of developing countries, co-operation between Parties and the competent international organizations is encouraged to promote, inter alia, public awareness, the development of sound management of hazardous wastes and other wastes and the adoption of new low-waste technologies.

2.3.2 Convention Text - Article 14

Financial Aspects

1. The Parties agree that, according to the specific needs of different regions and subregions, regional or sub-regional centres for training and technology transfers regarding the management of hazardous wastes and other wastes and the minimization of their generation should be established. The Parties shall decide on the establishment of appropriate funding mechanisms of a voluntary nature.
2. The Parties shall consider the establishment of a revolving fund to assist on an interim basis in case of emergency situations to minimize damage from accidents arising from transboundary movements of hazardous wastes and other wastes or during the disposal of those wastes.

2.3.3 Protocol on Liability and Compensation for Damage Resulting from Transboundary Movement of Hazardous Wastes and their Disposal text – Article 15

Financial mechanism

1. Where compensation under the Protocol does not cover the costs of damage, additional and supplementary measures aimed at ensuring adequate and prompt compensation may be taken using existing mechanisms.
2. The Meeting of the Parties shall keep under review the need for and possibility of improving existing mechanisms or establishing a new mechanism.

2.3.4 COP Decision I/7 and its Annex II – Institutional and Financial Arrangements (1992)

The Conference,

Recalling paragraph 3 of Article 16 of the Basel Convention stipulating that at its first meeting the Conference of the Parties shall designate the Secretariat from among those existing competent intergovernmental organizations which have signalled their willingness to carry out the Secretariat functions under this convention,

Having considered the note of the Executive Director of the United Nations Environment Programme in document UNEP/CHW.1/9 and its corrigenda,

1. Requests the United Nations Environment Programme to carry out the functions of the Basel Convention Secretariat;
2. Further requests the Executive Director of UNEP to establish the Secretariat in accordance with the structure contained in the budget and to have the Secretariat located in Geneva;

3. Approves the budget of the Convention and its Secretariat for 1993 and 1994 as included in the Annex I of this decision;
4. Decides that the contributions of the Parties to the budget of the Convention and its Secretariat shall be according to the formula in the annex to this decision and subject to consideration by the Open-ended ad hoc committee of the distribution of the contributions for 1994;
5. Invites the Secretary-General of the United Nations to establish a Trust Fund for the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal and a technical cooperation trust fund to support developing countries and other countries in need of technical assistance in the implementation of the Basel Convention, in accordance with the financial regulations and rules of the United Nations, the general procedures governing the operations of the Environment Fund of the United Nations Environment Programme and the terms of reference for the administration of these Trust Funds to receive the contributions of the Parties for the implementation of the Convention (attached in Annex II to this decision),
6. Calls on Parties and non-Parties which agreed to contribute to pay their contributions as soon as possible so as to ensure the smooth functioning of the Secretariat and the implementation of the decisions of the Conference of the Parties,
7. Requests the Executive Director of UNEP to inform the Parties and non-Parties on the financial changes in the implementation of the Basel Convention and to request them to pay their contributions into the respective trust funds as soon as possible.

Annex II

Terms of reference for the administration of the Trust Funds for the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal

1. A Trust Fund for the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (hereinafter referred to as the Trust Fund) shall be established to provide financial support for the ordinary expenditure of the Secretariat of the Basel Convention. A Technical Cooperation Trust Fund (hereinafter referred to as the Technical Trust Fund) shall be established to assist developing countries and other countries in need of technical assistance in the implementation of the Basel Convention.
2. Pursuant to the Financial Regulations and Rules of the United Nations, the Executive Director of the United Nations Environment Programme (UNEP), with the approval of the Governing Council of UNEP, shall establish the Trust Funds for the administration of the Convention.

3. The Trust Fund shall be established for an initial period of two years, beginning 1 January 1993 and ending 31 December 1994. The appropriations of the Trust Fund for this period shall be financed from:
 - (a) Contributions made by the Parties to the Convention, by reference to the Table attached as an Appendix to the Budget, including additional contributions and contributions from any new Parties which are to be added to the Table;
 - (b) Contributions from States not party to the Convention, other governmental, intergovernmental and non-governmental organizations, and other sources.
4. The Technical Trust Fund shall be established for an initial period of two years, beginning 1 January 1993 and ending 31 December 1994. The appropriation of the Technical Trust Fund for this period shall be financed from the contributions made by the Parties and the non-Parties to the Convention.
5. The contributions referred to in Article 3(a) above are to be based on the United Nations scale of assessments for the apportionment of the expenses of the United Nations (adjusted to provide that no one contribution shall exceed 25 per cent of the total).
6. The budget estimates, prepared in United States dollars, covering income and expenditure for each of the two calendar years 1993 and 1994 shall be as approved by the First Meeting of the Conference of the Parties to the Convention and further such budget estimates for subsequent periods of two years shall be prepared and approved at any ordinary or extraordinary meeting of the Parties. The Bureau shall prepare a report based on a special survey by the Secretariat for the Open-ended ad hoc Committee to review and provisionally adopt contributions to the budget for 1994 by the end of September 1993.
7. The decision of the Conference of the Parties on the budget, including contributions thereto, shall be made by consensus.
8. The Bureau of the Parties may, on the advice of the Executive Director, approve expenditure on any one or more objects of expenditure over and above the level approved by the Conference of the Parties for those objects of expenditure, provided that there shall be no overall increase in the budget above that approved by the Conference of the Parties.
9. Commitments against the resources of the Trust Funds may be made only if they are covered by the necessary income. No commitments shall be made in advance of the receipt of contributions.
10. In the event that the Executive Director of UNEP anticipates that there might be a shortfall in resources over the financial period as a whole, he shall, with the advice of the members of the bureau, have discretion to adjust the budget so that expenditures are at all times fully covered by contributions received.

11. At the end of a calendar year of a financial period, the Executive Director may transfer any uncommitted balance of appropriations to the following calendar year.
12. All contributions are due to be paid in the year immediately preceding the year to which the contributions relate.
13. All contributions shall be paid in United States dollars into the following account: Account No. 015-002756, UNEP General Trust Funds Account, Chemical Bank, United Nations Branch, New York, N.Y. 10017, United States of America.
14. Contributions from States that become Parties after the beginning of the financial period shall be made pro rata temporis for the balance of the financial period.
15. Contributions not immediately required for the purpose of both Funds shall be invested at the discretion of the United Nations and any interest so earned shall be credited to the Fund.
16. The Executive Director shall deduct from the income of both Trust Funds an administrative support charge equal to 13 per cent of other expenditures recorded during any accounting period in order to meet the cost of administrative activities financed from both Trust Funds and provide services relating to personnel, accounting, audit, etc.
17. The financial period of both Trust Funds will be a biennium consisting of two consecutive calendar years. At the end of each calendar year of a financial period, the Executive Director shall submit to the Parties the certified accounts for the year and a report of activities under the Convention. He shall submit the accounts for the two-year financial period audited by the Board of Auditors of the United Nations as soon as practicable.
18. The General Procedures governing the operations of the Fund of UNEP and the Financial Regulations and Rules of the United Nations and these terms of reference shall govern the financial operations of the Convention.
19. In the event that the Parties wish both Trust Funds to be extended beyond 31 December 1994, the Executive Director of UNEP shall be so requested by the Parties at least six months earlier. Such extension of both Trust Funds shall be subject to the approval of the UNEP Governing Council.

2.3.5 COP Decision II/19 – Establishment of Regional Centres for Training and Technology Transfer (1994)

The Conference,

Recalling decision I/13 on the establishment of regional centres for training and technology transfer of the First Meeting of the Conference of the Parties to the Basel Convention in which it was decided that one of the functions of the Open-ended Ad Hoc Committee of the Conference would be to identify the specific needs of different

regions and subregions for training and technology transfer and to report to the Second Meeting of the Conference of the Parties on ways and means for the establishment and functioning of such Centres, including considering appropriate funding mechanisms for this purpose.

Having considered the note of the Secretariat contained in document UNEP/CHW.2/19,

Having further considered the Open-ended Ad Hoc Committee recommendations contained in its decision I/5 on „Establishment of Regional Centres for Training and Technology Transfer“, as annexed to the present decision,

Requests the Conference of the Parties to provide a strong mandate for th Open-ended Ad Hoc Committee at its second meeting, as already proposed in Committee decision I/5, to conclude the selection of sites for the establishment of regional centre(s) based on the results of the feasibility studies and taking into account the existence of any related regional centre and inform the Third Meeting of the Conference of the Parties of the decision taken to enable the initiation of activities for the establiehment of the regional centre(s).

Annex

Committee decision I/5 on establishment of Regional Centres for Trainig and Technology Transfer adopted by the Parties at their first meeting,

Also recalling Agenda 21 adopted by UNDED in June 1992 regarding the establishment of regional centres for training and technology transfere as outlined in paras 20.28(d) and 20.31(e) of Chapter 20 of Agenda 21,

Having considered the report by the Secretariat (UNEP/CHW/C.1/1/6 pf 18 August 1993) on information received from the interested Parties to the Basel Convention in relation to the Establishement of Regional Centres for Training and Technology Transfer,

Convinced that States should cooperate to ensure the environmentally sound management of hazardous wastes and the minimization of their generation, according to the specific needs of different regions and subregions,

Recognizing that cooperation in the establishment of regional or subregional centres for training and technology transfer will facilitate the environmentally sound management of hazardous wastes and minimization of their generation,

1. Recommends that the following guidelines be used as a basis to determine the suitability of a potential pilot centre(s);
 - (a) Presence or potential use of an existing suitable facility, e.g. technology centre, university;

- (b) Having access to appropriately qualified individuals suitable for a hazardous waste management training programme and who can act as future instructors or trainers;
 - (c) Availability of a personnel pool to implement a hazardous waste management system;
 - (d) Commitment to invest time and resources into the maintenance, continuation and advancement of the centre;
 - (e) Programme must be fully recognized and promoted by senior government authorities;
 - (f) Centres should be located in a reasonably accessible area within a candidate region;
2. Invites those countries in a position to do so, individually or collectively, on a bilateral or multilateral basis, to consider supplying financial resources and technically qualified person(s) recruited from either government or the private sector to collaborate in the preparation of the feasibility study(ies) in the candidate regions.
- Each feasibility study should include:
- (a) Identifying and prioritizing the needs of the region;
 - (b) Identifying the resources available in the region;
 - (c) Identifying the resources required to address the needs;
 - (d) Identifying the benefits to be gained through establishment of a pilot centre;
 - (e) Obtaining views from candidate regions as to the types of technical assistance or training they consider to be of the highest priority;
 - (f) Determining if a centre is immediately required to address the prioritized needs;
 - (g) Determining what resources are available from each candidate region and what resources would be required;
3. Invites the Secretariat of the Basel Convention to take the necessary steps for the preparation of feasibility studies in Africa, Asia and the Pacific, Latin America and the Caribbean and Eastern Europe. This may involve acting as a liaison with individual host countries to provide for local support for the person(s) conducting the feasibility study. The candidate region should also provide, as appropriate, qualified person(s) to assist the technical representative in conducting the feasibility study;
4. Requests the Secretariat to prepare a report, based on a review of the feasibility studies, for distribution to all Parties and Signatories;

5. Requests the second meeting of the Conference of the Parties, based on the completion of the feasibility studies, to select sites for the establishment of regional centre(s). In case this is not possible, requests the Conference of the Parties to provide the mandate to the Open-ended Ad Hoc Committee to conclude the selection and inform the third meeting of the Conference of the Parties of the decision taken to initiate activities for the establishment of the regional centre(s).

2.3.6 COP Decision V/32- Enlargement of the scope of the Technical Cooperation Trust Fund (1999)

The Conference,

Recalling its decisions I/14, II/2, III/3 and IV/20 concerning the emergency fund,

Recalling its decisions I/5, II/1, III/2 and IV/19 concerning the adoption of a protocol on liability and compensation,

Recalling its decisions I/7 and IV/22 concerning the Technical Cooperation Trust Fund of the Basel Convention, Referring to its decision V/29 on the adoption of the Protocol on Liability and Compensation,

1. Decides on an interim basis to enlarge the scope of the Technical Cooperation Trust Fund of the Basel Convention to assist the Contracting Parties which are developing countries or countries with economies in transition in cases of emergency and compensation for damage resulting from incidents arising from transboundary movements of hazardous wastes and other wastes and their disposal;
2. Decides that the Secretariat of the Basel Convention may, upon request, use the funds referred to in paragraph 8 to assist a Party to the Convention which is a developing country or a country with economy in transition in case of an incident occurring during a transboundary movement of hazardous wastes and other wastes covered by the Basel Convention in order:
 - (a) To estimate the magnitude of damage occurred or damage that may occur and the measures needed to prevent damage;
 - (b) To take appropriate emergency measures to prevent or mitigate the damage;
 - (c) To help find those Parties and other entities in a position to give the assistance needed;
3. Also decides that, where damage occurs that is covered by the Liability and Compensation Protocol, the Secretariat of the Basel Convention may, upon request by a Contracting Party which is a developing country or a Contracting

Party which is a country with economy in transition, use the funds referred to in paragraph 8 to provide compensation for damage to and reinstatement of the environment up to the limits provided for in the Protocol, where such compensation and reinstatement is not adequate under the Protocol, and that the present paragraph will become operational on the date the Protocol enters into force;

4. Also decides that the Secretariat of the Basel Convention may, upon request, use the funds referred to in paragraph 8 to assist a Party to the Convention which is a developing country or a country with economy in transition in developing its capacity-building and transfer of technology and in putting in place measures to prevent accidents and damage to the environment caused by the transboundary movement of hazardous wastes and other wastes and their disposal;
5. Further decides that the Parties shall evaluate the information made available by the Secretariat on:
 - (a) Functioning of this interim arrangement;
 - (b) The number of incidents arising from transboundary movements of hazardous wastes and other wastes and their disposal;
 - (c) With regard to each incident, the nature of the damage, the costs of preventive measures and measures of reinstatement;
 - (d) With regard to each incident, the extent to which damage was not compensated;
6. Requests the Secretariat to provide to the Parties the information referred to in the previous paragraph as it becomes available and in any case not later than one year after the adoption of the present decision;
7. Notes that the evaluation referred to in paragraph 5 shall be done in order to enable the Conference of the Parties at its sixth meeting to decide on the need to maintain, improve, change this interim arrangement or propose additional measures:
 - (a) To provide for the costs of preventive measures and measures of reinstatement for damage from accidents arising from transboundary movements of hazardous wastes and other waste under the Convention or during the disposal of the wastes;
 - (b) To provide for compensation when the person liable is or remains unknown, disappears or cannot be found, or is or may become financially incapable of meeting his or her obligation, or the liable person is exempted from liability in conformity with Article 4, paragraph 5 of the Protocol, and with regard to illegal traffic;

8. Urges Parties to provide contributions to the Technical Cooperation Trust Fund to support the activities referred to in paragraphs 2, 3 and 4 and agrees that a contributor may specify that its contributions be used for purposes specified in paragraphs 2, 3 or 4;
9. Requests the Expanded Bureau, in consultation with interested Parties and stakeholders, to prepare and issue interim guidelines as soon as possible for the Secretariat to implement the tasks assigned to it by the present decision and agrees that the guidelines will be submitted to the Conference of the Parties at its sixth meeting for adoption; that these guidelines will include provisions for the recovery, from sources such as liable parties and providers of financial assurance, of funds paid by the Technical Cooperation Trust Fund under paragraphs 2 and 3; that such recovered funds may be used for purposes set forth in paragraphs 2, 3 and 4, while respecting the original earmarking where appropriate;
10. Urges Parties to cooperate and provide advisory services, technical support and equipment for the purpose of responding to damage involving the transboundary movement of hazardous wastes and other wastes and their disposal;
11. Urges each Party which has not yet done so to establish a national system for responding promptly and effectively to incidents occurring during transboundary movement of hazardous wastes and their disposal;
12. Decides that the Secretariat shall present through the Expanded Bureau a report for the Conference of the Parties at its sixth meeting on implementation of the present decision.

2.3.7 COP Decision VI/1 - Strategic plan for the implementation of the Basel Convention (to 2010) (2002)

The Conference of the Parties,

Recalling the Basel Declaration on Environmentally Sound Management and reaffirming the objectives set therein,

Noting with appreciation the contribution of Parties and other stakeholders in support of the preparation of the strategic plan for the implementation of the Basel Convention,

Having considered the strategic text and the action table constituting the strategic plan for the implementation of the Basel Convention to 2010,

Aware of the need to concentrate efforts and resources to support activities in 2003-2004 to ensure an early implementation of the strategic plan,

Aware also of the need to take into account regional specificities and the importance of the Basel Convention Regional Centres in the implementation of the strategic plan,

1. Agrees that the strategic text and the action table contained in document UNEP/CHW.6/3 constitutes the strategic plan for the implementation of the Basel Convention to 2010;
2. Also agrees that the strategic plan for the implementation of the Basel Convention contained in document UNEP/CHW.6/3 constitutes the major instrument to give further effect to the Basel Declaration on Environmentally Sound Management;
3. Adopts the strategic text of the strategic plan, as amended by the sixth meeting of the Conference of the Parties;
4. Also adopts the action table, to be reviewed, and amended as necessary, for submission to the seventh meeting of the Conference of the Parties, for its decision;
5. Requests the Open-ended Working Group to review, and amend as necessary, the action table in the light of experience gained in the implementation of the activities in 2003-2004;
6. Agrees to take into account regional and national diversities and specificities, including developing countries and least developed countries, in the development and implementation of the strategic plan;
7. Also agrees to mobilize resources to implement the strategic plan for 2003-2004 and to develop a financial strategy for the period 2005-2010;
8. Requests the secretariat to cooperate with Parties in the development of financial plans to support the strategic plan, including plans for Parties to access Global Environmental Facility and other multilateral and bilateral funding;
9. Also requests the secretariat to cooperate closely with the Parties, the Basel Convention Regional Centres and other stakeholders in the development and implementation of those activities contained in the strategic plan for which financial support is agreed upon by the Parties;
10. Appeals to Parties and other stakeholders to provide financial and other resources, including in kind support, for the implementation of the strategic plan;
11. Also appeals to recipient Parties and regions to consider including in their development assistance priorities projects that implement the strategic plan;
12. Encourages Parties and other stakeholders to promote the implementation of the strategic plan and to cooperate among themselves in that regard;
13. Requests the secretariat to report to the Conference of the Parties at its seventh meeting on progress in the implementation of the strategic plan and, as appropriate, to the relevant subsidiary bodies on a regular basis.

2.3.8 COP Decision VI/3 – Establishment and functioning of the Basel Convention Regional Centres for Training and Technology Transfer⁶ (2002)

The Conference of the Parties,

Recalling paragraph 17 of decision V/5 of the fifth meeting of the Conference of the Parties to the Basel Convention,

Taking note with appreciation of the result of the process of consultation undertaken by the secretariat with the host countries and the Regional Centres,

Welcoming the financial and/or support in kind provided by host Governments, donor countries, industry, United Nations and other relevant international organizations and bodies such as the United Nations Conference on Trade and Development, the World Health Organization and the United Nations Environment Programme for the functioning of these Centres,

1. Takes note of the conclusions and recommendations of the Consultative Meeting of the Basel Convention Regional Centres, held in Cairo, contained in annex 3 of the report of the Consultative Meeting, towards the establishment of the Basel Convention Regional Centres (see UNEP/CHW/WGI/1/5);
2. Adopts the core functions of the Basel Convention Regional Centres, as contained in appendix I to the present decision and the roles and functions of the Coordinating Centres, as contained in appendix II to the present decision;
3. Adopts the following core set of elements for inclusion in the Framework Agreement to be signed between the secretariat of the Basel Convention (on behalf of the Conference of the Parties) and the representative of the host countries' Governments:
 - (a) Identification of the Parties entering into the agreement;
 - (b) Overall purpose for entering into the agreement;
 - (c) Legislative authority on which the agreement is based;
 - (d) Official name and address of the Regional Centre;
 - (e) Legal status of the Centre (for example, separate national legal entity with a regional role or intergovernmental institution and authority under which the Centre was established and operates);
 - (f) Countries consenting to be served by the Centre;

6 Further related decision: Decision VII/29 – Basel Convention regional centres: report on progress.

- (g) Management/governance arrangements (for example, national committee/body to mobilize and coordinate the national inputs into the Centre; steering committee attended by the representatives of the countries served by the Centre to determine the business plan of the Centre and oversee the plan's implementation; terms of reference of these bodies; rules and procedures governing the meetings organized by the Centre);
- (h) The possible involvement of donors with respect to financial and technical assistance to support the Centre;
- (i) Effective cooperation and coordination with the secretariat of the Basel Convention and among the Regional Centres;
- (j) Reporting channels;
- (k) Contributions of host countries in kind, cash and services towards the operation of the Centre and, if possible, contributions of the countries served by the Centre;
- (l) Contributions from the Technical Cooperation Trust Fund to assist developing countries and other countries in need of technical assistance in the implementation of the Basel Convention and other voluntary contributions towards the financing of the core functions of the Centre and operational and other associated costs related to the core functions of the Centre;
- (m) Matching funds (contributions in cash, kind or services) to be raised by the Centre;
- (n) Working language(s) of the Centre;
- (o) Exemption by the host country from taxation and other levies on the resources (including equipment) provided from the funds under the control of the Contracting Parties according to its national legislation, whenever possible;
- (p) In the case of an intergovernmental institution, the terms and conditions of the 1946 Convention on the Privileges and Immunities of the United Nations shall apply as appropriate;
- (q) Reporting on substantive activities undertaken by the Centre and financial reporting on the funds raised by the Centre and the expenditures of the Centre to the secretariat of the Basel Convention;
- (r) Arrangements to settle any disputes between the signatories of the agreement;
- (s) Duration of the agreement;
- (t) Provisions for the periodic external review, extension, termination or amendment of the agreement; and

- (u) A business plan for the period 2003-2004 for the Regional Centre, approved by the countries served by the Centre, shall be prepared before the signature of the Framework Agreement.
4. Endorses the mechanism of establishing the Basel Convention Regional Centres by signing the Framework Agreement;
 5. Mandates the secretariat of the Basel Convention to negotiate and sign in the name of the Conference of the Parties, the Framework Agreement with the representative of the Government of the country hosting or willing to host the Centre and with whom consultations have been completed by the secretariat and selected by the Conference of the Parties and, where necessary, with the regional or international organizations which will perform the functions of the Basel Convention Regional Centres. The negotiation and signature of the Framework Agreement shall be completed without delay in order to formalize the establishment of the Centres approved by the Conference of the Parties.
 6. Requests the secretariat to submit the concluded Framework Agreements to the Conference of the Parties at its seventh meeting;
 7. Endorses the role of the Basel Convention Regional Centres in carrying out the implementation of the Basel Declaration and the priority actions of the strategic plan for the implementation of the Basel Convention, using contributions from the Trust Fund for the Basel Convention, as agreed periodically by the Conference of the Parties;
 8. Requests the secretariat to prepare, based on the reports received from the Centres, a document on the implementation of the present decision and progress and difficulties encountered in the activities of the Centres, to be presented to the Conference of the Parties at its seventh meeting with a view to assessing the adequacy of the arrangements for the functioning of the Centres, including financial mechanisms;
 9. Urges all Parties and non-parties in a position to do so, as well as international organizations, including development banks, non-governmental organizations and the private sector, to make financial contributions directly to the Technical Cooperation Trust Fund or in kind contributions, or contributions on a bilateral level, to allow all the Centres to become fully operational;
 10. Requests the secretariat to explore, in collaboration with the Regional Centres, possibilities for the establishment of partnerships with industry and other stakeholders in the work of the Regional Centres in order to ensure the long-term sustainability of their operation;
 11. Requests the secretariat to establish, pursue and reinforce its closer collaboration with relevant United Nations and other international and regional agencies and conventions in the work of the Regional Centres, in particular with the United Nations Environment Programme offices and programmes, including its

Division of Technology, Industry and Economics, International Environmental Technology Centre, Global Programme of Action for the Protection of the Marine Environment from Land-based Activities, National Cleaner Production Centres, and Chemicals Branch, the United Nations Industrial Development Organization, the United Nations Institute for Training and Research, the World Health Organization, the Food and Agriculture Organization of the United Nations, the United Nations regional economic commissions, the World Customs Organization, the International Criminal Police Organization – Interpol General Secretariat, the secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, the Ozone Secretariat and the regional organizations for the protection of the marine environment, to explore new areas of cooperation.

Appendix I

Core Functions of The Basel Convention Regional Centres

The role of the Centres is to assist developing countries and countries with economies in transition, within their own region, through capacity-building for environmentally sound management, to achieve the fulfilment of the objectives of the Convention.

The description of the core functions of the Centres is as follows:

1. Training;
2. Technology transfer;
3. Information;
4. Consulting;
5. Awareness-raising.

The explanations of the core functions of the Centres are as follows:

- (a) Developing and conducting training programmes, workshops, seminars and associated projects in the field of the environmentally sound management of hazardous wastes, transfer of environmentally sound technology and minimization of the generation of hazardous wastes, with specific emphasis on training of trainers and the promotion of ratification and implementation of the Convention and its instruments;
- (b) Identifying, developing and strengthening mechanisms for the transfer of technology in the field of environmentally sound management of hazardous wastes or their minimization in the region;

- (c) Gathering, assessing and disseminating information in the field of hazardous wastes and other wastes to Parties of the region and to the secretariat;
- (d) Collecting information on new or proven environmentally sound technologies and know-how relating to environmentally sound management and minimization of the generation of hazardous wastes and other wastes and disseminating these to Parties of the region at their request;
- (e) Establishing and maintaining regular exchange of information relevant to the provisions of the Basel Convention, and networking at the national and regional levels;
- (f) Organizing meetings, symposiums and missions in the field, useful for carrying out these objectives in the region;
- (g) Providing assistance and advice to the Parties and non-parties of the region at their request, on matters relevant to the environmentally sound management or minimization of hazardous wastes, the implementation of the provisions of the Basel Convention and other related matters;
- (h) Promoting public awareness;
- (i) Encouraging the best approaches, practices and methodologies for environmentally sound management and minimization of the generation of hazardous wastes and other wastes, for example, through case studies and pilot projects;
- (j) Cooperating with the United Nations and its bodies, in particular the United Nations Environment Programme and the specialized agencies, and with other relevant intergovernmental organizations, industry and non-governmental organizations, and, where appropriate, with any other institution, in order to coordinate activities and develop and implement joint projects related to the provisions of the Basel Convention and develop synergies where appropriate with other multilateral environmental agreements;
- (k) Developing, within the general financial strategy approved by the Parties, the Centres' own strategy for financial sustainability;
- (l) Cooperating in mobilization of human, financial and material means in order to meet the urgent needs at the request of the Party(ies) of the region faced with incidents or accidents which cannot be solved with the means of the individual Party(ies) concerned;
- (m) Performing any other functions assigned to it by the decisions of the Conference of the Parties of the Basel Convention or by Parties of the region consistent with such decisions.

Appendix II

Roles and Functions of The Coordinating Centres of The Basel Convention in Addition to The Core Functions of The Basel Convention Regional Centres Contained in Appendix I

1. Ensuring interaction, including exchange of information, between the secretariat of the Basel Convention and the Regional Centres, among the subregional centres, Parties and other related institutions;
2. Conveying regional consultation to identify priorities and formulate strategies;
3. Supporting and coordinating common tasks of the subregional centres in the field of policies, information, communication, technical and financial assessment;
4. Defining and executing programmes of regional scope in coordination with the subregional centres;
5. Identifying, promoting and strengthening the synergies and mechanisms of cooperation among the subregional centres and other stakeholders in environmentally sound management and the minimization of generation of hazardous waste and technology transfer in and outside the region;
6. Keeping a compilation system for information and making such information accessible to stakeholders.

2.3.9 COP Decision VI/14 – Interim guidelines for the implementation of decision V/32 on enlargement of the scope of the Trust Fund to Assist Developing and Other Countries in Need of Technical Assistance in the Implementation of the Basel Convention⁷ (2002)

The Conference of the Parties,

Taking note of article 15, paragraph 1, of the Protocol on Liability and Compensation for Damage Resulting from Transboundary Movements of Hazardous Wastes and their Disposal,

Recalling its decision V/32 concerning the enlargement, on an interim basis, of the scope of the Trust Fund to Assist Developing and Other Countries in Need of Technical Assistance to Implement the Basel Convention (Technical Cooperation Trust Fund),

7 Further related decisions: Decision VII/29 - Interim guidelines for the implementation of decision V/32 on enlargement of the scope of the Trust Fund to Assist Developing and Other Countries in Need of Technical Assistance in the Implementation of the Basel Convention ; Decision IX/22 - Implementation of decision V/32 on enlargement of the scope of the Trust Fund to Assist Developing and Other Countries in Need of Technical Assistance in the Implementation of the Basel Convention.

Recalling also its decision V/18 on the emergency fund,

Taking note of article 15, paragraph 2, of the Protocol on Liability and Compensation for Damage Resulting from Transboundary Movements of Hazardous Wastes and their Disposal,

1. Approves the Interim Guidelines for the Implementation of Decision V/32, Enlargement of the scope of the Technical Cooperation Trust Fund, contained in the appendix to the present decision;
2. Invites developing countries and countries with economies in transition which are Parties to the Basel Convention to submit to the secretariat project proposals for development of capacity-building, transfer of technology and putting in place measures to prevent accidents and damage to the environment caused by transboundary movements of hazardous wastes and other wastes and their disposal, including for development of emergency response and contingency plans;
3. Requests the secretariat to continue working on gathering information related to:
 - (a) The number of incidents arising from transboundary movements of hazardous wastes and their disposal; and
 - (b) With regard to each incident, the extent to which damage was not compensated by the current mechanism;
4. Encourages Parties and the secretariat to keep working at of the Conference of the Parties on the improvement of the existing mechanism or, if necessary, on the establishment of a new mechanism.

2.3.10 COP Decision VII/8 – Capacity-building for implementation of the Strategic Plan (2004)

The Conference of the Parties,

Recalling its decision VI/11 on capacity-building and its decision V/5 on the regional centres for training and technology transfer,

Welcoming the specific activities carried out by the Basel Convention regional centres and Parties in close cooperation with the Secretariat of the Basel Convention to implement the Strategic Plan,

Emphasizing the importance of aiming at the mutually supportive implementation of related multilateral environmental agreements in the context of the life-cycle approach to the environmentally sound management of chemicals and wastes,

Recognizing in particular the need for close collaboration with the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous

Chemicals and Pesticides in International Trade and the Stockholm Convention on Persistent Organic Pollutants with regard to the life-cycle management of persistent organic and inorganic pollutants and hazardous chemicals,

Bearing in mind that capacity building, information exchange, awareness raising and education in all sectors of society are of paramount importance for achieving the aims of the Basel Convention,

1. Requests the Secretariat to continue to cooperate with the Basel Convention regional centres, Parties, non Parties, international organizations, the industry sector and non governmental organizations, to enhance the worldwide knowledge and the practical implementation of the Basel Convention through awareness raising and capacity building activities, subject to the availability of funds;
2. Further requests the Secretariat to continue to collaborate closely with UNEP Chemicals, the secretariats of the Rotterdam Convention and the Stockholm Convention and other partners, including the Basel Convention regional centres, with regard to the organization of joint training and capacity building activities, in particular laying emphasis on socio-economic and financial production models;
3. Encourages the Secretariat, in cooperation with the Basel Convention regional centres, to continue to develop capacity building activities such as workshops, project activities, training materials and decision supportive tools, in close consultation and partnership with key partners from Governments, specialized agencies, the industry sector, universities and non governmental organizations, with a view to addressing the needs of Parties for the environmentally sound management of priority waste streams, including, but not limited to, electronic wastes, lead and used lead-acid batteries, used oils, obsolete stocks of pesticides, PCBs, dioxins and furans, asbestos and materials resulting from the dismantling of ships, biomedical and healthcare wastes;
4. Invites Parties, non-Parties, intergovernmental organizations, members of the industry and business sectors and non governmental organizations to provide financial resources or assistance in kind to assist countries in need of such assistance in the development of specific capacity-building projects, training, information and awareness-raising activities;
5. Also invites Parties to inform the Secretariat of their capacity building activities and awareness and educational materials related to the implementation of the Basel Convention, to enable it to disseminate such information to other Parties and stakeholders;
6. Also requests the Secretariat to submit a report on the activities related to capacity building to the Conference of the Parties at its eighth meeting.

2.3.11 COP Decision VIII/4 – Basel Convention Regional and Coordinating Centres (2006)

The Conference of the Parties,

Recalling Article 14 of the Convention, by which Parties agreed that, according to the specific needs of different regions and subregions, regional or subregional centres for training and technology transfers regarding the management of hazardous wastes and other wastes and the minimization of their generation should be established and, further, that the Parties shall decide on the establishment of appropriate funding mechanisms of a voluntary nature,

Also recalling its decision VI/3 on the establishment and functioning of the Basel Convention regional centres on training and technology transfer,

Recognizing the importance and usefulness of coordinating and enhancing the effectiveness of the work of Basel Convention regional and coordinating centres among themselves and with the Secretariat in assisting Parties in the implementation of the Basel Convention, including developing and executing projects in the context of the Strategic Plan for the Implementation of the Basel Convention to 2010, particularly with respect to regional facilitation and capacity-building programmes,

Concerned by the difficulties experienced by Basel Convention regional and coordinating centres owing to a lack of sustainable funding,

Committed to improving cooperation and coordination between the Basel Convention, the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, the Stockholm Convention on Persistent Organic Pollutants and other relevant instruments and programmes through the work of the Basel Convention regional and coordinating centres and recognizing the need for coordination between the Secretariat and the Basel Convention regional and coordinating centres in that regard,

1. Invites Parties, especially donor countries, to support and utilize the Basel Convention regional and coordinating centres in contributing to the implementation of the Strategic Plan, including for projects in support of training and technology transfer on the environmentally sound management of hazardous and other wastes, taking into account a life-cycle approach to such wastes;
2. Requests the Secretariat to continue, as appropriate, to guide and assist the Basel Convention regional and coordinating centres in the development of projects to assist Parties in the implementation of the Strategic Plan focus areas, building on the existing work on resource mobilization under the Basel Convention;
3. Requests the Secretariat and Basel Convention regional and coordinating centres, subject to the availability of voluntary contributions and in consultation

with relevant international organizations such as the Global Environment Facility, to conduct training activities in the regional centres and with countries within the regions to enhance their capacity to gain access to the Global Environment Facility and other financing mechanisms;

4. Encourages Parties and others to provide support, financial or in-kind, including through the Trust Fund to Assist Developing and Other Countries in Need of Assistance in the Implementation of the Basel Convention, to enable the Basel Convention regional and coordinating centres to support the implementation of the Strategic Plan;
5. Encourages Parties and other entities in a position to do so to consider collaborating with the host Governments with a view to increasing contributions to the Basel Convention regional and coordinating centres;
6. Requests the Basel Convention regional and coordinating centres to use the guidance materials prepared by the Secretariat for improving the administration, governance and operational effectiveness of the centres and to report thereon, through the Secretariat, to the Open-ended Working Group at its next session;
7. Requests the Open Ended Working Group to initiate at its sixth session a review of the operation of the Basel Convention regional and coordinating centres, including their relationship with Convention bodies, including the Secretariat, and other stakeholders, in order to enhance the combined effectiveness and capacity of the centres and the Secretariat;
8. Invites Parties to submit views on the objectives and scope of the review for consideration and action at the sixth session of the Open-ended Working Group;
9. Requests the Secretariat to prepare a report for the sixth session of the Open-ended Working Group on the review and, in the light of the discussion at that meeting, to prepare a similar report for the Conference of the Parties at its ninth meeting;
10. Urges Parties, relevant global and regional agreements and programmes to make full use of the Basel Convention regional and coordinating centres to enhance international and regional cooperation and coordination on relevant issues and to explore mutually cost-effective approaches to promoting their respective goals and objectives.

2.3.12 COP Decision IX/3 – Strategic Plan and new strategic framework (2008)

The Conference of the Parties,

Recalling its decision VIII/10 and decision VI/28 of the Open-ended Working Group,

Also recalling paragraph 7 of Article 15 of the Convention,

Recognizing that the preparation of a new strategic framework for the implementation of the Basel Convention would benefit from an effectiveness evaluation of the implementation of the Convention,

Re-emphasizing the critical importance of the Strategic Plan for the Implementation of the Basel Convention for Parties and others,

Noting the concerted efforts undertaken by Parties in implementing the Strategic Plan and by the Basel Convention regional and coordinating centres, the Secretariat and other stakeholders in supporting their implementation,

Taking into consideration the ongoing review of the implementation of the Strategic Plan for the 2002–2010 period, the reports by the Secretariat on the implementation of the Strategic Plan⁸ and the comments received from Parties to date on the developments and obstacles in the implementation of the Strategic Plan,

Recognizing the need for a new strategic framework for a ten-year period from the tenth meeting of the Conference of the Parties in the light of the evolving needs of the Parties to the Convention,

Considering the changing scientific, environmental, technical and economic circumstances under which the Convention is working; the challenges faced by Parties in implementation and by the Basel Convention regional and coordinating centres, the Secretariat and others in supporting their implementation; and the need to ensure that appropriate and innovative approaches are used to meet the objectives of the Convention,

Noting that the Conference of the Parties can further consider the effectiveness of the implementation of the Convention,

Recognizing also the importance of gathering and analysing data and information required to provide an evaluation of the effectiveness of the implementation of the Convention as a basis for the preparation of a new strategic framework,

1. Decides that a new strategic framework for the implementation of the Basel Convention is required for a ten-year period so that the Basel Convention will promote the environmentally sound management of waste and will play a decisive role in highlighting the links between waste management and the achievement of the Millennium Development Goals and human health and livelihood;

8 UNEP/CHW.7/3, UNEP/CHW.7/4, UNEP/CHW.8/2Add.1 and Add.2 and UNEP/CHW.9/4.

2. Decides that the current Strategic Plan should continue to be implemented until a new strategic framework is adopted by the Conference of the Parties at its tenth meeting;
3. Invites Parties, non-Parties, intergovernmental organizations, members of the industry and business sectors and non-governmental organizations to provide financial resources or in kind assistance to countries that need support in implementing the current Strategic Plan and developing a new strategic framework;
4. Further decides that a new strategic framework should:
 - (a) Be based on the objectives of article 4 of the Convention;
 - (b) Be based, among other things, on:
 - (i) Best possible knowledge on levels and trends of transboundary waste streams and the environmentally sound management of wastes;
 - (ii) Assessment of capacities of developing countries and countries with economies in transition;
 - (iii) Acknowledgement of specific challenges being faced by small island developing States and least developed countries in the environmentally sound management of wastes;
 - (c) Consider the enhanced cooperation and coordination among the Basel, Stockholm and Rotterdam conventions;
 - (d) Make full use of the Basel Convention regional and coordinating centres and take account of the capacities and role of the centres;
 - (e) Acknowledge that resource mobilization should be seen as a very important element in consideration of the Basel Convention's new strategic framework and reinforce commitment to taking an active and comprehensive approach to resource mobilization, as set out in decision VIII/34;
 - (f) Be attractive to partners beyond the Basel Convention, including the United Nations Environment Programme, the United Nations Development Programme, the United Nations Institute for Training and Research, the Global Environment Facility, the World Bank and donors, civil society and the private sector;
 - (g) Continue collaboration with intergovernmental organizations;
 - (h) Benefit from an understanding of the lessons learned from the previous Strategic Plan in meeting the objectives of the Convention and from other assessments on experiences of the Convention;

5. Welcomes the medium-term strategy of the United Nations Environment Programme, including the thematic priority areas related to harmful substances and hazardous waste and resource efficiency, sustainable consumption and production, and considers that there should be a close relationship between the new strategic framework and the medium-term strategy;
6. Urges Parties, signatories, the regional and coordinating centres and others to submit further comments on the developments and obstacles in the implementation of the current Strategic Plan to the Secretariat by 30 November 2008 and also requests the secretariat to develop further options to engage better all Parties in this consultation process;
7. Invites each Party to nominate a contact person to facilitate liaison with the Secretariat in the review of the Strategic Plan, in the facilitation of the effectiveness evaluation and the development of a new strategic framework;
8. Directs the Secretariat to consult with the designated contacts at the key stages in the review of the Strategic Plan, in the facilitation of the effectiveness evaluation and in the development of a new strategic framework;
9. Requests the Secretariat to prepare a report, taking into account information gathered from consultations as described in paragraphs 6, 7 and 8 above, containing information and conclusions on the review of the implementation of the Strategic Plan and, among other things, a comparative assessment of the Plan and the results of the implementation of the Plan, with a view to its publication on the Basel Convention Secretariat website by 30 March 2009;
10. Invites Parties, signatories, the regional and coordinating centres and others to submit to the Secretariat by 30 June 2009, taking into account the report referred to in paragraph 9 above;
 - (a) Data and information required to facilitate an evaluation of the effectiveness of the implementation of the Convention as a basis for the preparation of a new strategic framework;
 - (b) Views on a new strategic framework for the implementation of the Basel Convention, in particular with regard to potential elements of the framework, including indicators of achievement and performance, and also the respective roles of the Secretariat, the Basel Convention regional and coordinating centres and other partners in its future implementation;
11. Requests the Secretariat to prepare, based on the comments received, a first draft of a new strategic framework for publication on the Basel Convention website by 31 January 2010 and for consideration by the Open ended Working Group at its seventh meeting;
12. Invites Parties, signatories, the regional and coordinating centres and others to submit comments on the first draft of a new strategic framework to the Secretariat by 30 April 2010;

13. Decides to establish an open-ended coordination group operating within the framework of and meeting back-to-back preceding the Open-ended Working Group and reporting to the Open ended Working Group, in order to scrutinize the draft strategic framework prepared by the Secretariat and advise on and prepare elements for a new strategic framework, based on the work of the Secretariat and the consultative process outlined above in the present decision;
14. Requests the Open-ended Working Group, based on its consideration of the draft referred to in paragraphs 11, 12 and 13 above and the outputs of the coordination group referred to in paragraph 13 above, to prepare a draft strategic framework for the implementation of the Basel Convention for adoption by the Conference of the Parties at its tenth meeting.

2.3.13 COP Decision IX/4 - Review of the operation of the Basel Convention regional and coordinating centres (2008)

The Conference of the Parties,

Recalling paragraph 1 of article 14 of the Convention,

Recognizing the role of the Basel Convention regional and coordinating centres in the implementation of the Basel Convention and its Strategic Plan,

Considering the conclusions and recommendations of the report by the Secretariat on the operation of the Basel Convention regional and coordinating centres,⁹

Recalling paragraph 4 of decision VI/4 of the Conference,

Considering the recommendation of the ad hoc joint working group on enhancing cooperation and coordination among the Basel, Rotterdam and Stockholm conventions with regard to the coordinated use of regional offices and centres,¹⁰

Noting with appreciation the precedent set by the Global Environment Facility in deciding to designate a Basel Convention regional centre as an executing agency for activities funded by the Facility, Mindful that several Basel Convention regional and coordinating centres have applied to serve as Stockholm Convention regional or subregional centres for capacity building and the transfer of environmentally sound technology,

Mindful also that, at its sixth session, the Open-ended Working Group of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and

⁹ UNEP/CHW.9/INF/6.

¹⁰ UNEP/CHW.9/14.

Their Disposal was requested to initiate the review of the operation of the Basel Convention regional and coordinating centres, including their relationship with Convention bodies, including the Secretariat, and other stakeholders, in order to enhance the combined effectiveness and capacity of the centres and the Secretariat,

1. Concludes, in consideration of the conclusions and recommendations set out in the report by the Secretariat:
 - (a) That it is necessary to ensure the performance of the core functions of the Basel Convention regional and coordinating centres identified in appendices I and II to decision VI/3 of the Conference of the Parties and to encourage the exchange of information and expertise between the various centres;
 - (b) That, in relation to the Basel Convention regional and coordinating centres, the Secretariat, pursuant to the provisions of the Basel Convention, plays, inter alia, an important facilitative and catalytic role in mobilizing financial resources and technical assistance for programmes delivered through regional centres and in providing guidance on effective governance and administration arrangements, subject to the availability of resources;
 - (c) That it is necessary to ensure adequate training for the centres' staff in fund raising and project management and to set in place effective governance arrangements, with the aim of having Basel Convention regional and coordinating centres that are capable of effectively and efficiently supporting Parties in the implementation of the Convention in a sustainable manner;
 - (d) That the regional nature of the Basel Convention regional and coordinating centres should be reinforced, including through strengthening and building on existing mechanisms and through the full and active engagement of all countries in the activities of the centres, without prejudice to existing framework agreements;
 - (e) That the Basel Convention regional and coordinating centres could play an important role in implementing activities related to chemical and waste instruments, including the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, the Stockholm Convention on Persistent Organic Pollutants and the Strategic Approach to International Chemicals Management, while acknowledging that some centres already play that role;
2. Encourages the Basel Convention regional and coordinating centres to revise their business plans to follow up relevant recommendations in the report by the Secretariat on their operation;

3. Requests the Secretariat, subject to the availability of funds, to prepare the following documents to be published on the Basel Convention website by 30 November 2009 and to be submitted to the Open-ended Working Group at its next session with a view to developing further the conclusions and recommendations set out in the report by the Secretariat on the operation of the Basel Convention regional and coordinating centres and to addressing the recommendations of the ad hoc joint working group on enhancing cooperation and coordination among the Basel, Rotterdam and Stockholm conventions:
 - (a) Draft workplan for the strengthening of the Basel Convention regional and coordinating centres, taking into account the catalogue of actions set out in section 3 of the report by the Secretariat;
 - (b) Detailed list of the necessary elements for the performance of the core functions based on appendices I and II to decision VI/3;
 - (c) Draft strategic framework for the financial sustainability of the centres that would assist the Basel Convention regional and coordinating centres in developing strategies for their financial sustainability, including exploring the use of the Trust Fund to Assist Developing Countries and other Countries in Need of Technical Assistance in the Implementation of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Technical Cooperation Trust Fund);
 - (d) Set of indicators to measure performance and impediments in relation to the functions and impacts of the Basel Convention regional and coordinating centres;
4. Invites Parties, signatories and others to submit comments on the documents referred to in paragraph 3, above, to the Secretariat by 30 April 2010;
5. Mandates the Open-ended Working Group, in finalizing the workplan for strengthening the Basel Convention regional and coordinating centres, based on the draft to be prepared by the Secretariat pursuant to paragraph 3 (a) above, to consider the actions proposed in the workplan and to submit the final workplan to the Conference of the Parties at its tenth meeting for consideration and adoption;
6. Urges Parties and signatories, especially donor countries, and invites other constituents in a position to do so and, where appropriate, multilateral donors to provide necessary financial support, including to the Technical Cooperation Trust Fund, for the strengthening of the Basel Convention regional and coordinating centres in order to enable the centres to operate in accordance with their core functions and regional roles;
7. Requests the Secretariat to report to the Conference of the Parties at its tenth meeting on developments in the operation of the Basel Convention regional and coordinating centres.

2.3.14 COP Decision IX/22 - Implementation of decision V/32 on enlargement of the scope of the Trust Fund to Assist Developing and Other Countries in Need of Assistance in the Implementation of the Basel Convention (2008)

The Conference of the Parties

1. Requests the Open-ended Working Group to review the implementation of decision V/32 and to develop recommendations addressing the expediency of the procedures under the mechanism for emergency assistance adopted therein, the adequacy of resources available for use under the mechanism and cooperation with other international organizations and agencies in responding to emergency situations and to transmit those recommendations to the Conference of the Parties for consideration at its tenth meeting;
2. Adopts the standard form set out in the annex to the present decision for requests for emergency assistance from the Trust Fund to Assist Developing Countries and other Countries in Need of Technical Assistance in the Implementation of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Technical Cooperation Trust Fund) by developing and other countries;
3. Requests the Secretariat to place the standard form for requests for emergency assistance, in all six official United Nations languages, on the Basel Convention website;
4. Urges Parties that are in a position to do so to provide contributions to the Technical Cooperation Trust Fund to support the activities referred to in parts 1 and 3 of the Interim Guidelines for the Implementation of Decision V/32, Enlargement of the scope of the Technical Cooperation Trust Fund.

2.4 Dispute Settlement

2.4.1 Convention Text – Article 19

Verification

Any Party which has reason to believe that another Party is acting or has acted in breach of its obligations under this Convention may inform the Secretariat thereof, and in such an event, shall simultaneously and immediately inform, directly or through the Secretariat, the Party against whom the allegations are made. All relevant information should be submitted by the Secretariat to the Parties.

2.4.2 Convention Text – Article 20 and ANNEX VI

Settlement of Disputes

1. In case of a dispute between Parties as to the interpretation or application of, or compliance with, this Convention or any protocol thereto, they shall seek a settlement of the dispute through negotiation or any other peaceful means of their own choice.
2. If the Parties concerned cannot settle their dispute through the means mentioned in the preceding paragraph, the dispute, if the Parties to the dispute agree, shall be submitted to the International Court of Justice or to arbitration under the conditions set out in Annex VI on Arbitration. However, failure to reach common agreement on submission of the dispute to the International Court of Justice or to arbitration shall not absolve the Parties from the responsibility of continuing to seek to resolve it by the means referred to in paragraph 1.
3. When ratifying, accepting, approving, formally confirming or acceding to this Convention, or at any time thereafter, a State or political and/or economic integration organization may declare that it recognizes as compulsory ipso facto and without special agreement, in relation to any Party accepting the same obligation:
 - (a) submission of the dispute to the International Court of Justice; and/or
 - (b) arbitration in accordance with the procedures set out in Annex VI.

Such declaration shall be notified in writing to the Secretariat which shall communicate it to the Parties.

Annex VI - ARBITRATION

Article 1

Unless the agreement referred to in Article 20 of the Convention provides otherwise, the arbitration procedure shall be conducted in accordance with Articles 2 to 10 below.

Article 2

The claimant Party shall notify the Secretariat that the Parties have agreed to submit the dispute to arbitration pursuant to paragraph 2 or paragraph 3 of Article 20 and include, in particular, the Articles of the Convention the interpretation or application of which are at issue. The Secretariat shall forward the information thus received to all Parties to the Convention.

Article 3

The arbitral tribunal shall consist of three members. Each of the Parties to the dispute shall appoint an arbitrator, and the two arbitrators so appointed shall designate by common agreement the third arbitrator, who shall be the chairman of the tribunal. The latter shall not be a national of one of the Parties to the dispute, nor have his usual place of residence in the territory of one of these Parties, nor be employed by any of them, nor have dealt with the case in any other capacity.

Article 4

1. If the chairman of the arbitral tribunal has not been designated within two months of the appointment of the second arbitrator, the Secretary-General of the United Nations shall, at the request of either Party, designate him within a further two months period.
2. If one of the Parties to the dispute does not appoint an arbitrator within two months of the receipt of the request, the other Party may inform the Secretary-General of the United Nations who shall designate the chairman of the arbitral tribunal within a further two months' period. Upon designation, the chairman of the arbitral tribunal shall request the Party which has not appointed an arbitrator to do so within two months. After such period, he shall inform the Secretary-General of the United Nations, who shall make this appointment within a further two months' period.

Article 5

1. The arbitral tribunal shall render its decision in accordance with international law and in accordance with the provisions of this Convention.
2. Any arbitral tribunal constituted under the provisions of this Annex shall draw up its own rules of procedure.

Article 6

1. The decisions of the arbitral tribunal both on procedure and on substance, shall be taken by majority vote of its members.
2. The tribunal may take all appropriate measures in order to establish the facts. It may, at the request of one of the Parties, recommend essential interim measures of protection.
3. The Parties to the dispute shall provide all facilities necessary for the effective conduct of the proceedings.
4. The absence or default of a Party in the dispute shall not constitute an impediment to the proceedings.

Article 7

The tribunal may hear and determine counter-claims arising directly out of the subject-matter of the dispute.

Article 8

Unless the arbitral tribunal determines otherwise because of the particular circumstances of the case, the expenses of the tribunal, including the remuneration of its members, shall be borne by the Parties to the dispute in equal shares. The tribunal shall keep a record of all its expenses, and shall furnish a final statement thereof to the Parties.

Article 9

Any Party that has an interest of a legal nature in the subject-matter of the dispute which may be affected by the decision in the case, may intervene in the proceedings with the consent of the tribunal.

Article 10

1. The tribunal shall render its award within five months of the date on which it is established unless it finds it necessary to extend the time-limit for a period which should not exceed five months.
2. The award of the arbitral tribunal shall be accompanied by a statement of reasons. It shall be final and binding upon the Parties to the dispute.
3. Any dispute which may arise between the Parties concerning the interpretation or execution of the award may be submitted by either Party to the arbitral tribunal which made the award or, if the latter cannot be seized thereof, to another tribunal constituted for this purpose in the same manner as the first.

3. CARTAGENA PROTOCOL ON BIOSAFETY TO THE CONVENTION ON BIOLOGICAL DIVERSITY 2000

3.1 Monitoring and Reporting

3.1.1 Protocol Text - Article 33

Monitoring and Reporting

Each Party shall monitor the implementation of its obligations under this Protocol, and shall, at intervals to be determined by the Conference of the Parties serving as the meeting of the Parties to this Protocol, report to the Conference of the Parties serving as the meeting of the Parties to this Protocol on measures that it has taken to implement the Protocol.

3.2 Multilateral Procedures to Promote Compliance and Address Non-Compliance

3.2.1 Protocol Text - Article 34

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.

3.2.2 CMP Decision BS-I/7 - Establishment of procedures and mechanisms on compliance under the Cartagena Protocol on Biosafety (2004)

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

Recalling Article 34 of the Cartagena Protocol on Biosafety,

Recognizing the importance of establishing procedures and mechanisms to promote compliance with the provisions of the Protocol and to address cases of non-compliance,

1. Decides to adopt procedures and mechanisms on compliance under the Cartagena Protocol on Biosafety as set out in the annex to this decision and to establish the Compliance Committee referred to therein;
2. Requests the Executive Secretary, in consultation with the Bureau of the Conference of the Parties serving as the meeting of the Parties to the Protocol,

to arrange for a meeting of the Compliance Committee, to be held before the second meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol for the purpose of developing rules of procedure referred to in paragraph 7 of section II of the procedures and mechanisms on compliance under the Cartagena Protocol on Biosafety.

Annex

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 and predictability. It shall pay particular attention to the special needs of developing country Parties, in particular the least developed and small island developing States among them, and Parties with economies in transition, and take into full consideration the difficulties they face in the implementation of the Protocol.

II. Institutional mechanisms

1. A Compliance Committee, hereinafter referred to as “the Committee”, is hereby established pursuant to Article 34 of the Cartagena Protocol on Biosafety to carry out the functions specified herein.
2. The Committee shall consist of 15 members nominated by Parties and elected by the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety on the basis of three members from each of the five regional groups of the United Nations.

3. Members of the Committee shall have recognized competence in the field of biosafety or other relevant fields, including legal or technical expertise, and serve objectively and in a personal capacity.
4. Members shall be elected by the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety for a period of four years, this being a full term. At its first meeting, the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety shall elect five members, one from each region, for half a term, and ten members for a full term. Each time thereafter, the Conference of the Parties to the serving as the meeting of the Parties to the Cartagena Protocol on Biosafety shall elect for a full term, new members to replace those whose term has expired. Members shall not serve for more than two consecutive terms.
5. The Committee shall meet twice a year, unless it decides otherwise. The Secretariat shall service the meetings of the Committee.
6. The Committee shall submit its reports including recommendations with regard to the discharge of its functions to the next meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol for consideration and appropriate action.
7. The Committee shall develop and submit its rules of procedure to the Conference of the Parties serving as the meeting of the Parties for its consideration and approval.

III. Functions of the Committee

1. The Committee shall, with a view to promoting compliance and addressing cases of non compliance, and under the overall guidance of the Conference of the Parties serving as the meeting of the Parties to the Protocol, have the following functions:
 - (a) Identify the specific circumstances and possible causes of individual cases of non compliance referred to it;
 - (b) Consider information submitted to it regarding matters relating to compliance and cases of non-compliance;
 - (c) Provide advice and/or assistance, as appropriate, to the concerned Party, on matters relating to compliance with a view to assisting it to comply with its obligations under the Protocol;
 - (d) Review general issues of compliance by Parties with their obligations under the Protocol, taking into account the information provided in the national reports communicated in accordance with Article 33 of the Protocol and also through the Biosafety Clearing-House;

- (e) Take measures, as appropriate, or make recommendations, to the Conference of the Parties serving as the meeting of the Parties to the Protocol;
- (f) Carry out any other functions as may be assigned to it by the Conference of the Parties serving as the meeting of the Parties to the Protocol.

IV. Procedures

1. The Committee shall receive, through the Secretariat, any submissions relating to compliance from:
 - (a) Any Party with respect to itself;
 - (b) Any Party, which is affected or likely to be affected, with respect to another Party.

The Committee may reject to consider any submission made pursuant to paragraph 1(b) of this section that is de minimis or ill-founded, bearing in mind the objectives of the Protocol.

2. The Secretariat shall, within fifteen days of receipt of submissions under paragraph 1 (b) 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 provisions 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 in accordance with paragraph 1(b) of section IV.

2. The Committee may seek or receive and consider relevant information from sources, such as:
 - (a) The Biosafety Clearing-House, the Conference of the Parties to the Convention, the Conference of the Parties serving as the meeting of the Parties to the Protocol, and subsidiary bodies of the Convention on Biological Diversity and the Protocol;
 - (b) Relevant international organizations.
3. The Committee may seek expert advice from the biosafety roster of experts.
4. The Committee, in undertaking all of its functions and activities, shall maintain the confidentiality of any information that is confidential under Article 21 of the Protocol.

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

1. The Committee may take one or more of the following measures with a view to promoting compliance and addressing cases of non-compliance, taking into account the capacity of the Party concerned, especially developing country Parties, in particular the least developed and small island developing States amongst them, and Parties with economies in transition, to comply, and such factors as the cause, type, degree and frequency of non-compliance:
 - (a) Provide advice or assistance to the Party concerned, as appropriate;
 - (b) Make recommendations to the Conference of the Parties to the Convention serving as the meeting of the Parties to the Protocol regarding the provision of financial and technical assistance, technology transfer, training and other capacity-building measures;
 - (c) Request or assist, as appropriate, the Party concerned to develop a compliance action plan regarding the achievement of compliance with the Protocol within a timeframe to be agreed upon between the Committee and the Party concerned; and
 - (d) Invite the Party concerned to submit progress reports to the Committee on the efforts it is making to comply with its obligations under the Protocol;
 - (e) Pursuant to paragraph 1(c) and (d) above, report to the Conference of the Parties serving as the meeting of the Parties on efforts made by Parties in non-compliance to return to compliance and maintain this as an agenda item of the Committee until adequately resolved.
2. The Conference of the Parties serving as the meeting of the Parties may, upon the recommendations of the Committee, taking into account the capacity of the Party concerned, especially developing country Parties, in particular the least developed and small island developing States amongst them, and Parties

with economies in transition, to comply, and such factors as the cause, type, degree and frequency of non-compliance, also decide upon one or more of the following measures:

- (a) Provide financial and technical assistance, technology transfer, training and other capacity building measures;
- (b) Issue a caution to the concerned Party;
- (c) Request the Executive Secretary to publish cases of non-compliance in the Biosafety Clearing-House;
- (d) In cases of repeated non-compliance, take such measures as may be decided by the Conference of the Parties serving as the meeting of the Parties to the Protocol at its third meeting, and thereafter in accordance with Article 35 of the Protocol, within the framework of the review process provided for in Section VII below.

VII. Review of the procedures and mechanisms

The Conference of the Parties serving as the meeting of the Parties to the Protocol shall, at its third meeting and thereafter, in line with Article 35 of the Protocol, review the effectiveness of these procedures and mechanisms, address repeated cases of non-compliance and take appropriate action.

3.2.3 CMP Decision BS-II/1 - Rules of procedure for meetings of the Compliance Committee (2005)

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

Recalling its decision BS-I/7,

Recalling also paragraph 7 of section II of the procedures and mechanisms on compliance under the Cartagena Protocol on Biosafety that requires the Compliance Committee to submit its rules of procedure to the Conference of the Parties serving as the meeting of the Parties to the Protocol for its consideration and approval,

Taking note of the report of the Compliance Committee under the Cartagena Protocol on Biosafety on the work of its first meeting (UNEP/CBD/BS/COP-MOP/2/2),

Approves the rules of procedure for the meetings of the Compliance Committee under the Cartagena Protocol on Biosafety as annexed to the present decision, with the exception of rule 18.

Rules of Procedure For The Meetings of The Compliance Committee Under The Cartagena Protocol on Biosafety

I. PURPOSES

Rule 1

These rules of procedure shall apply to any meeting of the Compliance Committee under the Cartagena Protocol on Biosafety and shall be read together with and in furtherance of the procedures and mechanisms set out in decision BS-I/7 of the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety.

Rule 2

The rules of procedure for meetings of the Conference of the Parties to the Convention on Biological Diversity, as applied, mutatis mutandis, to the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety, shall apply, mutatis mutandis, to any meeting of the Compliance Committee under the Cartagena Protocol on Biosafety, except as otherwise provided in the rules set out herein and in decision BS-I/7, and provided that rules 16 to 20, on representation and credentials of the rules of procedure for the meetings of the Conference of the Parties to the Convention on Biological Diversity shall not apply.

II. DEFINITIONS

Rule 3

For the purposes of these rules:

- (a) "Protocol" means the Cartagena Protocol on Biosafety to the Convention on Biological Diversity adopted in Montreal on 29 January 2000;
- (b) "Party" means a Party to the Protocol;
- (c) "Conference of the Parties serving as the meeting of the Parties to the Protocol" means the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety as provided for under Article 29 of the Protocol;
- (d) "Committee" means the Compliance Committee established by decision BS-I/7 of the Conference of the Parties serving as the meeting of the Parties to the Protocol;
- (e) "Chair" and "Vice-Chair" mean, respectively, the chairperson and the vice chairperson elected in accordance with rule 12 of the present rules of procedure;

- (f) “Member” means a member of the Committee elected in accordance with paragraph 2 of section II of the compliance procedures or a replacement appointed in accordance with paragraph 2 of rule 10 of the present rules of procedure;
- (g) “Secretariat” means the Secretariat referred to in Article 31 of the Protocol.
- (h) “The Compliance Procedures” means the procedures and mechanisms on compliance under the Cartagena Protocol on Biosafety adopted by the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol and set out in the annex to decision BS-I/7.

III. DATES AND NOTICE OF MEETINGS

Rule 4

The Committee shall decide on the dates and duration of its meetings.

Rule 5

The Secretariat shall notify all members of the Committee of the dates and venue of a meeting at least six weeks before the meeting is due to commence.

IV. AGENDA

Rule 6

The agenda of the Committee shall include items arising from its functions as specified in section III of the Compliance Procedures and other matters related thereto.

Rule 7

To the extent possible, the provisional agenda, together with supporting documents, shall be distributed by the Secretariat to all members of the Committee at least four weeks before the opening of the meeting.

V. DISTRIBUTION AND CONSIDERATION OF INFORMATION

Rule 8

1. Members of the Committee shall be informed immediately by the Secretariat that a submission has been received under paragraph 1 of section IV of the compliance procedures.
2. A submission received in accordance with paragraph 1 (a) of section IV of the Compliance Procedures shall be transmitted by the Secretariat to the members of the Committee as soon as possible but no later than ninety days of receipt of

the submission. A submission received in accordance with paragraph 1 (b) and any response and information received under paragraph 3 of section IV of the Compliance Procedures shall be transmitted by the Secretariat to the members of the Committee as soon as practicable.

3. The information received in accordance with paragraph 2 of section V of the Compliance Procedures shall be transmitted by the Secretariat to the members of the Committee within fifteen days of receipt of such information. The Committee shall determine the relevance of the information before placing it on the agenda. Any such information that will be considered by the Committee shall, as soon as practicable, be made available to the Party concerned.

VI. PUBLICATION OF DOCUMENTS AND INFORMATION

Rule 9

The provisional agenda, reports of meetings, official documents and, subject to rule 8 above and paragraph 4 of section V of the Compliance Procedures, any other relevant documents shall be made available to the public.

VII. MEMBERS

Rule 10

1. The term of office of a member shall commence on 1 January of the calendar year immediately following his or her election and end on 31 December, two or four years thereafter, as applicable.
2. If a member of the Committee resigns or is unable to complete his or her term of office or to perform his or her functions, the Bureau of the Conference of the Parties serving as the meeting of the Parties to the Protocol shall, in consultation with the appropriate regional group, appoint a replacement to serve the remainder of that member's term of office.

Rule 11

Each member of the Committee shall, with respect to any matter that is under consideration by the Committee, avoid direct or indirect conflicts of interest. Where a member finds himself or herself faced with a direct or indirect conflict of interest, that member shall bring the issue to the attention of the Committee before consideration of that particular matter. The concerned member shall not participate in the elaboration and adoption of a recommendation of the Committee in relation to that matter.

VIII. OFFICERS

Rule 12

1. The Committee shall elect a Chair and a Vice-Chair for a term of two years. Subject to rule 10 of the present rules of procedure, they shall serve in those capacities until their successors take office.
2. No officer shall serve for more than two consecutive terms.

IX. PARTICIPATION IN PROCEEDINGS OF THE COMMITTEE

Rule 13

A Party in respect of which a submission is made or which makes a submission as referred to in paragraph 1 of section IV of the Compliance Procedures shall be invited to participate in the deliberations of the Committee. The Party concerned shall be given an opportunity to comment in writing on any recommendation of the Committee. Any such comments shall be forwarded with the report of the Committee to the Conference of the Parties serving as the meeting of the Parties to the Protocol.

X. CONDUCT OF BUSINESS

Rule 14

1. The Committee shall decide on whether it will meet in open or closed sessions. Such decisions, including reasoning, shall be reflected in the reports of the Committee.
2. The Party concerned is entitled to participate in the meetings of the Committee pursuant to paragraph 4 of section IV of the compliance procedures.
3. Any person invited by the Committee may attend the meetings of the Committee.

Rule 15

Electronic means of communication may be used by the members of the Committee for the purpose of conducting informal consultations on issues under consideration. Electronic means of communication shall not be used for making decisions on matters of substance.

Rule 16

Ten members of the Committee shall constitute a quorum.

XI. VOTING

Rule 17

Each member of the Committee shall have one vote.

Rule 18

1. The Committee shall make every effort to reach agreement on all matters of substance by consensus. If all efforts to reach consensus have been exhausted and no agreement has been reached, any decision shall, as a last resort, be taken by a two-thirds majority of the members present and voting or by eight members, whichever is the greater. Where consensus is not possible, the report shall reflect the views of all members of the Committee.
2. For the purposes of these rules, the phrase “members present and voting” means members present at the session at which voting takes place and casting an affirmative or negative vote. Members abstaining from voting shall be considered as not voting.]

XII. LANGUAGE

Rule 19

The working language of the Committee shall be English or any other official United Nations language agreed by the Committee.

Rule 20

The submissions from the Party concerned, the response and the information, as referred to in section IV of the Compliance Procedures, shall be made in one of the six official languages of the United Nations. The Secretariat shall make arrangements to translate them into English if they are submitted in one of the languages of the United Nations other than English.

XIII. AMENDMENTS TO RULES OF PROCEDURE

Rule 21

Any amendment to these rules of procedure shall be adopted by consensus by the Committee and submitted to the Conference of the Parties serving as the meeting of the Parties to the Protocol for consideration and approval.

XIV. OVERRIDING AUTHORITY OF THE PROTOCOL AND DECISION BS-I/7

Rule 22

In the event of a conflict between any provision in these rules and any provision in the Protocol or decision BS-I/7, the provisions of the Protocol or decision BS-I/7 shall prevail.

3.3 Major Provisions to Facilitate Compliance

3.3.1 Protocol Text - Article 20

Information Sharing and the Biosafety Clearing-House

1. A Biosafety Clearing-House is hereby established as part of the clearing-house mechanism under Article 18, paragraph 3, of the Convention, in order to:
 - (a) Facilitate the exchange of scientific, technical, environmental and legal information on, and experience with, living modified organisms; and
 - (b) Assist Parties to implement the Protocol, taking into account the special needs of developing country Parties, in particular the least developed and small island developing States among them, and countries with economies in transition as well as countries that are centres of origin and centres of genetic diversity.
2. The Biosafety Clearing-House shall serve as a means through which information is made available for the purposes of paragraph 1 above. It shall provide access to information made available by the Parties relevant to the implementation of the Protocol. It shall also provide access, where possible, to other international biosafety information exchange mechanisms.
3. Without prejudice to the protection of confidential information, each Party shall make available to the Biosafety Clearing-House any information required to be made available to the Biosafety Clearing-House under this Protocol, and:
 - (a) Any existing laws, regulations and guidelines for implementation of the Protocol, as well as information required by the Parties for the advance informed agreement procedure;
 - (b) Any bilateral, regional and multilateral agreements and arrangements;
 - (c) Summaries of its risk assessments or environmental reviews of living modified organisms generated by its regulatory process, and carried out in accordance with Article 15, including, where appropriate, relevant information regarding products thereof, namely, processed materials

that are of living modified organism origin, containing detectable novel combinations of replicable genetic material obtained through the use of modern biotechnology;

- (d) Its final decisions regarding the importation or release of living modified organisms; and
 - (e) Reports submitted by it pursuant to Article 33, including those on implementation of the advance informed agreement procedure.
4. The modalities of the operation of the Biosafety Clearing-House, including reports on its activities, shall be considered and decided upon by the Conference of the Parties serving as the meeting of the Parties to this Protocol at its first meeting, and kept under review thereafter.

3.3.2 Protocol Text - Article 22

Capacity Building

1. The Parties shall cooperate in the development and/or strengthening of human resources and institutional capacities in biosafety, including biotechnology to the extent that it is required for biosafety, for the purpose of the effective implementation of this Protocol, in developing country Parties, in particular the least developed and small island developing States among them, and in Parties with economies in transition, including through existing global, regional, subregional and national institutions and organizations and, as appropriate, through facilitating private sector involvement.
2. For the purposes of implementing paragraph 1 above, in relation to cooperation, the needs of developing country Parties, in particular the least developed and small island developing States among them, for financial resources and access to and transfer of technology and know-how in accordance with the relevant provisions of the Convention, shall be taken fully into account for capacity-building in biosafety. Cooperation in capacity-building shall, subject to the different situation, capabilities and requirements of each Party, include scientific and technical training in the proper and safe management of biotechnology, and in the use of risk assessment and risk management for biosafety, and the enhancement of technological and institutional capacities in biosafety. The needs of Parties with economies in transition shall also be taken fully into account for such capacity-building in biosafety.

3.3.3 Protocol Text - Article 28

Financial Mechanism and Resources

1. In considering financial resources for the implementation of this Protocol, the Parties shall take into account the provisions of Article 20 of the Convention.
2. The financial mechanism established in Article 21 of the Convention shall, through the institutional structure entrusted with its operation, be the financial mechanism for this Protocol.
3. Regarding the capacity-building referred to in Article 22 of this Protocol, the Conference of the Parties serving as the meeting of the Parties to this Protocol, in providing guidance with respect to the financial mechanism referred to in paragraph 2 above, for consideration by the Conference of the Parties, shall take into account the need for financial resources by developing country Parties, in particular the least developed and the small island developing States among them.
4. In the context of paragraph 1 above, the Parties shall also take into account the needs of the developing country Parties, in particular the least developed and the small island developing States among them, and of the Parties with economies in transition, in their efforts to identify and implement their capacity-building requirements for the purposes of the implementation of this Protocol.
5. The guidance to the financial mechanism of the Convention in relevant decisions of the Conference of the Parties, including those agreed before the adoption of this Protocol, shall apply, *mutatis mutandis*, to the provisions of this Article.
6. The developed country Parties may also provide, and the developing country Parties and the Parties with economies in transition avail themselves of, financial and technological resources for the implementation of the provisions of this Protocol through bilateral, regional and multilateral channels.

3.4 Dispute Settlement Procedures

3.4.1 Convention Text - Article 27

Settlement of Disputes

1. In the event of a dispute between Contracting Parties concerning the interpretation or application of this Convention, the parties concerned shall seek solution by negotiation.
2. If the parties concerned cannot reach agreement by negotiation, they may jointly seek the good offices of, or request mediation by, a third party.

3. When ratifying, accepting, approving or acceding to this Convention, or at any time thereafter, a State or regional economic integration organization may declare in writing to the Depositary that for a dispute not resolved in accordance with paragraph 1 or paragraph 2 above, it accepts one or both of the following means of dispute settlement as compulsory:
 - (a) Arbitration in accordance with the procedure laid down in Part 1 of Annex II;
 - (b) Submission of the dispute to the International Court of Justice.
4. If the parties to the dispute have not, in accordance with paragraph 3 above, accepted the same or any procedure, the dispute shall be submitted to conciliation in accordance with Part 2 of Annex II unless the parties otherwise agree.
5. The provisions of this Article shall apply with respect to any protocol except as otherwise provided in the protocol concerned.

3.4.2 Protocol Text - Article 32

Relationship With the Convention

Except as otherwise provided in this Protocol, the provisions of the Convention relating to its protocols shall apply to this Protocol.

4. MONTREAL PROTOCOL ON SUBSTANCES THAT DEplete THE OZONE LAYER 1987

4.1 Performance Review Information

4.1.1 Protocol Text - Article 7

Reporting of data

1. Each Party shall provide to the Secretariat, within three months of becoming a Party, statistical data on its production, imports and exports of each of the controlled substances in Annex A for the year 1986, or the best possible estimates of such data where actual data are not available.
2. Each Party shall provide to the Secretariat statistical data on its production, imports and exports of each of the controlled substances
 - in Annex B and Groups I and II of Annex C for the year 1989;
 - in Annex E, for the year 1991,or the best possible estimates of such data where actual data are not available, not later than three months after the date when the provisions set out in the Protocol with regard to the substances in Annexes B, C and E respectively enter into force for that Party.
3. Each Party shall provide to the Secretariat statistical data on its annual production (as defined in paragraph 5 of Article 1) of each of the controlled substances listed in Annexes A, B, C and E and, separately, for each substance,
 - Amounts used for feedstocks,
 - Amounts destroyed by technologies approved by the Parties, and
 - Imports from and exports to Parties and non-Parties respectively,for the year during which provisions concerning the substances in Annexes A, B, C and E respectively entered into force for that Party and for each year thereafter. Each Party shall provide to the Secretariat statistical data on the annual amount of the controlled substance listed in Annex E used for quarantine and pre-shipment applications. Data shall be forwarded not later than nine months after the end of the year to which the data relate.
- 3 bis. Each Party shall provide to the Secretariat separate statistical data of its annual imports and exports of each of the controlled substances listed in Group II of Annex A and Group I of Annex C that have been recycled.

For Parties operating under the provisions of paragraph 8 (a) of Article 2, the requirements in paragraphs 1, 2, 3 and 3 bis of this Article in respect of

statistical data on imports and exports shall be satisfied if the regional economic integration organization concerned provides data on imports and exports between the organization and States that are not members of that organization.

4.1.2 Protocol Text - Article 9

Research, development, public awareness and exchange of information

3. Within two years of the entry into force of this Protocol and every two years thereafter, each Party shall submit to the Secretariat a summary of the activities it has conducted pursuant to this Article.

4.1.3 CMP Decision XVII/24 - Reports under Article 9 (2005)

Reports of the Parties submitted under Article 9 of the Montreal Protocol on research, development, public awareness and exchange of information

The Seventeenth Meeting of the Parties decided in Dec. XVII/24:

1. To note with appreciation the reports submitted by the following 28 Parties in accordance with Article 9 of the Montreal Protocol: Argentina, Belarus, Brazil, Brunei Darussalam, Bulgaria, Czech Republic, Dominican Republic, Guyana, Hungary, Iceland, Jordan, Latvia, Mauritius, Malaysia, Monaco, Norway, Oman, Pakistan, Poland, Romania, Somalia, Spain, Sri Lanka, Sweden, Thailand, Togo, Trinidad and Tobago, Turkmenistan;
2. To recall that paragraph 3 of Article 9 states that, every two years, each Party shall submit to the Secretariat a summary of activities it has conducted pursuant to that Article, and that relevant activities include promotion of research and development, information exchange on technologies for reducing emissions of ozone-depleting substances, alternatives to the use of controlled substances and the costs and benefits of relevant control strategies, awareness-raising on the environmental effects of controlled substances emissions and other substances that deplete the ozone layer;
3. To recognize that information relevant to the reporting obligation contained in paragraph 3 of Article 9 may be generated through cooperative efforts undertaken in the context of regional ozone networks, ozone research managers activities under Article 3 of the Vienna Convention, participation by Parties in the assessment work of both the Technology and Economic Assessment Panel and the Scientific Assessment Panel under Article 6 of the Montreal Protocol, and national public awareness-raising initiatives;
4. To note that the reporting under Article 9, paragraph 3, could be undertaken through electronic means, and to note also that the information contained in these reports could be shared through the Ozone Secretariat's website;

5. To note that such activities continue to play an important role in global efforts to protect the ozone layer and that dissemination of information on such activities, through Article 9, also contributes to these efforts;
6. To therefore urge all Parties to submit information in accordance with paragraph 3 of Article 9.

4.2 Multilateral Procedures to Consider Non-Compliance and Non-Compliance Response Measures

4.2.1 Protocol Text - Article 8

Non-compliance

The Parties, at their first meeting, shall consider and approve procedures and institutional mechanisms for determining non-compliance with the provisions of this Protocol and for treatment of Parties found to be in non-compliance.

4.2.2 CMP Decision I/8 - Non-compliance (1989)

The First Meeting of the Parties decided in Dec. I/8:

- a. to establish an open-ended ad hoc Working Group of Legal Experts to develop and submit to the Secretariat by 1 November 1989 appropriate proposals for consideration and approval by the Parties at their Second Meeting on procedures and institutional mechanisms for determining non-compliance with the provisions of the Montreal Protocol and for the treatment of Parties that fail to comply with its terms;
- b. to invite Parties and signatories to submit to the Secretariat by no later than 22 May 1989 any comments or proposals they wish to see reflected in the working documents of the ad hoc working group;
- c. to urge the Parties to provide within the next three months on a voluntary basis, the necessary funds for the ad hoc working group's meeting.

4.2.3 CMP Decision II/5 - Non-compliance (1990)

Decision II/5: Non-compliance

The Second Meeting of the Parties decided in Dec. II/5:

To adopt, on an interim basis, the procedures and institutional mechanisms for determining non-compliance with the provisions of the Protocol and for treatment of Parties found to be in non-compliance, as set out in Annex III to the report on the work of the Second Meeting of the Parties;

To extend the mandate of the open-ended Ad hoc Working Group of Legal Experts to elaborate further procedures on non-compliance and terms of reference for the Implementation Committee and to present the results for review by the preparatory meeting to the Fourth Meeting of the Parties with a view to their consideration at the Fourth Meeting.

4.2.4 CMP Decision III/2 - Non-compliance procedure (1991)

The Third Meeting of the Parties decided in Dec. III/2 to

- a. request the Ad hoc Working Group of Legal Experts on the Non-compliance Procedure with the Montreal Protocol, when elaborating further the procedures on non compliance, to:
 - i. identify possible situations of non-compliance with the Protocol;
 - ii. develop an indicative list of advisory and conciliatory measures to encourage full compliance;
 - iii. reflect the role of the Implementation Committee as an advisory and conciliatory body bearing in mind that the recommendation of the Implementation Committee on Non-compliance Procedure must always be referred to the meeting of the Parties for final decision;
 - iv. reflect the possible need for legal interpretation of the provisions of the Protocol;
 - v. draw up an indicative list of measures that might be taken by a meeting of the Parties in respect of Parties that are not in compliance with the Protocol, bearing in mind the need to provide all assistance possible to countries, particularly developing countries, to enable them to comply with the Protocol;
 - vi. endorse the conclusion of the Ad Hoc Working Group of Legal Experts that the judicial and arbitral settlement of disputes provided for in Article 11 of the Vienna Convention and the Non-compliance Procedure pursuant to Article 8 of the Montreal Protocol were two distinct and separate procedures (UNEP/OzL.Pro/WG.3/2/3);
- b. adopt the following timetable for finalization of the draft non-compliance procedures for consideration by the Fourth Meeting of the Parties to the Protocol:

October 1991: Meeting of the Ad hoc Working Group of Legal Experts to complete the draft procedures for endorsement by the Parties;

November 1991: Submission of draft non-compliance procedures to the Ozone Secretariat;

December 1991: Circulation of draft non-compliance procedures to the Parties.

4.2.5 CMP Decision IV/5 - Non-Compliance Procedure (1992)

The Fourth Meeting of the Parties decided in Dec. IV/5:

to note with appreciation the work of the Ad Hoc Working Group of Legal Experts on Non-Compliance with the Montreal Protocol;

to adopt the non-compliance procedure, as set out in Annex IV to the report of the Fourth Meeting of the Parties;

to adopt the indicative list of measures that might be taken in respect of non-compliance, as set out in Annex V to the report of the Fourth Meeting of the Parties

to accept the recommendation that there is no need to expedite the amendment procedure under Article 9 of the Vienna Convention for the Protection of the Ozone Layer;

to adopt the view that the responsibility for legal interpretation of the Protocol rests ultimately with the Parties themselves.

4.2.6 Annex V of the report of the Fourth Meeting of the Parties - Indicative list of measures that might be taken by a meeting of the Parties in respect of non-compliance with the Protocol (1992)

Indicative list of measures that might be taken by a meeting of the Parties in respect of non-compliance with the Protocol

- A. Appropriate assistance, including assistance for the collection and reporting of data, technical assistance, technology transfer and financial assistance, information transfer and training.
- B. Issuing 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.

4.2.7 Annex II of the report of the Tenth Meeting of the Parties - Non-compliance procedure (1996)

The following procedure has been formulated pursuant to Article 8 of the Montreal Protocol. It shall apply without prejudice to the operation of the settlement of disputes procedure laid down in Article 11 of the Vienna Convention.

1. If one or more Parties have reservations regarding another Party's implementation of its obligations under the Protocol, those concerns may be addressed in writing to the Secretariat. Such a submission shall be supported by corroborating information.
2. The Secretariat shall, within two weeks of its receiving a submission, send a copy of that submission to the Party whose implementation of a particular provision of the Protocol is at issue. Any reply and information in support thereof are to be submitted to the Secretariat and to the Parties involved within three months of the date of the dispatch or such longer period as the circumstances of any particular case may require. If the Secretariat has not received a reply from the Party three months after sending it the original submission, the Secretariat shall send a reminder to the Party that it has yet to provide its reply. The Secretariat shall, as soon as the reply and information from the Party are available, but not later than six months after receiving the submission, transmit the submission, the reply and the information, if any, provided by the Parties to the Implementation Committee referred to in paragraph 5, which shall consider the matter as soon as practicable.
3. Where the Secretariat, during the course of preparing its report, becomes aware of possible non-compliance by any Party with its obligations under the Protocol, it may request the Party concerned to furnish necessary information about the matter. If there is no response from the Party concerned within three months of such longer period as the circumstances of the matter may require of the matter is not resolved through administrative action or through diplomatic contacts, the Secretariat shall include the matter in its report to the Meeting of the Parties pursuant to Article 12 (c) of the Protocol and inform the Implementation Committee, which shall consider the matter as soon as practicable.
4. Where a Party concludes that, despite having made its best, bona fide efforts, it is unable to comply fully with its obligations under the Protocol, it may address to the Secretariat a submission in writing, explaining, in particular, the specific circumstances that it considers to be the cause of its non-compliance. The Secretariat shall transmit such submission to the Implementation Committee which shall consider it as soon as practicable.
5. An Implementation Committee is hereby established. It shall consist of 10 Parties elected by the Meeting of the Parties for two years, based on equitable geographical distribution. Each Party so elected to the Committee shall be requested to notify the Secretariat, within two months of its election, of who is to represent it and shall endeavour to ensure that such representation remains throughout the entire term of office. Outgoing Parties may be re-elected for one immediate consecutive term. A Party that has completed a second consecutive two-year term as a Committee member shall be eligible for election again only after an absence of one year from the Committee. The Committee shall elect its

own President and Vice-President. Each shall serve for one year at a time. The Vice-President shall, in addition, serve as the rapporteur of the Committee.

6. The Implementation Committee shall, unless it decides otherwise, meet twice a year. The Secretariat shall arrange for and service its meetings.
7. The functions of the Implementation Committee shall be:
 - a. To receive, consider and report on any submission in accordance with paragraphs 1, 2 and 4;
 - b. To receive, consider and report on any information or observations forwarded by the Secretariat in connection with the preparation of the reports referred to in Article 12 (c) of the Protocol and on any other information received and forwarded by the Secretariat concerning compliance with the provisions of the Protocol;
 - c. To request, where it considers necessary, through the Secretariat, further information on matters under its consideration;
 - d. To identify the facts and possible causes relating to individual cases of non-compliance referred to the Committee, as best it can, and make appropriate recommendations to the Meeting of the Parties;
 - e. To undertake, upon the invitation of the Party concerned, information-gathering in the territory of that Party for fulfilling the functions of the Committee;
 - f. To maintain, in particular for the purposes of drawing up its recommendations, an exchange of information with the Executive Committee of the Multilateral Fund related to the provision of financial and technical cooperation, including the transfer of technologies to Parties operating under Article 5, paragraph 1, of the Protocol.
8. The Implementation Committee shall consider the submissions, information and observations referred to in paragraph 7 with a view to securing an amicable solution of the matter on the basis of respect for the provisions of the Protocol.
9. The Implementation Committee shall report to the Meeting of the Parties, including any recommendations it considers appropriate. The report shall be made available to the Parties not later than six weeks before their meeting. After receiving a report by the Committee the Parties may, taking into consideration the circumstances of the matter, decide upon and call for steps to bring about full compliance with the Protocol, including measures to assist the Parties' compliance with the Protocol, and to further the Protocol's objectives.
10. Where a Party that is not a member of the Implementation Committee is identified in a submission under paragraph 1, or itself makes such a submission, it shall be entitled to participate in the consideration by the Committee of that submission.

11. No Party, whether or not a member of the Implementation Committee, involved in a matter under consideration by the Implementation Committee, shall take part in the elaboration and adoption of recommendations on that matter to be included in the report of the Committee.
12. The Parties involved in a matter referred to in paragraphs 1, 3 or 4 shall inform, through the Secretariat, the Meeting of the Parties of the results of proceedings taken under Article 11 of the Convention regarding possible non-compliance, about implementation of those results and about implementation of any decision of the Parties pursuant to paragraph 9.
13. The Meeting of the Parties may, pending completion of proceedings initiated under Article 11 of the Convention, issue an interim call and/or recommendations.
14. The Meeting of the Parties may request the Implementation Committee to make recommendations to assist the Meeting's consideration of matters of possible non-compliance.
15. The members of the Implementation Committee and any Party involved in its deliberations shall protect the confidentiality of information they receive in confidence.
16. The report, which shall not contain any information received in confidence, shall be made available to any person upon request. All information exchanged by or with the Committee that is related to any recommendation by the Committee to the Meeting of the Parties shall be made available by the Secretariat to any Party upon its request; that Party shall ensure the confidentiality of the information it has received in confidence.

4.2.8 CMP Decision IX/35 - Review of the non-compliance procedure (1997)

The Ninth Meeting of the Parties decided in Dec. IX/35:

Recalling the non-compliance procedure adopted by the Fourth Meeting of the Parties in its decision IV/5,

Noting that these procedures have not been reviewed since their adoption in 1992,

Aware that the effective operation of the Protocol requires that these procedures should be reviewed on a regular basis,

Also aware of the fundamental importance of ensuring compliance with the provisions of the Montreal Protocol and of assisting Parties to that end,

1. To establish an Ad Hoc Working Group of Legal and Technical Experts on Non-Compliance composed of fourteen members: seven representatives from Parties operating under paragraph 1 of Article 5 and seven representatives

from Parties not operating under Article 5, to review the non-compliance procedure of the Montreal Protocol and to develop appropriate conclusions and recommendations, for consideration by the Parties, on the need and modalities for the further elaboration and the strengthening of this procedure;

2. To select the following seven Parties: Australia, Canada, European Community, Russian Federation, Slovakia, Switzerland and United Kingdom of Great Britain and Northern Ireland from those Parties not operating under paragraph 1 of Article 5, and to select the following seven Parties: Argentina, Botswana, China, Georgia, Morocco, Sri Lanka and St. Lucia, from those Parties operating under paragraph 1 of Article 5, as members of the Ad Hoc Working Group of Legal and Technical Experts on Non-Compliance;
3. To note that the Ad Hoc Working Group of Legal and Technical Experts on Non-Compliance shall select two Co-Chairs, one from those Parties operating under paragraph 1 of Article 5 and one from Parties not so operating;
4. To adopt the following timetable for the work of the Ad Hoc Working Group of Legal and Technical Experts on Non-Compliance:
 - a. 1 November 1997: each of the selected Parties is invited to indicate to the Secretariat the name of its representative to the Ad Hoc Working Group;
 - b. 1 January 1998: all Parties are also invited to submit to the Secretariat any comments or proposals they wish to see considered in the work of the Ad Hoc Working Group;
 - c. The Ad Hoc Working Group will meet during the three days immediately prior to the seventeenth meeting of the Open-ended Working Group of the Parties. It should provide a short report at the seventeenth meeting of the Open-ended Working Group of the Parties on the status of its work;
 - d. The Ad Hoc Working Group will meet during the three days immediately prior to the Tenth Meeting of the Parties. It should provide a status report on the outcome of its work, including any conclusions and recommendations;
 - e. The Group may also consider carrying out additional work through correspondence or any other means it considers appropriate;
5. To request the Ad Hoc Working Group of Legal and Technical Experts on Non-Compliance, when reviewing the non-compliance procedure to:
 - a. Consider any proposals presented by Parties for strengthening the non-compliance procedure, including, inter alia, how repeated instances of major significance of non-compliance with the Protocol could trigger the adoption of measures under the indicative list of measures with a view to ensuring prompt compliance with the Protocol;

- b. Consider any proposals presented by Parties for improving the effectiveness of the functioning of the Implementation Committee, including with respect to data-reporting and the conduct of its work;
6. To consider and adopt any appropriate decision at the Tenth Meeting of the Parties upon the review of the work of the Ad Hoc Working Group of Legal and Technical Experts on Non-Compliance, including its conclusions and/or recommendations;
7. To note that the review of the “Indicative list of measures that might be taken by a meeting of the Parties in respect of non-compliance with the Protocol” is not included in the mandate of the Ad Hoc Working Group.

4.2.9 CMP Decision X/10 - Review of the non-compliance procedure (1996)

The Tenth Meeting of the Parties decided in Dec. X/10:

Recalling decision IV/5 on a non-compliance procedure of the Montreal Protocol adopted by the Fourth Meeting of the Parties,

Recalling also decision IX/35 on review of the non-compliance procedure adopted by the Ninth Meeting of the Parties,

Noting the report of the Ad Hoc Working Group of Legal and Technical Experts on Non-Compliance established by decision IX/35 (UNEP/OzL.Pro/WG.4/1/3) and, in particular, its conclusion that in general the non-compliance procedure has functioned satisfactorily but that further clarification was desirable and that some additional practices should be developed to streamline the procedure,

1. To express appreciation to the Ad Hoc Working Group for its report reviewing the non-compliance procedure;
2. To agree on the following changes in the text with a view to clarifying particular paragraphs of the non-compliance procedure:
 - a. In paragraph 2, the following should be substituted for the last sentence:

“If the Secretariat has not received a reply from the Party three months after sending it the original submission, the Secretariat shall send a reminder to the Party that it has yet to provide its reply. The Secretariat shall, as soon as the reply and information from the Party are available, but not later than six months after receiving the submission, transmit the submission, the reply and the information, if any, provided by the Parties to the Implementation Committee referred to in paragraph 5, which shall consider the matter as soon as practicable.”

- b. In paragraph 3, the following should be substituted for the word “accordingly” at the end of the paragraph:
- “, which shall consider the matter as soon as practicable”
- c. In paragraph 5:
- i. The following should be inserted after the second sentence:
- “Each Party so elected to the Committee shall be requested to notify the Secretariat, within two months of its election, of who is to represent it and shall endeavor to ensure that such representation remains throughout the entire term of office.”
- ii. The following should be inserted after the third sentence:
- “A Party that has completed a second consecutive two-year term as a Committee member shall be eligible for election again only after an absence of one year from the Committee.”
- d. In paragraph 7, the following subparagraph should be inserted after subparagraph (c):
- “(d) To identify the facts and possible causes relating to individual cases of non-compliance referred to the Committee, as best it can, and make appropriate recommendations to the Meeting of the Parties;”
- and the subsequent subparagraphs should be renumbered accordingly;
- To agree, consistent with the Implementation Committee’s practice of reviewing all instances of non-compliance, that in situations where there has been a persistent pattern of non-compliance by a Party, the Implementation Committee should report and make appropriate recommendations to the Meeting of the Parties with the view to ensuring the integrity of the Montreal Protocol, taking into account the circumstances surrounding the Party’s persistent pattern of non-compliance. In this connection, consideration should be given to progress made by a Party towards achieving compliance and measures taken to help the non-compliant Party return to compliance;
- To draw the attention of Parties to the amended non-compliance procedure as set out in annex II to the report of the Tenth Meeting of the Parties [see Section 3.5 in this Handbook];
- To consider, unless the Parties decide otherwise, the operation of the non-compliance procedure again no later than the end of 2003.

4.3 Technical and Financial Assistance

4.3.1 Protocol Text - Article 9

Research, development, public awareness and exchange of information

1. The Parties shall co-operate, consistent with their national laws, regulations and practices and taking into account in particular the needs of developing countries, in promoting, directly or through competent international bodies, research, development and exchange of information on:
 - a. best technologies for improving the containment, recovery, recycling, or destruction of controlled substances or otherwise reducing their emissions;
 - b. possible alternatives to controlled substances, to products containing such substances, and to products manufactured with them; and
 - c. costs and benefits of relevant control strategies.
2. The Parties, individually, jointly or through competent international bodies, shall co-operate in promoting public awareness of the environmental effects of the emissions of controlled substances and other substances that deplete the ozone layer.

4.3.2 Protocol Text - Article 10

Financial mechanism

1. The Parties shall establish a mechanism for the purposes of providing financial and technical co-operation, including the transfer of technologies, to Parties operating under paragraph 1 of Article 5 of this Protocol to enable their compliance with the control measures set out in Articles 2A to 2E and Article 2I, and any control measures in Articles 2F to 2H that are decided pursuant to paragraph 1 bis of Article 5 of the Protocol. The mechanism, contributions to which shall be additional to other financial transfers to Parties operating under that paragraph, shall meet all agreed incremental costs of such Parties in order to enable their compliance with the control measures of the Protocol. An indicative list of the categories of incremental costs shall be decided by the meeting of the Parties.
2. The mechanism established under paragraph 1 shall include a Multilateral Fund. It may also include other means of multilateral, regional and bilateral co-operation.

3. The Multilateral Fund shall:
 - a. Meet, on a grant or concessional basis as appropriate, and according to criteria to be decided upon by the Parties, the agreed incremental costs;
 - b. Finance clearing-house functions to:
 - i. Assist Parties operating under paragraph 1 of Article 5, through country specific studies and other technical co-operation, to identify their needs for co-operation;
 - ii. Facilitate technical co-operation to meet these identified needs;
 - iii. Distribute, as provided for in Article 9, information and relevant materials, and hold workshops, training sessions, and other related activities, for the benefit of Parties that are developing countries; and
 - iv. Facilitate and monitor other multilateral, regional and bilateral co-operation available to Parties that are developing countries;
 - c. Finance the secretarial services of the Multilateral Fund and related support costs.
4. The Multilateral Fund shall operate under the authority of the Parties who shall decide on its overall policies.
5. The Parties shall establish an Executive Committee to develop and monitor the implementation of specific operational policies, guidelines and administrative arrangements, including the disbursement of resources, for the purpose of achieving the objectives of the Multilateral Fund. The Executive Committee shall discharge its tasks and responsibilities, specified in its terms of reference as agreed by the Parties, with the co-operation and assistance of the International Bank for Reconstruction and Development (World Bank), the United Nations Environment Programme, the United Nations Development Programme or other appropriate agencies depending on their respective areas of expertise. The members of the Executive Committee, which shall be selected on the basis of a balanced representation of the Parties operating under paragraph 1 of Article 5 and of the Parties not so operating, shall be endorsed by the Parties.
6. The Multilateral Fund shall be financed by contributions from Parties not operating under paragraph 1 of Article 5 in convertible currency or, in certain circumstances, in kind and/or in national currency, on the basis of the United Nations scale of assessments. Contributions by other Parties shall be encouraged. Bilateral and, in particular cases agreed by a decision of the Parties, regional co-operation may, up to a percentage and consistent with any criteria to be specified by decision of the Parties, be considered as a contribution to the Multilateral Fund, provided that such co-operation, as a minimum:
 - a. Strictly relates to compliance with the provisions of this Protocol;

- b. Provides additional resources; and
 - c. Meets agreed incremental costs.
7. The Parties shall decide upon the programme budget of the Multilateral Fund for each fiscal period and upon the percentage of contributions of the individual Parties thereto.
 8. Resources under the Multilateral Fund shall be disbursed with the concurrence of the beneficiary Party.
 9. Decisions by the Parties under this Article shall be taken by consensus whenever possible. If all efforts at consensus have been exhausted and no agreement reached, decisions shall be adopted by a two-thirds majority vote of the Parties present and voting, representing a majority of the Parties operating under paragraph 1 of Article 5 present and voting and a majority of the Parties not so operating present and voting.
 10. The financial mechanism set out in this Article is without prejudice to any future arrangements that may be developed with respect to other environmental issues.

4.3.3 CMP Decision IV/18 - Establishment of a Financial Mechanism (1992)

The Fourth Meeting of the Parties decided in Dec. IV/18:

I

1. to establish the Financial Mechanism, including the Multilateral Fund provided for in Article 10 of the Montreal Protocol as amended at the Second Meeting of the Parties;
2. to make the Multilateral Fund operative from 1 January 1993 and to transfer to it any resources remaining in the Interim Multilateral Fund on that date;
3. to set the total contributions to the Fund for 1993 at 113.34 million and to commit to a replenishment of the Fund in order to meet on grant or concessional terms the requirements of Parties operating under paragraph 1 of Article 5 of the Protocol, in respect of agreed incremental costs as indicated by the figures 340-500 million for 1994-1996. The total contribution to the Fund for 1994 will not be less than the commitments for 1993;
4. to establish the Executive Committee;
5. to adopt the terms of reference for the Multilateral Fund and for the Executive Committee, as set out in Annex IX and Annex X, respectively, to the report of the Fourth Meeting of the Parties;
6. to endorse the recommendations of the Executive Committee contained in paragraph 108 of UNEP/OzL.Pro/ExCom/8/29 and to approve the indicative list of the categories of incremental costs, as set out in Annex VIII to the report of

the Fourth Meeting of the Parties, in accordance with paragraph 1 of Article 10 of the amended Protocol;

7. to call on the Executive Committee to continue to operate under the agreements, procedures and guidelines applicable to the Interim Multilateral Fund;
8. to accept with appreciation the offer of Canada to host the Secretariat of the Multilateral Fund on the same terms as they hosted the Secretariat of the Interim Multilateral Fund and to locate the Secretariat at Montreal, Canada;

II

1. to request the Executive Committee of the Multilateral Fund for the Implementation of the Montreal Protocol, in the light of its terms of reference, and drawing on the various reports and assessments it has at its disposal, and with the cooperation and assistance of the implementing agencies, and independent advice as appropriate or necessary, to submit to the Open-ended Working Group of the Parties at its next meeting a report comprising:
 - a. A report on the operation of the Financial Mechanism since 1 January 1991;
 - b. Its three-year plan and budget (as required by paragraph 10 (b) of its terms of reference) based on:
 - i. The needs of Parties operating under paragraph 1 of Article 5 of the Protocol;
 - ii. The capacity and performance of the implementing agencies; and
 - iii. The strategies and projects to be implemented by Parties operating under paragraph 1 of Article 5 of the Protocol;
2. to request the Open-ended Working Group to assess the report of the Executive Committee and to make recommendations, as appropriate, to the Fifth Meeting of the Parties;
3. to request the Open-ended Working Group to make a recommendation to the Fifth Meeting of the Parties on the level of replenishment for the Multilateral Fund for the period 1994-1996, in the light of:
 - a. Decisions made by the Fourth Meeting of the Parties on this issue;
 - b. The report prepared by the Executive Committee;
 - c. Other assessments on the level of resources needed for the period 1994-1996 available to the Open-ended Working Group;
 - d. The status of commitments and disbursements of the Financial Mechanism;
4. to evaluate and review, by 1995, the Financial Mechanism established by Article 10 of the Protocol and section I of the present decision, with a view to

ensuring its continued effectiveness, taking into account chapters 9, 33 and 34, and all other relevant chapters, of Agenda 21 as adopted by the United Nations Conference on Environment and Development, held in Rio de Janeiro in June 1992.

4.4 Dispute Settlement

4.4.1 Protocol Text - Article 14

Relationship of this Protocol to the Convention

Except as otherwise provided in this Protocol, the provisions of the Convention relating to its protocols shall apply to this Protocol.

4.4.2 Vienna Convention Text - Article 11

Settlement of disputes

1. In the event of a dispute between Parties concerning the interpretation or application of this Convention, the parties concerned shall seek solution by negotiation.
2. If the parties concerned cannot reach agreement by negotiation, they may jointly seek the good offices of, or request mediation by, a third party.
3. When ratifying, accepting, approving or acceding to this Convention, or at any time thereafter, a State or regional economic integration organization may declare in writing to the Depositary that for a dispute not resolved in accordance with paragraph 1 or paragraph 2 above, it accepts one or both of the following means of dispute settlement as compulsory:
 - a. Arbitration in accordance with procedures to be adopted by the Conference of the Parties at its first ordinary meeting;
 - b. Submission of the dispute to the International Court of Justice.
4. If the parties have not, in accordance with paragraph 3 above, accepted the same or any procedure, the dispute shall be submitted to conciliation in accordance with paragraph 5 below unless the parties otherwise agree.
5. A conciliation commission shall be created upon the request of one of the parties to the dispute. The commission shall be composed of an equal number of members appointed by each party concerned and a chairman chosen jointly by the members appointed by each party. The commission shall render a final and recommendatory award, which the parties shall consider in good faith.
6. The provisions of this Article shall apply with respect to any protocol except as provided in the protocol concerned.

4.5 Annex: Primer for members of the Implementation Committee under the Non-compliance Procedure of the Montreal Protocol

IMPLEMENTATION COMMITTEE

**UNDER THE NON-COMPLIANCE PROCEDURE
OF THE
MONTREAL PROTOCOL ON SUBSTANCES THAT
DEplete THE OZONE LAYER**

PRIMER FOR MEMBERS

October 2007

SECRETARIAT FOR THE VIENNA CONVENTION AND ITS MONTREAL PROTOCOL –
THE OZONE SECRETARIAT

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1. INTRODUCTION

1.1. Purpose of the primer

This primer is intended to provide members of the Implementation Committee, particularly new members, with a comprehensive understanding of the non-compliance procedure of the Montreal Protocol and the manner in which the Committee has operated over more than 15 years. In that regard, it is important to note that the non-compliance procedure adopted by the Parties consists of only 16 paragraphs and that, like any institution, the Implementation Committee has developed over the course of its existence a mode of efficient operation that, while firmly based on the non-compliance procedure, relies to a considerable extent on custom and precedent. For this reason, the primer includes both a recitation of the requirements of the non-compliance procedure and an explanation of the customary practices of the Implementation Committee. In this way, it is hoped that the primer will provide a basis for future advancements in the timely and effective resolution of instances of non-compliance while at the same time ensuring the consistent and transparent treatment of the issues considered by the Committee.

The Primer commences with the text of the non-compliance procedure, followed by a discussion of the basis on which the non-compliance procedure was established and the composition, roles, responsibilities and key operational guidelines of the Committee. It also summarizes the key stages in the operation of the non-compliance procedure and outlines the mechanics of the Committee's twice-yearly meetings, including a typical agenda, meeting documents and actions expected from the Committee with regard to common compliance issues.

Section 6 of the primer contains details of the various Montreal Protocol obligations that are currently the subject of review by the Committee and Internet website addresses for the Ozone Secretariat, the secretariats of the Multilateral Fund for the Implementation of the Montreal Protocol (the Multilateral Fund), the Global Environment Facility and the implementing agencies of the Multilateral Fund. Section 6 also contains a glossary of relevant acronyms and commonly-used terms as well as the text of standardized recommendations addressing routine procedural matters of non-compliance with the Montreal Protocol.

1.2. Administration and updating of the primer

The primer will be updated by the Ozone Secretariat as needed to provide new members elected to the Committee with the most up-to-date information available. The primer will be available on the Ozone Secretariat's website at <http://ozone.unep.org/Publications/index>.

2. NON-COMPLIANCE PROCEDURE OF THE MONTREAL PROTOCOL

The following procedure has been formulated pursuant to Article 8 of the Montreal Protocol. It shall apply without prejudice to the operation of the procedure for the settlement of disputes laid down in Article 11 of the Vienna Convention.

1. If one or more Parties have reservations regarding another Party's implementation of its obligations under the Protocol, those concerns may be addressed in writing to the Secretariat. Such a submission shall be supported by corroborating information.
2. The Secretariat shall, within two weeks of its receiving a submission, send a copy of that submission to the Party whose implementation of a particular provision of the Protocol is at issue. Any reply and information in support thereof are to be submitted to the Secretariat and to the Parties involved within three months of the date of the dispatch or such longer period as the circumstances of any particular case may require. If the Secretariat has not received a reply from the Party three months after sending it the original submission, the Secretariat shall send a reminder to the Party that it has yet to provide its reply. The Secretariat shall, as soon as the reply and information from the Party are available, but not later than six months after receiving the submission, transmit the submission, the reply and the information, if any, provided by the Parties to the Implementation Committee referred to in paragraph 5, which shall consider the matter as soon as practicable.
3. Where the Secretariat, during the course of preparing its report, becomes aware of possible non-compliance by any Party with its obligations under the Protocol, it may request the Party concerned to furnish necessary information about the matter. If there is no response from the Party concerned within three months or such longer period as the circumstances of the matter may require or the matter is not resolved through administrative action or through diplomatic contacts, the Secretariat shall include the matter in its report to the Meeting of the Parties pursuant to Article 12 (c) of the Protocol and inform the Implementation Committee, which shall consider the matter as soon as practicable.
4. Where a Party concludes that, despite having made its best, bona fide efforts, it is unable to comply fully with its obligations under the Protocol, it may address to the Secretariat a submission in writing, explaining, in particular, the specific circumstances that it considers to be the cause of its non-compliance. The Secretariat shall transmit such submission to the Implementation Committee which shall consider it as soon as practicable.
5. An Implementation Committee is hereby established. It shall consist of 10 Parties elected by the Meeting of the Parties for two years, based on equitable geographical distribution. Each Party so elected to the Committee shall be requested to notify the Secretariat, within two months of its election, of who is to represent it and shall endeavour to ensure that such representation remains throughout the entire term of office. Outgoing Parties may be re-elected for one immediate consecutive term. A Party that has completed a second consecutive two-year term as a Committee member shall be eligible for election again only after an absence of one year from the Committee. The Committee shall elect its

- own President and Vice-President. Each shall serve for one year at a time. The Vice-President shall, in addition, serve as the rapporteur of the Committee.
6. The Implementation Committee shall, unless it decides otherwise, meet twice a year. The Secretariat shall arrange for and service its meetings.
 7. The functions of the Implementation Committee shall be:
 - (a) To receive, consider and report on any submission in accordance with paragraphs 1, 2 and 4;
 - (b) To receive, consider and report on any information or observations forwarded by the Secretariat in connection with the preparation of the reports referred to in Article 12 (c) of the Protocol and on any other information received and forwarded by the Secretariat concerning compliance with the provisions of the Protocol;
 - (c) To request, where it considers necessary, through the Secretariat, further information on matters under its consideration;
 - (d) To identify the facts and possible causes relating to individual cases of non-compliance referred to the Committee, as best it can, and make appropriate recommendations to the Meeting of the Parties;
 - (e) To undertake, upon the invitation of the Party concerned, information-gathering in the territory of that Party for fulfilling the functions of the Committee;
 - (f) To maintain, in particular for the purposes of drawing up its recommendations, an exchange of information with the Executive Committee of the Multilateral Fund related to the provision of financial and technical co-operation, including the transfer of technologies to Parties operating under Article 5, paragraph 1, of the Protocol.
 8. The Implementation Committee shall consider the submissions, information and observations referred to in paragraph 7 with a view to securing an amicable solution of the matter on the basis of respect for the provisions of the Protocol.
 9. The Implementation Committee shall report to the Meeting of the Parties, including any recommendations it considers appropriate. The report shall be made available to the Parties not later than six weeks before their meeting. After receiving a report by the Committee the Parties may, taking into consideration the circumstances of the matter, decide upon and call for steps to bring about full compliance with the Protocol, including measures to assist the Parties' compliance with the Protocol, and to further the Protocol's objectives.
 10. Where a Party that is not a member of the Implementation Committee is identified in a submission under paragraph 1, or itself makes such a submission, it shall be entitled to participate in the consideration by the Committee of that submission.

11. No Party, whether or not a member of the Implementation Committee, involved in a matter under consideration by the Implementation Committee, shall take part in the elaboration and adoption of recommendations on that matter to be included in the report of the Committee.
12. The Parties involved in a matter referred to in paragraphs 1, 3 or 4 shall inform, through the Secretariat, the Meeting of the Parties of the results of proceedings taken under Article 11 of the Convention regarding possible non-compliance, about implementation of those results and about implementation of any decision of the Parties pursuant to paragraph 9.
13. The Meeting of the Parties may, pending completion of proceedings initiated under Article 11 of the Convention, issue an interim call and/or recommendations.
14. The Meeting of the Parties may request the Implementation Committee to make recommendations to assist the Meeting's consideration of matters of possible non-compliance.
15. The members of the Implementation Committee and any Party involved in its deliberations shall protect the confidentiality of information they receive in confidence.
16. The report, which shall not contain any information received in confidence, shall be made available to any person upon request. All information exchanged by or with the Committee that is related to any recommendation by the Committee to the Meeting of the Parties shall be made available by the Secretariat to any Party upon its request; that Party shall ensure the confidentiality of the information it has received in confidence.

2.1. Indicative list of measures that might be taken by the Meeting of the Parties in respect of non-compliance with the Protocol

- 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.

3. BACKGROUND TO THE NON-COMPLIANCE PROCEDURE AND THE IMPLEMENTATION COMMITTEE

3.1. Authority for the non-compliance procedure and the Implementation Committee

3.1.1. Non-compliance procedure

The non-compliance procedure of the Montreal Protocol was adopted on an interim basis by the Second Meeting of the Parties (decision II/5) to give effect to Article 8 of the Protocol.

Article 8 of the Montreal Protocol: *“The Parties, at their first meeting shall consider and approve procedures and institutional mechanisms for determining non-compliance with the provisions of this Protocol and for treatment of Parties found to be in non-compliance.”*
Box 1

The non-compliance procedure was adopted on a permanent basis in 1992 by the Fourth Meeting of the Parties (decision IV/5) and revised in 1998 by the Tenth Meeting of the Parties (decision X/10). The procedure is distinguished by its promotion of a cooperative and consultative approach, rather than an adversarial and confrontational approach, to addressing non-compliance. Through application of the procedure, the Implementation Committee has consistently sought actively to engage non-compliant Parties in the identification and adoption of measures to secure their return to compliance as soon as possible.

The various elements of the procedure are described throughout the rest of this primer. The full text of the procedure can be found in section 2.

3.1.2. Implementation Committee

Paragraph 5 of the non-compliance procedure established the Implementation Committee and prescribed its composition, terms of office and officers. The non-compliance procedure, along with related decisions of the Meetings of the Parties, determines the roles and responsibilities of the Committee, which is described in the following sections.

3.2. Selection of Committee members, terms of office and election and responsibilities of officers

3.2.1. Selection of the Committee

Pursuant to paragraph 5 of the non-compliance procedure, the Committee comprises 10 Parties, selected by the Meeting of the Parties on the basis of equitable geographical distribution. In practice this has meant that each of the five United Nations regional

groups (Western Europe and others; Africa; Asia and the Pacific; Latin America and the Caribbean; and Eastern Europe) selects two Parties to the Committee and that one of those two Parties is replaced each year. The names of the selected Parties are recorded in a decision of the Meeting of the Parties.

In accordance with paragraph 5 of the non-compliance procedure, within two months of its selection, each Party selected as a member of the Committee must submit to the Ozone Secretariat the name of the individual that will represent it on the Committee. Paragraph 5 notes that each Party should endeavour to ensure that its representation remains consistent throughout the entire term of its membership. This latter provision was included in the procedure in 1998 in response to the Parties' agreement that continuity of representation builds experience and expertise in the Committee, improving the efficiency and effectiveness of its operation, for the benefit of those Parties subject to the non-compliance procedure.

3.2.2. Terms of office

Members are selected for terms of two years, commencing 1 January of each year. Outgoing members may be re-selected for one immediate consecutive term, after which a year must elapse before they are again eligible for selection (paragraph 5 of the non-compliance procedure and decision XII/13).

The contact details of current Committee members are listed on the Committee's secure website.

3.2.3. Election and responsibilities of officers

The Committee selects a President and a Vice-President. The latter, in accordance with the non-compliance procedure, also serves as Rapporteur. Both officers hold office for one year at a time (paragraph 5 of the non-compliance procedure). Customarily, one officer is selected by the members that are Parties operating under Article 5 of the Protocol (Article 5 Parties) and the other is selected by the members that are Parties not operating under Article 5 (non-Article 5 Parties). The offices of President and Vice-President have traditionally alternated annually between Article 5 and non-Article 5 Party members.

The President and Vice-President of the Committee must be selected by the members of the Committee before the end of the Meeting of the Parties each year to ensure continuity of these two offices. The Meeting of the Parties endorses the Committee's selection of these officers through a decision, typically the same decision in which it endorses the selection of the Committee members (decision XII/13).

The President is responsible for chairing the meetings of the Committee, reviewing and clearing the meeting reports and giving an oral presentation to the Meeting of the Parties that summarizes the key points contained in the report of the final Committee meeting of the year, including any recommendations forwarded by the Committee to the Meeting of the Parties for its consideration. The President is also invited by the

Executive Committee of the Protocol's financial mechanism, the Multilateral Fund for the Implementation of the Montreal Protocol, to represent the Committee as an observer at meetings of the Executive Committee.

The Vice-President serves as the Rapporteur, assists the President in the review and clearance of the reports of Committee meetings and is invited to represent the Implementation Committee at meetings of the Executive Committee as an observer. The Vice-President is responsible, in the absence of the President, for chairing Committee meetings and presenting a summary of the report of the Committee's final meeting of the year to the Meeting of the Parties.

3.3. Roles and responsibilities of the Implementation Committee and its key actors

There are five key categories of persons involved in the operation of the non-compliance procedure and the Implementation Committee: the Committee members; the Ozone Secretariat; the Multilateral Fund Secretariat; the international and bilateral implementing agencies of the Multilateral Fund and the Global Environment Facility; and the Parties whose compliance is being examined by the Committee. Their roles and responsibilities as they relate to the procedure and the Committee are outlined below and further expanded upon in sections 4 and 5.

3.3.1. Implementation Committee members

The non-compliance procedure established the Implementation Committee to assist the Meeting of the Parties in reviewing the status of Parties' compliance with all provisions of the Protocol. Specific provisions of the Protocol that are most commonly subject to review by the Committee are listed in section 6.1 below and can be summarized as follows.

- (i) Data reporting: reporting of annual, base-year and baseline data (Articles 5 and 7 of the Protocol);
- (ii) Phase-out of the production and consumption of controlled substances (chlorofluorocarbons (CFCs), halons, carbon tetrachloride, methyl chloroform, hydrochlorofluorocarbons (HCFCs), hydrobromofluorocarbons (HBFCs), bromochloromethane and methyl bromide) in accordance with the schedules set out in the Protocol (Articles 2A–2I and 5);
- (iii) Trade in controlled substances with non-Parties to the Protocol (Article 4);
- (iv) Establishment of systems for licensing the import and export of new, used, recycled and reclaimed controlled substances (Article 4B);
- (v) Biennial reporting on research, development, public awareness and exchange of information activities (Article 9).

Through specific decisions of the Meetings of the Parties, the remit of the Committee also includes:

- (i) Requests from Parties to change their data for baseline years, i.e., the years used to determine a Party's compliance with the Protocol's controlled substances phase-out schedules (decisions XIII/19 and XV/19);
- (ii) Review of implementation of decisions of the Meeting of the Parties containing measures to return a Party to compliance, which continues until the report of the Committee records that the Party concerned has returned to compliance and all time-specific benchmarks contained in the decision related to that Party have passed (see section 4.6 for further details).

In implementing the non-compliance procedure with regard to these provisions of the Protocol and decisions of the Meetings of the Parties, the members of the Committee must undertake one or more of the following actions prescribed in paragraph 7 of the procedure:

- (i) Receive, consider and report on any submission concerning possible non-compliance;
- (ii) Receive, consider and report on any information or observations by the Secretariat on data reports and on any information on compliance with the Protocol;
- (iii) Request, where necessary, through the Secretariat, any further information on matters under its consideration. This may include requesting a Party to send a representative to a meeting of the Committee to improve its understanding of the Party's situation;
- (iv) Undertake information gathering in a Party's territory, upon invitation from the Party concerned;
- (v) Exchange information with the Executive Committee for the purposes of developing recommendations;
- (vi) Identify the facts and possible causes related to cases of non-compliance and make recommendations to the Meeting of the Parties on measures to return Parties whose compliance is at issue to full compliance.

The manner in which the Committee discharges its role and responsibilities is described in section 5.

3.3.2. Ozone Secretariat

The Ozone Secretariat is the secretariat for the Vienna Convention for the Protection of the Ozone Layer and the Montreal Protocol on Substances that Deplete the Ozone Layer.¹ Among its other roles, it acts as the primary support and advisory agency of the Implementation Committee. The Ozone Secretariat's Database Manager, Monitoring and

Compliance Officer and Senior Legal Officer are the main contacts in the Secretariat with regard to the preparation of meeting materials and operation of the Implementation Committee.

The contact details of the Secretariat and the relevant officers noted above are listed on the Committee's secure website.

¹ As set out in Article 7 of the Vienna Convention, Article 12 of the Montreal Protocol and rule 28 of the rules of procedure for the meetings of the governing bodies of these treaties and as decided by the Parties to the treaties from time to time.

As regards the non-compliance procedure and the operation of Implementation Committee meetings, the Ozone Secretariat performs the following duties:

- (i) It receives communications from Parties regarding the compliance of other Parties, forwards any such communications to the Parties whose compliance is in question, thus facilitating those Parties' right of response, and transmits all information on the matter, including any response, from the originating Party to the Committee;
- (ii) It receives information from Parties regarding their own compliance and transmits it to the Committee;
- (iii) It requests any Party whose data report indicates possible non-compliance to submit information on the matter. In cases where the matter is not resolved through administrative action or diplomatic contacts, it transmits to the Committee the details of the matter, any response received from the Party, a draft recommendation on the matter, and any other relevant information;
- (iv) It presents a report to the Committee on data submitted by Parties, highlighting any instances of non-compliance with the Protocol's data-reporting obligations and its requirement to ban trade in controlled substances with non-Parties to the Protocol, and any other information received or prepared by the Secretariat on compliance with the Protocol;
- (v) It presents a report to the Committee identifying those Parties that have reported the establishment of systems for licensing the import and export of controlled substances;
- (vi) It presents a report to the Committee on the Parties' biennial reporting on research, development, public awareness and exchange-of-information activities in accordance with Article 9 of the Protocol;
- (vii) It provides a means of communication between the Committee and Parties for the purpose of obtaining additional information on matters under the Committee's consideration;
- (viii) It prepares any other meeting documentation as requested by the Committee.

In addition, the Secretariat makes the necessary logistical arrangements for the meetings of the Committee, provides in-session support, including technical advice as required, and finalizes the reports of the Committee's meetings. To facilitate the exchange of information between the Implementation Committee and the Executive Committee of the Multilateral Fund required by paragraph 7 (f) of the non-compliance procedure, the Ozone Secretariat attends the meetings of the Executive Committee through mutual arrangement with the Secretariat of the Multilateral Fund. Also pursuant to paragraph 7 (f) of the procedure, and where relevant, the Ozone Secretariat obtains information related to the status of assistance provided by the Multilateral Fund to each Party operating under paragraph 1 of Article 5 that is under consideration by the Committee.

Paragraph 7 (f) of the non-compliance procedure: *"To maintain, in particular for the purposes of drawing up its recommendations, an exchange of information with the Executive Committee of the Multilateral Fund related to the provision of financial and technical cooperation, including the transfer of technologies to Parties operating under Article 5, paragraph 1, of the Protocol."* Box 2

3.3.3. Multilateral Fund Secretariat and the Executive Committee

The Multilateral Fund for the Implementation of the Montreal Protocol serves as the Protocol's financial mechanism for enabling Article 5 Parties to comply with the Protocol. The Multilateral Fund Secretariat and the Chair and Vice-Chair of the Executive Committee of the Multilateral Fund customarily attend the meetings of the Implementation Committee as invited observers. The Multilateral Fund Secretariat assists the Implementation Committee in the discharge of its responsibility set out in paragraph 7 (f) of the non-compliance procedure (see box 2, above) as follows:

- (i) Representatives of the Multilateral Fund Secretariat attend the meetings of the Implementation Committee to present information to the Implementation Committee on relevant Executive Committee decisions and the future prospects of Article 5 Parties for achieving compliance with the Protocol. The Fund Secretariat's representatives also provide information, as requested by the Implementation Committee members, on Fund assistance approved or planned for Article 5 Parties that are to be considered by the Committee;
- (ii) The Fund Secretariat also makes the documents of the Executive Committee available on its website, including a document on the current status of Fund assistance approved or planned for Article 5 Parties that are to be considered by the Implementation Committee, thus enabling the Ozone Secretariat to incorporate this information into its own meeting documents;
- (iii) The Fund Secretariat provides advice to the Ozone Secretariat on the status of planned or approved financial and technical assistance from the Multilateral Fund to Article 5 Parties under the Committee's consideration, on an ad hoc basis.

Contact details of the Multilateral Fund Secretariat are listed on the Committee's secure website.

3.3.4. International and bilateral implementing agencies

Financial and technical assistance provided under the auspices of the Multilateral Fund is provided through the Fund's four international implementing agencies, the United Nations Development Programme (UNDP), the United Nations Environment Programme (UNEP), the United Nations Industrial Development Organization (UNIDO) and the World Bank, as well as bilaterally through various agencies of Governments that donate to the Fund (bilateral implementing agencies). UNDP, UNEP, UNIDO and the World Bank also assist non-Article 5 Parties that are classified as countries with economies in transition to comply with the Protocol under the auspices of the Global Environment Facility.

The four international implementing agencies attend the meetings of the Implementation Committee as observers and assist the Implementation Committee to discharge its responsibilities set out in paragraphs 7 (c) and 7 (f) of the non-compliance procedure (see boxes 2 and 3).

Paragraph 7 (c) of the non-compliance procedure: *"To request, where it considers necessary, through the Secretariat, further information on matters under its consideration."*

Box 3

At the request of the Ozone Secretariat, the implementing agencies provide information both before and during the meetings of the Committee on the status of the technical and financial assistance which they are providing to Article 5 Parties and non-Article 5 countries with economies in transition that are under consideration by the Committee. The implementing agencies provide information during meetings through their representatives, while information made available before meetings is presented in meeting documents that are distributed to the members of the Committee in advance of Committee meetings.

The implementing agencies, as well as the bilateral agencies of donor Governments to the Fund, often assist Parties under the Committee's consideration to prepare documentation requested by the Committee. They also often assist such Parties to implement measures adopted by the Meeting of the Parties, on the Committee's recommendation, to return the Party to compliance.

The contacts details of the implementing agencies of the Multilateral Fund and the Global Environment Facility are listed on the Committee's secure website.

3.3.5. Parties subject to the non-compliance procedure

A Party whose compliance with the Protocol is in question and is brought to the attention of the Committee is usually requested to undertake one or more of the following actions:

- (i) To submit to the Committee via the Secretariat written information regarding its possible non-compliance;
- (ii) To send a representative to a Committee meeting to discuss its situation, usually in cases where the compliance matter is complex or requires the development of a plan of action to return the Party to compliance;
- (iii) To submit to the Committee via the Secretariat a plan of action containing measures to ensure its prompt return to compliance;
- (iv) Following the adoption of a decision by the Meeting of the Parties, which may include adoption of a plan of action, to fulfil the requirements of the decision, including submission of regular reports on the implementation of the plan of action to the Committee via the Secretariat.

When a Party attends a Committee meeting, a special session is set aside during the meeting for consultations with the Party's representative. As this session focuses on filling gaps in the Committee members' understanding of the Party's situation, it is critical that the Party's representative be fully aware of all aspects of the Party's Protocol implementation efforts.

Further information on the interaction between invited Parties and the Committee is contained in section 5.4.7.

3.4. Key directives for the implementation of the non-compliance procedure

Paragraphs 8, 10, 11 and 15 of the non-compliance procedure contain key directives to be observed by the Committee and other persons involved in its operation.

Paragraph 8 *requires the Committee to operate at all times with a view to securing an amicable solution to matters under its consideration on the basis of respect for the provisions of the Protocol.*

Paragraph 10 *provides that a Party that is not a member of the Committee but has notified the Secretariat that it is in non-compliance or is the subject of a written submission from another Party expressing reservations as to its compliance is entitled to participate in discussion of that matter by the Committee.*

Paragraph 11 *provides that no Party involved in a matter under consideration by the Committee, whether it is an invited Party or a member of the Committee, may take part in the elaboration and adoption of recommendations on that matter.*

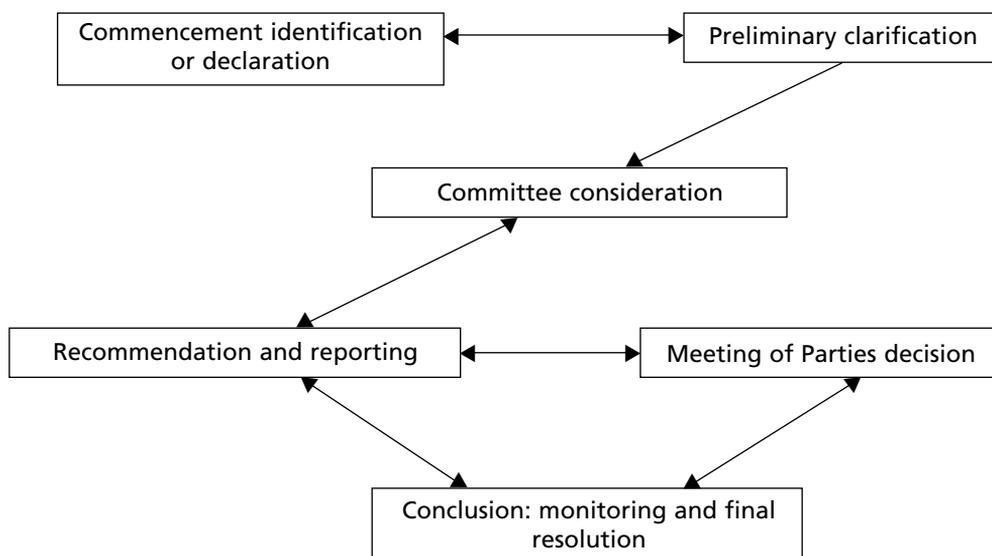
Paragraph 15 *requires Implementation Committee members and any Party involved in its deliberations to protect the confidentiality of information received in confidence.*

Box 4

4. OPERATION OF THE NON-COMPLIANCE PROCEDURE

The operation of the non-compliance procedure can be divided into six stages. The stages customarily occur in the order illustrated in chart 1.

Chart 1: Six stages in the operation of the non-compliance procedure



Each of the six stages is elaborated below.

4.1. Commencement: identification and declaration (trigger) stage

The non-compliance procedure commences in any one of the three following sets of circumstances:

- (i) A Party notifies the Ozone Secretariat in writing that it is unable to comply with the Protocol despite its best bona fide efforts and details the specific circumstances that it considers to be the cause of its non-compliance;
- (ii) A Party is the subject of a written submission to the Ozone Secretariat that details another Party's reservations regarding the former Party's implementation of its obligations under the Protocol;
- (iii) A Party is identified by the Ozone Secretariat, in the course of the preparation of its data report to the Committee, as a possible case of non-compliance.

The second set of circumstances has not arisen to date. The first set of circumstances arose a number of times in the 1990s when a number of non-Article 5 countries with economies in transition declared themselves to be in non-compliance.

The non-compliance procedure is most often triggered by the third set of circumstances. The type of non-compliance concerned is most often a Party's apparent failure to comply with the Protocol's provisions to phase out the consumption and production of a particular controlled substance. Such cases of possible non-compliance are detected by the Ozone Secretariat when it reviews the annual consumption and production data for controlled substances reported by the Parties in accordance with Article 7 of the Protocol and determines that a Party has reported consumption or production of a particular controlled substance in excess of the annual limit prescribed by the Protocol for that substance.

4.2. Preliminary clarification stage

Once the trigger stage has passed, the Ozone Secretariat:

- (i) Notifies the Party whose compliance is in question, in writing, of the apparent deviation from its obligations under the Protocol and invites the Party to submit a written explanation;
- (ii) Reports to the Committee at its next meeting, in writing and orally, on:
 - (a) The apparent deviation;
 - (b) Any response from the Party to the Secretariat's invitation to explain the apparent deviation; and
 - (c) Any information that the Secretariat determines to be of possible assistance to the Committee in its consideration of the Party's situation.

Information reported by the Secretariat to the Committee pursuant to subparagraph (ii) (c) above may include information on:

Whether the matter concerns an obligation assumed following a recent ratification of the Protocol or an amendment to the Protocol;

The nature and status of any assistance that the Party is receiving from the Multilateral Fund or Global Environment Facility in complying with the obligation that is the subject of the apparent deviation;

The identity of any international or bilateral agencies that are assisting the Party in complying with the obligation in question;

The nature and status of any regulatory measures that the Party has reported as planned, under development or established;

Any previous decisions or recommendations on related compliance matters to which the Party has been subject;

Recent trends in the Party's consumption and production of controlled substances;

Any extraneous circumstances that may constrain the Party's capacity to comply with the obligation under consideration (for example civil unrest or natural disaster).

4.3. Committee consideration stage

Over the course of one or more meetings, the Committee:

- (i) Requests any necessary additional information from the representatives of the Multilateral Fund Secretariat and implementing agencies present at the meeting;
- (ii) Consults any invited representatives from Parties under consideration;
- (iii) Discusses the information provided by the Ozone Secretariat, including the draft recommendations suggested by the Secretariat with regard to each compliance matter before the Committee.

In some cases the Committee need not engage in these three activities. While some cases require intensive deliberation and additional fact-finding, others are more straightforward and can be concluded through a process of "blanket approval". In such cases, the draft recommendations prepared by the Secretariat for the consideration of the Committee are based on text approved by the Committee at previous meetings to deal with similar cases and can therefore be approved without extended deliberation or fact-finding. For more on the blanket approval process see box 5 below.

As explained in section 4.4 below, the Committee customarily sets a deadline for the submission to the Ozone Secretariat of information and data by Parties under consideration. The deadline is intended to ensure the Committee has adequate time prior to its meeting to consider the information it requires to make a recommendation to assist a Party's return to compliance. The Committee has, however, also agreed that the Secretariat should facilitate the consideration of information submitted by Parties subject to the non-compliance procedure after the deadline specified by the Committee or after the conclusion of the Committee meeting held immediately prior to the annual Meeting of the Parties by, where possible reconvening the Committee or presenting to the Meeting of the Parties through the report of the President any new information, indicating errors of fact in draft decisions recommended by the Committee for adoption by the Meeting of the Parties, which could not be considered by the Committee at a reconvened meeting. As noted in section 4.4.2 below on reporting, the conclusions of the reconvened meeting of the Committee are reported to the Meeting of the Parties through the verbal report of the President, in order that they might be recorded in the report of the Meeting.

Reconvening the Committee and reporting the conclusions of the reconvened meeting to the Meeting of the Parties through the verbal report of the President, in order that they might be recorded in the report of the Meeting;

Presenting to the Meeting of the Parties through the report of the President any new information, indicating errors of fact in draft decisions recommended by the Committee for adoption by the Meeting of the Parties, which could not be considered by the Committee at a reconvened meeting.

“Blanket approval”: *The Committee consideration stage of the non-compliance procedure will not occur should a particular Party’s situation receive “blanket approval” from the Committee.*

When the Secretariat circulates meeting documents to the Committee it asks the members to review the draft recommendations on each Party listed in the documents and inform the Secretariat of those draft recommendations that the members wish to review in the Committee consideration stage, on the understanding that any draft recommendation not so identified will be considered to have “blanket approval” and will thereby immediately advance to the “Recommendation and reporting stage” described in section 4.4 below.

It should be noted that a draft recommendation given “blanket approval” by the Committee would still be proposed by the Secretariat for individual review in the Committee consideration stage should the Secretariat receive additional relevant information on a Party after dispatch of the meeting documents. *Box 5*

4.4. Recommendation and reporting stage

4.4.1. Recommendation

At each meeting, the Committee has always – and can therefore be expected to continue to do so in the future – drafted and adopted recommendations covering all the Parties presented by the Secretariat for consideration, as well as those Parties subject to draft recommendations identified for blanket approval. In accordance with paragraph 11 of the non-compliance procedure, should any member of the Committee represent a Party involved in a matter under consideration, that member must not take part in the drafting and adoption of recommendations pertaining to their Party. Subject to such recusals, the recommendations of the Committee have to date all been adopted by consensus.

The representatives of the Multilateral Fund Secretariat and the implementing agencies are categorized as observers and do not participate directly in the preparation or adoption of the recommendations. The Committee, however, usually requests them to be present during the drafting and adoption of recommendations to answer any questions relevant to the finalization of recommendation text.

Each recommendation adopted by the Committee can refer to one or more Parties, sometimes by name. Recommendations that do not name specific Parties usually concern compliance issues relevant to more than one Party, such as the reporting of ozone-depleting substances data for a given year, implementation of the Montreal Amendment obligation to establish and notify the Secretariat of the establishment of an ozone-depleting substance import and export licensing system, or requests to the Secretariat to prepare a paper on a compliance issue for consideration at a future meeting of the Committee.

The recommendations that name specific Parties usually fall into one of three categories:

- (i) Requests for information from a Party with a compliance matter under consideration, sometimes contained in a draft decision forwarded for consideration and possible adoption by the Meeting of the Parties;
- (ii) Proposals for the endorsement by the Meeting of the Parties of a Party's plan of action for returning to compliance contained in a draft decision;
- (iii) Acknowledgments of a Party's progress in implementing its plan of action for returning to compliance with the Protocol.

Depending on the nature of the compliance issue concerned, a particular Party may be the subject of a number of different recommendations adopted by the Committee over the course of one or more meetings.

Within the above-mentioned categories the Committee tailors the text of the recommendations to reflect the individual circumstances of the Parties concerned. That said, in the spirit of equal treatment for all Parties, the Committee often uses the same – or very similar – language to address less complex compliance matters that are considered by the Committee on a regular basis. The Committee has adopted a set of standardized recommendations to provide a basis for developing appropriate recommendations for such matters, which are known as “routine procedural matters of non-compliance”. In this way, the Committee seeks to manage its increasing workload more efficiently and effectively and to ensure the equitable treatment of Parties in comparable circumstances.

A compilation of the recommendations adopted by the Committee to date is maintained on the Secretariat's website at http://ozone.unep.org/Meeting_Documents/impcom/. The standardized recommendations addressing routine procedural matters of non-compliance with the Montreal Protocol are contained in section 6.2.

With regard to the first category of recommendations, it is customary for the Committee to incorporate a deadline for the submission of the requested information, to enhance the ability of the Committee to obtain in a timely manner the information required to develop recommendations to facilitate a Party's prompt return to compliance. The deadline is usually a date ten weeks prior to the next meeting of the Committee, but has been adjusted by the Committee in an effort to provide the Party in question with sufficient time to prepare and submit the requested information, while still providing the Secretariat with

time to process the information and seek further clarification, and the Committee with time for due consideration of the information.

4.4.1.1. Recommendations incorporating draft decisions

As noted in the above section, recommendations of the Committee can contain draft decisions to be forwarded to the Meeting of the Parties for possible adoption. Draft decisions are included in recommendations at the discretion of the Committee.

Feedback from Parties subject to the non-compliance procedure of the Protocol has indicated that, as decisions of the Parties are perceived to have a higher public profile than recommendations of the Committee, Parties are often likely to respond more promptly to decisions rather than recommendations on compliance. Consequently, the Committee customarily includes draft decisions in recommendations that are intended to prompt one or more of the following actions:

- (i) Submission by a Party of an explanation for a deviation from the control measures of the Protocol (the standardized recommendation text containing such draft decisions can be found in section 6.2, types 1 and 5);
- (ii) Submission by a Party of a plan of action for returning the Party to compliance with the control measures of the Protocol (the standardized recommendation text containing such draft decisions can be found in section 6.2, types 1, 3, 5, 8);
- (iii) Endorsement by the Meeting of the Parties of a Party's plan of action for returning to compliance and implementation of the plan by the Party (the standardized recommendation text containing such draft decisions can be found in section 6.2, types 6 and 7);
- (iv) Submission by a Party of an explanation for a failure to meet a commitment contained in a plan of action endorsed by a Meeting of the Parties (the standardized recommendation text containing such draft decisions can be found in section 6.2, type 10);
- (v) Submission by a Party of data in accordance with its data-reporting obligations under the Protocol (the standardized recommendation text containing such draft decisions can be found in section 6.2, type 15);
- (vi) Establishment of a system for licensing the import and export of ozone-depleting substances and submission of a report to the Secretariat regarding the same (the standardized recommendation text containing such draft decisions can be found in section 5.4.8)

4.4.2. Reporting

Paragraph 9 of the non-compliance procedure provides that the Committee shall report to the meeting of the Parties, including any recommendations it considers appropriate. Traditionally, the Committee entrusts the Secretariat, together with the President and

Vice-President, with the finalization of the report, which contains a summary of the meeting's discussions and the text of the recommendations adopted by the Committee. The Committee has also adopted the practice of circulating a conference room paper at meetings of the Parties. That paper contains the draft decisions recommended for adoption by the Committee at its meeting held immediately before the meeting of the Parties, as well as a tabular summary of the draft decisions that identify the Party, its related compliance issue and remarks that highlight any special circumstances specific to the Party. In addition, it has become customary for the President of the Committee to give a verbal presentation to the Meeting of the Parties on the work of the Committee during the year.

Paragraph 9 of the non-compliance procedures provides that the report of the Committee shall be made available to the Parties not later than six weeks before their meeting. To date, the report of the first Committee meeting of each year is circulated to the Parties by the Secretariat and posted on its website (http://ozone.unep.org/Meeting_Documents) six weeks prior to the annual Meeting of the Parties. This is not the case with the report of the second Committee meeting of each year because, since the adoption of the non-compliance procedure on a permanent basis in 1992, the second meeting of the Committee has always been held immediately prior the annual meeting of the Parties. As a consequence, the Committee has circulated the above mentioned conference room paper at meetings of the Parties, and the President of the Committee has given a verbal presentation to the Meeting of the Parties on the work of the Committee during the year. The report of the second meeting of the Committee is circulated to the Parties and posted on the website of the Secretariat after the Meeting of the Parties.

The Committee reaffirmed this approach at its thirty-eighth meeting, in June 2007, on the basis that it best served the interests of the Parties and the Protocol. The Committee expressed the view that scheduling the second meeting of the Committee immediately prior to the annual Meeting of the Parties maximized the time available to Parties to submit the information required by the Committee to review their compliance status. It also provided the Secretariat with the greatest opportunity to resolve through administrative and diplomatic contacts prior to the Committee meeting and in accordance with paragraph 3 of the non-compliance procedure any apparent inconsistencies between the requirements of the Protocol and Parties' data reports. It was noted that this approach had enabled the Committee to present to the annual meeting of the Parties a far more complete picture of all instances of potential or confirmed non-compliance with the Protocol. The approach also realized significant cost and logistical savings to the Parties. In order to make the report of the second meeting available six weeks prior to meetings of the Parties, the second meeting of the Implementation Committee would have to be held separately, requiring additional travel by members, invited Parties and representatives of the Fund secretariat and implementing agencies. A separate meeting would have imposed an additional cost of at least \$115,664 on the budget approved by the Parties for the Ozone Secretariat.

As explained in section 4.3 above, the Committee has agreed that the Secretariat may attempt to reconvene the Committee after the conclusion of its meeting held

immediately prior to the annual Meeting of the Parties, in order to facilitate the consideration of information submitted by Parties subject to the non-compliance procedure. In such cases, the conclusions of the reconvened meeting are reported to the Meeting of the Parties through the verbal report of the President, in order that they might be recorded in the report of the Meeting.

After the report of the Committee is finalized, the Secretariat communicates the text of the adopted recommendations by letter to the Parties concerned, copying it where relevant to the Multilateral Fund Secretariat and to any implementing agencies assisting the Party in returning to compliance with the Protocol. In those instances where a recommendation contains a deadline for the submission of information or data, the letter also includes an explanation of the possible consequences of failure to meet the deadline. These consequences include the adoption by the Committee of a recommendation to defer the consideration of the Party's situation given the importance of ensuring that the Committee has adequate time to consider the submitted information and deliberate its implications, or a recommendation to propose the adoption by the Meeting of the Parties of a draft decision requesting the Party submit the information sought by the Committee and cautioning the Party that, in the event it fails to return to compliance, the Meeting of the Parties could consider measures including the suspension of the Party's rights and privileges under the Protocol.

4.5. Meeting of the Parties decision stage

Each year, the Meeting of the Parties considers the report of the Committee as presented by the President. It also considers any draft decisions approved by the Committee, which are forwarded by the Committee to the Meeting of the Parties in a conference-room paper. It is customary for the Meeting of the Parties to take note of the report of the Committee and adopt the draft decisions contained in the conference-room paper. To date, virtually all draft decisions proposed by the Committee have been adopted by the Meeting of the Parties.

Depending on the nature of the compliance issue concerned, a particular Party may be the subject of a number of decisions adopted at different Meetings of the Parties without amendment.

A compilation of these decisions and all other compliance-related decisions adopted by the Meeting of the Parties is maintained on the Secretariat's website at http://ozone.unep.org/Meeting_Documents/impcom/.

Once adopted, the compliance decisions are circulated to all Parties in the report of the Meeting of the Parties at which they are adopted, which is also posted on the Ozone Secretariat's website (http://ozone.unep.org/Meeting_Documents/impcom). The Secretariat also communicates the text of the adopted decisions by letter to the Parties concerned, copying it, where relevant, to the secretariat of the Multilateral

Fund and to any implementing agencies assisting the Party in returning to compliance with the Protocol. Those Parties subject to decisions containing their plans of action for returning to compliance with the Protocol's control measures for the phase-out of controlled substances are requested to submit annual reports to the Secretariat on their implementation of the commitments contained in their plans of action for the consideration of the Committee.

4.6. Monitoring and final resolution stage

The Secretariat maintains a list of compliance-related decisions requiring further action by Parties and prepares a document for each Committee meeting listing the decisions scheduled for review.

The decisions are presented to the Committee at each meeting with a report on the status of those actions that were due to be completed prior to the meeting, including the annual reports submitted by those Parties subject to decisions containing plans of action for returning to compliance with the Protocol's control measures for the phase-out of controlled substances.

The Committee then repeats its consideration and recommendation and reporting stages described above in sections 4.3 and 4.4, reviewing progress made by each Party in performing the required actions set out in the decision pertaining to it and making any necessary recommendations, including the preparation of further draft decisions for consideration and possible adoption by the Meeting of the Parties with a view to resolving each compliance issue.

Some plans of action contained in decisions are designed not only to return a Party to compliance but also to accelerate its phase-out of a particular controlled substance. In such cases, once a Party has returned to compliance, the Committee will continue to monitor its implementation of its plan of action until all the measures contained in the plan have been completed. Similarly, should a Party go beyond its plan, returning to compliance in advance of the commitments contained in the plan, the Committee will continue to monitor its implementation until the time-specific milestones in the plan have been passed.

The implementation of the non-compliance procedure is considered to have been concluded in respect of a particular Party when the Committee records in the report of a Committee meeting that the Party has returned to compliance and has implemented all the required actions contained in the decision relating to it.

5. CONDUCT OF IMPLEMENTATION COMMITTEE MEETINGS

5.1. Schedule and typical duration of meetings and translation and interpretation arrangements

5.1.1. Schedule of meetings and typical duration

Paragraph 6 of the non-compliance procedure provides that meetings of the Implementation Committee shall be held twice a year, unless the Committee decides otherwise. The first meeting of the year is usually held immediately preceding or immediately following the annual meeting of the Open-ended Working Group of the Parties to the Protocol, at the same location. The end-of-year meeting is usually held immediately preceding the annual Meeting of the Parties and at the same location.

The first meeting of the year is usually two days in duration, while the end-of-year meeting is usually held over three days. The Committee usually conducts its work over two sessions each day, from 10 a.m. to 1 p.m. and from 3 p.m. to 6 p.m., with night sessions arranged when necessary.

5.1.2. Translation and interpretation arrangements

While not required by any specific decisions of the Parties, efforts are made to provide the primary meeting documents, except information documents, in the United Nations official language preferred by each member. To ensure that the Committee has, in consolidated form, the latest possible information on the situation of each Party under consideration and the most recent draft recommendations of the Secretariat on those situations, revisions and addenda of meeting documents are issued until the commencement of the meeting. Consequently, in some cases only English language versions of some documents are available to the Committee.

While not required by any specific decision of the Parties, if a member requires interpretation efforts are also made to provide interpretation in his or her preferred United Nations official language. In addition, efforts are made to provide additional interpretation services to accommodate the requirements of any representatives of invited Parties.

5.2. Rules of procedure

The rules of procedures for meetings of the Parties, adopted by the First Meeting of the Parties and subsequently amended by the Second and Third Meetings of the Parties, applies to the meetings of the Implementation Committee (rule 26 (6) of the rules of procedure), except to the extent that they are inconsistent with the non-compliance procedure. The rules are set out in the Handbook for the International Treaties for the Protection of the Ozone Layer, available on the Ozone Secretariat website at: <http://www.ozone.unep.org/publications>.

5.3. Typical agenda and meeting documents

The provisional agenda of each Committee meeting is prepared by the Ozone Secretariat. It is sent to the members along with a letter of invitation by e-mail and post six weeks prior to the meeting. It is also posted on the Committee's secure website.

The meeting documents are prepared by the Ozone Secretariat. Each meeting may also have a number of information documents. Detailed submissions from Parties whose situation is under consideration will be contained in an information document. The report of the Secretariat of the Multilateral Fund on the status and prospects of Article 5 countries in achieving compliance with the control measures of the Montreal Protocol will also be provided in an information document. This report is prepared in the first instance for the Executive Committee of the Multilateral Fund and later becomes an information document of the Implementation Committee. Proposals submitted by Committee members prior to Committee meetings will also become information documents. All meeting documents, including information documents, are sent to the members by e-mail and post upon completion. They are also posted on the Committee's secure website.

The Committee uses the meeting documents to review data, determine instances of possible non-compliance, consider recommendations and agree to recommend measures for returning Parties to compliance. To enable the Committee to perform this task in an effective manner, the Secretariat endeavours to schedule completion of the meeting documents such that it achieves a balance between providing early information and a package of information that is as complete and up to date as possible. This means that meeting documents can be dispatched between two and six weeks prior to the Committee meeting. Time permitting, if additional information relevant to the Committee's remit is received by the Secretariat after dispatch of the meeting documents, the Secretariat will issue revisions and addenda to the meeting documents to incorporate the new information.

Members are also welcome to circulate conference-room papers in English during the course of the meeting. A typical agenda, with related typical meeting documents, is presented in table 1 below. Note those items marked with an asterisk are only contained in agenda of the final meeting of each year.

Table 1: Typical agenda and meeting documents

Agenda item	Related meeting document
1. Opening of the meeting	
2. Adoption of the agenda and organization of work	Provisional agenda
3. Report of the Secretariat on data under Article 7 of the Montreal Protocol	Information provided by Parties in accordance with Article 7 of the Montreal Protocol on Substances that Deplete the Ozone Layer

Agenda item	Related meeting document
4. Information provided by the Fund Secretariat on relevant decisions of the Executive Committee and on activities carried out by implementing agencies (United Nations Development Programme, United Nations Environment Programme, United Nations Industrial Development Organization and World Bank) to facilitate compliance by Parties	Report by the Secretariat of the Multilateral Fund on the status and prospects of Article 5 countries in achieving compliance with the control measures of the Montreal Protocol
5. Follow-up on previous decisions of the Parties and recommendations of the Implementation Committee on non-compliance-related issues (a) Data-reporting obligations (b) Existing plans of action (c) Other decisions on compliance (d) Other recommendations on compliance	Information on cases of deviation from the Protocol's consumption and production reduction schedules and data-reporting requirements Documents submitted by Parties to the Committee List of Party-specific compliance issues to be considered by the Implementation Committee
6. Consideration of other non-compliance issues arising out of the data report	Information provided by Parties in accordance with Article 7 of the Montreal Protocol on Substances that Deplete the Ozone Layer Information on cases of deviation from the Protocol's consumption and production reduction schedules and data-reporting requirements Documents submitted by Parties to the Committee
7. Review of any information on requests for changes in baseline data	Information on cases of deviation from the Protocol's consumption and production reduction schedules and data-reporting requirements Documents submitted by Parties to the Committee
8. Information on compliance by Parties present at the invitation of the Implementation Committee	Information on cases of deviation from the Protocol's consumption and production reduction schedules and data-reporting requirements Documents submitted by Parties to the Committee
9. Consideration of the report of the Secretariat on Parties that have established licensing systems (Article 4B, paragraph 4, of the Montreal Protocol)	Note by the Secretariat: Licensing systems (Article 4B, paragraph 4, of the Montreal Protocol)

Agenda item	Related meeting document
10. Implementation of paragraph 1 of decision XVII/12 with respect to the reporting of CFC production by non-Article 5 Parties to meet the basic domestic needs of Article 5 Parties*	Information provided by Parties in accordance with Article 7 of the Montreal Protocol on Substances that Deplete the Ozone Layer
11. Information on those Parties that had not reported the destinations of all exports (including re-exports) for all controlled substances (including mixtures) in accordance with paragraph 4 of decision XVII/16*	Information provided by Parties in accordance with Article 7 of the Montreal Protocol on Substances that Deplete the Ozone Layer
12. Other matters	
13. Adoption of the report of the meeting	Consolidation of draft recommendations for adoption
14. Closure of the meeting	

5.4. Typical organization and conduct of work

Using the typical agenda contained in table 1 above, this section presents an item-by-item explanation of the substantive matters on the agenda, specifically covering the manner in which the Committee conducts its twice-yearly meetings to discharge its responsibilities as set out in section 3.3.1 above. For each agenda item a summary is provided of the issue discussed under the item and the corresponding action customarily taken by the Committee.

5.4.1. Organization of work

Following any opening formalities, the first agenda item of each meeting of the Committee is the organization of the work of the meeting. To that end, the Secretariat:

- (i) Names those Parties on the meeting agenda that the Committee members had previously identified as warranting individual consideration and recalls that the draft recommendations for the other Parties on the agenda would therefore be adopted by the Committee at its end-of-meeting executive session on the basis that they had not been identified for individual consideration. As mentioned in section 4.3 above, when the Secretariat circulates meeting documents to the Committee it asks the members to review the draft recommendations on each Party listed in the documents and to inform the Secretariat of those draft recommendations that the member wishes to review individually in the Committee consideration stage, on the understanding that any draft recommendation not so identified will be considered to have blanket approval and will therefore immediately be forwarded for adoption;

- (ii) Suggests, on the basis of new information received by the Secretariat following the dispatch of the meeting documentation, any additions to the list of those Parties that should be individually considered;
- (iii) Lists the complete set of meeting documents.

The President outlines for the Committee's consideration and comment administrative matters such as the working hours that the Secretariat has scheduled in consultation with the interpreters for each day of the meeting, the list of invited Parties that have sent representatives to consult the Committee on their particular compliance issues and a timetable for the completion of the agenda over the course of the meeting.

The President reminds the Committee of the following customary practices for conducting the work of the Committee:

- (i) After concluding its discussion on a particular Party or sub-item of the agenda, the Committee will move temporarily into executive session to agree on a draft recommendation for adoption by the Committee at its executive session at the end of meeting;
- (ii) The representatives of the Multilateral Fund secretariat and the implementing agencies (UNEP, UNDP, UNIDO and the World Bank) are not required to leave the room during the executive sessions of the Committee;
- (iii) The representatives of the Multilateral Fund secretariat and the implementing agencies will treat the deliberations of the Committee in executive session as confidential and recall that they will not participate in such deliberations except to the extent that they are responding to questions from the members;
- (iv) While the Committee adopts the text of the recommendations as a whole, it entrusts the President and Vice-President with finalizing the text of the Committee report, in cooperation with the Ozone Secretariat.

Expected Committee actions

- (i) As necessary, to comment on the information provided;
- (ii) To adopt the proposed working hours and timetable for completion of the agenda.

5.4.2. Report of the Secretariat on data under Article 7 of the Montreal Protocol

Under this agenda item, the Ozone Secretariat presents a report on information provided by Parties in accordance with Article 7 of the Montreal Protocol.

The report includes the following information:

- (i) Status of ratification of the Montreal Protocol and its amendments;
- (ii) Status of base-year, baseline and annual data reporting, including a list of Parties yet to report as required by the Protocol;
- (iii) Deviations from the Protocol's production and consumption phase-out control measures in previous years, including lists of Parties that have reported deviations, the data concerned and any explanation provided by the Parties for the deviations.

In presenting the report, the Database Manager highlights any revisions or additions to the information contained in the report that were prompted by information received by the Secretariat after the report's finalization.

Details of what constitutes base-year and baseline data and production and consumption control measures of the Protocol are contained in sections 6.1.1 and 6.1.2.

Expected Committee action

- (i) As necessary, to ask questions and seek clarification from the Ozone Secretariat with regard to its presentation. Any substantive discussion of compliance issues arising from the report are, however, deferred until the agenda items described in sections 5.4.4 and 5.4.5 are taken up.

5.4.3. Information provided by the Fund secretariat on relevant decisions of the Executive Committee and on activities carried out by implementing agencies to facilitate compliance by Parties

Under this agenda item, the representatives of the Multilateral Fund secretariat present an information document containing a report on the status and prospects of Article 5 countries in achieving compliance with the control measures of the Montreal Protocol. The report contains:

- (i) An annual update on the apparent status of Article 5 Parties with respect to their compliance with the control measures of the Protocol, as suggested by the latest consumption and production data reported by those Parties;
- (ii) Information on approved or planned assistance for those Parties whose latest consumption exceeds the Protocol's current control measures, that appear to be at risk of non-compliance with future control measures, or are subject to decisions or recommendations on compliance;
- (iii) Data on the implementation of country programmes, including an analysis of consumption data on controlled substances by sector.

The representatives of the Fund secretariat also inform the Committee of the decisions related to compliance matters that have been taken by the Executive Committee since the last meeting of the Implementation Committee.

Expected Committee actions

- (i) As necessary, to ask questions and seek clarification from the Fund secretariat with regard to its presentation. Any substantive discussion of compliance issues arising from the report are, however, deferred until the agenda items described in sections 5.4.4 and 5.4.5 have been taken up;
- (ii) To note with appreciation the report of the Fund Secretariat.

5.4.4. Follow-up on previous decisions of the Parties and recommendations of the Implementation Committee on non-compliance-related issues

5.4.4.1. Data-reporting obligations

Under this agenda item a list is provided of all Parties subject to decisions of the Meeting of the Parties or recommendations of the Committee concerning non-compliance with their data-reporting obligations under the Protocol.

Details of the Parties' data-reporting obligations under the Protocol are contained in section 6.1.1, while decisions and recommendations on data-reporting obligations that are to be reviewed by the Committee are contained in a document prepared for each meeting of the Committee.

The President reminds the Committee of any listed Parties that will not be individually considered and that the draft recommendations pertaining to those Parties will be forwarded for adoption at the Committee's end-of-meeting executive session in accordance with the "blanket approval" procedure (see section 4.3 above).

The Ozone Secretariat presents the Committee with information relating to those listed Parties that have been identified for individual consideration by the Committee. The information the Secretariat presents is drawn from the meeting document prepared by the Secretariat on cases of deviation from the Protocol's consumption and production reduction schedules and data-reporting requirements, as well as from documents submitted by Parties. The meeting document prepared by the Secretariat also contains draft recommendations on each Party setting forth actions that the Committee might wish to recommend in respect of the Party. In its presentation, the Secretariat highlights any revised or additional information that it has received since the document was finalized and amends the Secretariat's draft recommendations as necessary.

For each listed Party identified for individual action, the meeting document includes information on:

- (i) The nature of the data reporting non-compliance, including whether the Party has only recently ratified the treaty instrument that makes the Party subject to the data-reporting obligation;
- (ii) The relevant decision of the Meeting of the Parties or recommendation of the Implementation Committee, including the action or actions that the Meeting of the Parties or the Committee had requested the Party to undertake;
- (iii) The Party's response to the decision or recommendation and any subsequent requests for clarification from the Secretariat or the fact that the Party has not submitted the requested data.

Expected Committee actions

- (i) As necessary, to ask questions and seek clarification on the Parties' situations from the Ozone Secretariat, Fund Secretariat and implementing agencies;
- (ii) In executive session, to discuss and agree on appropriate recommendations for each Party, to be forwarded for adoption by the Committee at the executive session at the end of the meeting, with reference to the suggested recommendations of the Ozone Secretariat and where appropriate to standardized recommendations types 15 and 16 for addressing routine procedural matters of non-compliance.

Standardized recommendations types 15 and 16: *The Committee adopts standardized recommendations to address routine procedural matters of non-compliance with a view to enabling the Committee to manage its increasing workload more efficiently and effectively and ensuring the equitable treatment of Parties in like circumstances.*

Standardized recommendation type 15 addresses the situation where a Party has not submitted its outstanding data in accordance with a recommendation of the Committee.

Standardized recommendation type 16 addresses the situation where a Party has submitted its outstanding data in accordance with a recommendation of the Committee or a decision of the Meeting of the Parties.

The text of these and all other type of standardized recommendations is contained in section 6.2.

Box 6

5.4.4.2. Existing plans of action

Under this agenda item a list is provided of all Parties subject to decisions of the Meeting of the Parties containing plans of action to return the Parties to compliance with the Protocol's control measures containing commitments that have not yet been reviewed and implemented. The list may include a Party that has returned to compliance with the Protocol's control measures, thereby fulfilling its legal obligations as prescribed by the

Protocol, but has not yet completed implementation of all the commitments made to the Meeting of the Parties with regard to the phase-out of particular controlled substances that are the subject of their plan of action. Consequently, the Committee would continue to monitor the progress of such a Party until it has completed implementation of all such commitments.

Details of the Parties' production and consumption phase-out obligations under the control measures of the Protocol are contained in section 6.1.2.

The President reminds the Committee of any listed Parties that will not be individually considered and that the draft recommendations pertaining to those Parties will be adopted by the Committee at the Committee's end-of-meeting executive session in accordance with the "blanket approval" procedure (see section 4.3 above).

The Ozone Secretariat presents the Committee with information relating to those listed Parties that have been identified for individual consideration by the Committee. The information the Secretariat presents is drawn from the meeting document prepared by the Secretariat on the cases of deviation from the Protocol's consumption and production reduction schedules and data-reporting requirements, as well as from documents submitted by Parties. The meeting document prepared by the Secretariat also contains draft recommendations on each Party setting forth actions that the Committee might wish to recommend in respect of the Party. In its presentation, the Secretariat highlights any revised or additional information that it has received since the document was finalized and amends the Secretariat's draft recommendations as necessary.

A Party listed under this item that submits to the Secretariat an explanation for its failure to implement one or more of its commitments will usually be invited by the Secretariat to send a representative to the meeting to respond to any questions the Committee may wish to ask regarding the Party's situation. Should the Party accept the invitation, the President will propose that, to make the best use of its time with the Party's representative, the Committee identify the gaps in its understanding of the Party's situation and defer agreement on a recommendation pertaining to the Party until after consultation with the Party's representative.

Expected Committee actions

- (i) As necessary, to ask questions and seek clarification on the Parties' situations from the Ozone Secretariat, the Fund secretariat and the implementing agencies;
- (ii) For those Parties that have sent representatives to the meeting, to identify the information that should be sought from the representatives so as to enable the Committee to develop appropriate recommendations on their situations;
- (iii) For those Parties that have not sent representatives to the meeting, to discuss and agree on in executive session appropriate recommendations for each Party, to be adopted by the Committee at the executive session at the end of the meeting, with reference to the suggested recommendations of the Ozone Secretariat and

where appropriate to standardized recommendation types 9, 10, 11, 12 and 13 for addressing routine procedural matters of non-compliance.

Standardized recommendations types 9, 10, 11, 12 and 13: *The Committee adopts standardized recommendations to address routine procedural matters of non-compliance with a view to enabling the Committee to manage its increasing workload more efficiently and effectively and to ensuring the equitable treatment of Parties in like circumstances.*

Standardized recommendation type 9 addresses the situation where a Party has not submitted its report on its implementation of one or more of the commitments contained in its plan of action.

Standardized recommendation type 10 addresses the situation where a Party has reported failure to implement one or more of its commitments but has not submitted an explanation for the failure.

Standardized recommendation type 11 addresses the situation where a Party's report on the implementation of its commitment or commitments indicates that it has returned to compliance with its obligations under the Protocol.

Standardized recommendation type 12 addresses the situation where a Party's report on the implementation of its commitment or commitments indicates that it is in advance of its commitment or commitments for the preceding year.

Standardized recommendation type 13 addresses the situation where a Party's report on the implementation of its commitment or commitments indicates that it has fully implemented a particular commitment or commitments.

The text of these and all other types of standardized recommendations is contained in section 6.2.

Box 7

5.4.4.3. Other decisions on compliance

Under this agenda item a list is provided of all Parties subject to compliance-related decisions of the Meeting of the Parties that do not contain plans of action. Such decisions might include a decision requesting a given Party to submit an explanation for a deviation from the Protocol's consumption or production control measures and a plan of action for returning the Party to compliance, or requesting a Party to submit an explanation for a deviation from a commitment or commitments contained in a plan of action.

The President reminds the Committee of any listed Parties that will not be individually considered and that the draft recommendations pertaining to those Parties will be forwarded for adoption at the Committee's end-of-meeting executive session in accordance with the "blanket approval" procedure (see section 4.3. above).

The Ozone Secretariat presents the Committee with information relating to those listed Parties that have been identified for individual consideration by the Committee. The information the Secretariat presents is drawn from the meeting document prepared by the Secretariat on the cases of deviation from the Protocol's consumption and production reduction schedules and data-reporting requirements, as well as from documents submitted by Parties. The meeting document prepared by the Secretariat also contains draft recommendations on each party setting forth actions that the Committee might wish to recommend in respect of the Party. In its presentation, the Secretariat highlights any revised or additional information that it has received since the document was finalized and amends the Secretariat's draft recommendations as necessary.

A Party under this item that submits to the Secretariat an explanation for its deviation and a plan of action to redress the deviation will usually be invited by the Secretariat to send a representative to the meeting to respond to any questions the Committee may wish to ask regarding the Party's situation. Should the Party accept the invitation, the President will propose that, to make the best use of its time with the Party's representative, the Committee identify the gaps in its understanding of the Party's situation and defer agreement on a recommendation pertaining to the Party until after consultation with the Party's representative.

Expected Committee actions

- (i) As necessary, ask questions and seek clarification on the Parties' situations from the Ozone Secretariat, Fund Secretariat and implementing agencies;
- (ii) For those Parties that have sent representatives to the meeting, identify the information that should be sought from the representatives to enable the Committee to develop appropriate recommendations on their situations;
- (iii) For those Parties that have not sent representatives to the meeting, to discuss and agree on in executive session appropriate recommendations for each Party, to be forwarded for adoption at the end-of-meeting executive session, with reference to the suggested recommendations of the Ozone Secretariat and where appropriate to standardized recommendation types 3, 4, 6, 7 and 8 for addressing routine procedural matters of noncompliance.

Standardized recommendations types 3, 4, 6, 7 and 8: *The Committee adopted standardized recommendation text to address routine procedural matters of non-compliance to enable the Committee to manage its increasing workload more efficiently and effectively and ensure the equitable treatment of Parties in like circumstances.*

Standardized recommendation type 3 addresses the matter of a Party that has submitted an explanation for its deviation from the Protocol's consumption or production control measures that confirms its non-compliance with those measures but has not submitted a plan of action.

Standardized recommendation type 4 addresses the matter of a Party that has submitted an explanation for its deviation that confirms that the deviation did not constitute non-compliance with the Protocol.

Standardized recommendation type 6 addresses the matter of a Party that has submitted an explanation for its deviation and a plan of action to return it to compliance that contains time-specific benchmarks and supporting regulatory and policy measures.

Standardized recommendation type 7 addresses the matter of a Party that submitted an explanation for its deviation at a previous meeting of the Committee that confirms its non-compliance and has at the current meeting of the Committee submitted a plan of action to return it to compliance that contains time-specific benchmarks and supporting regulatory and policy measures.

Standardized recommendation type 8 addresses the matter of a Party that submitted an explanation for its deviation at a previous meeting of the Committee that confirms its non-compliance but has not yet submitted a plan of action.

The text of these and all other types of standardized recommendations is contained in section 6.2.

Box 8

5.4.4.4. Other recommendations on compliance

Under this agenda item a list is provided of all Parties subject to compliance-related recommendations of the Committee that do not concern existing plans of action. Such recommendations include recommendations requesting a Party to submit an explanation for a deviation from the Protocol's consumption or production control measures and a plan of action for returning the Party to compliance or requesting a Party to submit data in accordance with its data-reporting obligations.

The President reminds the Committee of any listed Parties that will not be individually considered, and that the draft recommendations pertaining to those Parties will be adopted by the Committee at the Committee's end-of-meeting executive session in accordance with the "blanket approval" procedure (see section 4.3 above).

The Ozone Secretariat presents the Committee with information relating to those listed Parties that have been identified for individual consideration. The information the Secretariat presents is drawn from the meeting document prepared by the Secretariat on the cases of deviation from the Protocol's consumption and production reduction schedules and data-reporting requirements, as well as from documents submitted by Parties to the Committee. The meeting document prepared by the Secretariat also contains draft recommendations on each Party setting forth actions that the Committee might wish to recommend in respect of the Party. In its presentation, the Secretariat highlights any revised or additional information that it has received since the document was finalized and amends the Secretariat's draft recommendations as necessary.

A Party listed under this item that submits to the Secretariat an explanation for its deviation and a plan of action to redress the deviation will usually be invited by the Secretariat to send a representative to the meeting to respond to any questions which the Committee may wish to ask regarding the Party's situation. Should the Party accept the invitation, the President will propose that, to make the best use of its time with the Party's representative, the Committee identify the gaps in its understanding of the Party's situation and defer agreement on a recommendation pertaining to the Party until after consultation with the Party's representative.

Expected Committee actions

- (i) As necessary, to ask questions and seek clarification on the Parties' situations from the Ozone Secretariat, the Fund secretariat and the implementing agencies;
- (ii) For those Parties that have sent representatives to the meeting, to identify the information that should be sought from the representatives so as to enable the Committee to develop appropriate recommendations on their situations;
- (iii) For those Parties that have not sent representatives to the meeting, to discuss and agree on in executive session appropriate recommendations for each Party, to be adopted by the Committee at the executive session at the end of the meeting, with reference to the suggested recommendations of the Ozone Secretariat and where appropriate to standardized recommendation types 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 15 and 16 for addressing routine procedural matters of non-compliance.

Standardized recommendations types 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 15 and 16: *The Committee adopts standardized recommendation text to address routine procedural matters of non-compliance to enable the Committee to manage its increasing workload more efficiently and effectively and ensure the equitable treatment of Parties in like circumstances.*

Standardized recommendation type 3 addresses the situation where a Party has submitted an explanation for its deviation from the Protocol's consumption or production control measures that confirms its non-compliance with those measures but has not submitted a plan of action.

Standardized recommendation type 4 addresses the situation where a Party has submitted an explanation for its deviation that confirms that the deviation did not constitute non-compliance with the Protocol.

Standardized recommendation type 5 addresses the situation where a Party has not submitted an explanation for its deviation or a plan of action.

Standardized recommendation type 6 addresses the situation where a Party has submitted an explanation for its deviation and a plan of action to return it to compliance that contains time-specific benchmarks and supporting regulatory and policy measures.

Standardized recommendation type 7 addresses the situation where a Party which submitted an explanation for its deviation at a previous meeting of the Committee that confirms its non-compliance has at the current meeting submitted a plan of action in accordance with a recommendation of the Committee.

Standardized recommendation type 8 addresses the situation where a Party submitted an explanation for its deviation at a previous meeting of the Committee that confirms its non-compliance but has not yet submitted a plan of action in accordance with a recommendation of the Committee.

Standardized recommendation type 10 addresses the situation where a Party has reported failure to implement one or more of its commitments but has not submitted an explanation for the failure.

Standardized recommendation type 11 addresses the situation where a Party's report on the implementation of its commitment or commitments indicates that it has returned to compliance with its obligations under the Protocol.

Standardized recommendation type 12 addresses the situation where a Party's report on the implementation of its commitment or commitments indicates that it is in advance of its commitment or commitments for the preceding year.

Standardized recommendation type 13 addresses the situation where a Party's report on the implementation of its commitment or commitments indicates that it has fully implemented a particular commitment or commitments.

Standardized recommendation type 15 addresses the situation where a Party has not submitted its outstanding data in accordance with a recommendation of the Committee.

Standardized recommendation type 16 addresses the situation where a Party has submitted its outstanding data in accordance with a recommendation of the Committee or a decision of the Meeting of the Parties.

The text of these and all other types of standardized recommendations is contained in section 6.2.

Box 9

5.4.5. Consideration of other non-compliance issues arising out of the data report

The provisional agenda does not list the Parties to be considered under this item as a complete list of such Parties cannot be reliably compiled in advance of the Committee meeting. This is because the Secretariat receives new data reports on a continuous basis and each new data report has the potential to reveal a deviation from the Protocol's control measures to phase out the production and consumption of controlled substances that might indicate possible non-compliance. The Secretariat seeks to present to the Committee as many of these reports and associated deviations

as possible so that the Committee can provide the Parties with the most comprehensive picture possible of compliance with the Montreal Protocol. Consequently, both the list of Parties that have not submitted their data in accordance with their data-reporting obligations and the list of Parties that have reported deviations indicating possible non-compliance with their obligations to phase out production and consumption of controlled substances remain in a state of flux up until the commencement of each meeting.

In addition, if a non-compliance issue arising out of the data report pertains to a Party scheduled for consideration under one of the preceding agenda items, the additional non-compliance issue arising out of the data report will also be considered under the preceding agenda item. This approach is intended to ensure that, to the greatest extent possible, the Committee develops a recommendation for a given Party with an understanding of all compliance issues relating to that Party.

Although the Parties to be considered under this item are not listed on the agenda, they are identified in the meeting document on information on cases of deviation from the Protocol's consumption and production reduction schedules and data-reporting requirements and the meeting document on information provided by Parties in accordance with Article 7 of the Montreal Protocol. The former document contains information on those Parties that, as of a given date, had submitted data that revealed deviations from the Protocol's control measures and indicated possible non-compliance with those control measures (in other words, it does not include those deviations that are exempted or otherwise approved by the Meetings of the Parties). The latter document lists those Parties that, as of a given date, had submitted data that deviated from the Protocol's control measures and those Parties that, as of the same date, had not fulfilled their base-year, baseline data or annual data-reporting obligations.

Deliberations under this agenda item are customarily separated into discussion of non-compliance with data-reporting obligations and discussion of deviations from the Protocols' control measures for the phase-out of controlled substances.

5.4.5.1. Data reporting

Details of data-reporting obligations under the Montreal Protocol are contained in section 6.1.1.

The Ozone Secretariat presents information on those Parties with outstanding data-reporting obligations not considered under preceding agenda items. The information presented by the Secretariat is drawn from the meeting document on information provided by Parties in accordance with Article 7 of the Montreal Protocol. In its presentation, the Secretariat highlights any revised or additional information that it has received since the document was finalized and amends the Secretariat's draft recommendations as necessary.

Expected Committee actions

- (i) As necessary, to ask questions and seek clarification on the Parties' situations from the Ozone Secretariat, Fund secretariat and implementing agencies;
- (ii) In executive session, to discuss and agree on appropriate recommendations for the Parties to be adopted by the Committee at the executive session at the end of the meeting, with reference to the suggested recommendations of the Ozone Secretariat and where appropriate to standardized recommendation types 14 and 15 for addressing routine procedural matters of non-compliance.

Standardized recommendations types 14 and 15: *The Committee adopts standardized recommendation text to address routine procedural matters of non-compliance to enable the Committee to manage its increasing workload more efficiently and effectively and ensure the equitable treatment of Parties in like circumstances.*

Standardized recommendation type 14 addresses the situation where a Party has not submitted its outstanding data at the mid-year meeting of the Committee and has not yet been subject to a recommendation of the Committee on this issue.

Standardized recommendation type 15 addresses the situation where a Party has not submitted its outstanding data at the end-of-year meeting of the Committee and has not yet been subject to a recommendation of the Committee on this issue.

The text of these and all other types of standardized recommendations is contained in section 6.2.

Box 10

5.4.5.2. Control measures

Details of the Protocol's control measures for the phase-out of the production and consumption of controlled substances are contained in section 6.1.2.

As mentioned above, the Parties to be considered under this item are identified in the meeting document on information on cases of deviation from the Protocol's consumption and production reduction schedules and data-reporting requirements, thereby enabling the members of the Committee to notify the Secretariat prior to the commencement of the meeting which, if any, Parties they wish to consider individually. The President therefore reminds the Committee of any Parties that will not be individually considered and that the draft recommendations pertaining to those Parties will be adopted by the Committee at the Committee's end-of-meeting executive session in accordance with the blanket approval procedure (see section 4.3. above).

The Ozone Secretariat then presents the Committee with information relating to those Parties that have been identified for individual consideration and have not already been considered under a prior agenda item. The information the Secretariat presents is drawn from the meeting document prepared by the Secretariat on the cases of deviation from the Protocol's consumption and production reduction schedules and data-reporting requirements, as well as from documents submitted by Parties to the

Committee. The meeting document prepared by the Secretariat also contains draft recommendations on each Party setting forth actions that the Committee might wish to recommend in respect of the Party. In its presentation, the Secretariat highlights any revised or additional information that it has received since the documents were finalized and amends the Secretariat's draft recommendations as necessary.

For each Party, the meeting documents provide information on:

- (i) The nature of the Party's deviation from the Protocol's control measures, as appropriate noting when the Party has only recently ratified the treaty instrument that makes it subject to the control measure in question;
- (ii) Any response from the Party to the Secretariat's invitation to provide an explanation for the deviation and the date on which the Secretariat transmitted its invitation;
- (iii) The nature and status of any approved or planned assistance for the Party from the Multilateral Fund or the Global Environment Facility that relates to the control measures from which the Party has deviated;
- (iv) The identity of any implementing agency providing institutional strengthening assistance to the Party under the Multilateral Fund or the Global Environment Facility;
- (v) The status of the Party's system for the licensing of imports and exports of controlled substances and any other regulatory measures;
- (vi) Any other information that may give the Committee an insight into the reason for the Party's deviation or failure to respond to the Secretariat's invitation to provide an explanation. Such insights might be provided by the implementing agencies or the Fund secretariat and include information on natural disasters or civil unrest affecting the Party;
- (vii) If the Party's response includes a draft plan of action intended to redress the deviation:

The nature of any time-specific benchmarks for the phase-out of the controlled substance in question and, if it can be ascertained, the year in which the benchmarks would return the Party to compliance with the Protocol's control measures for that controlled substance; The nature of any regulatory or policy measures to support the achievement of the time-specific benchmarks;

A Party listed under this item that submits to the Secretariat an explanation for its deviation and a plan of action intended to address the non-compliance will usually be invited by the Secretariat to send a representative to the meeting to respond to any questions which the Committee may wish to ask regarding the Party's situation. Should the Party accept the invitation, the President will propose that, to make the best use of its time with the Party's representative, the Committee identify the gaps in

its understanding of the Party's situation and defer agreement on a recommendation pertaining to the Party until after consultation with the Party's representative.

Expected Committee actions

- (i) As necessary, to ask questions and seek clarification on the Parties' situations from the Ozone Secretariat, the Fund secretariat and the implementing agencies;
- (ii) For those Parties that have sent representatives to the meeting, to identify the information that should be sought from the representatives to enable the Committee to develop appropriate recommendations on their situations;
- (iii) For those Parties that have not sent representatives to the meeting, to discuss and to agree on in executive session appropriate recommendations for each Party, to be adopted by the Committee at the executive session at the end of the meeting, with reference to the suggested recommendations of the Ozone Secretariat and where appropriate to standardized recommendation types 1, 2, 3, 4, 5 and 6 for addressing routine procedural matters of non-compliance.

Standardized recommendations types 1, 2, 3, 4, 5 and 6: *The Committee adopts standardized recommendation text to address routine procedural matters of non-compliance to enable the Committee to manage its increasing workload more efficiently and effectively and ensure the equitable treatment of Parties in like circumstances.*

Standardized recommendation type 1 addresses the situation where a Party has reported a deviation from the Protocol's control measures that is being considered by the Committee for the first time but has not submitted an explanation for its deviation or a plan of action to address the deviation.

Standardized recommendation type 2 addresses the situation where a Party has reported a deviation from the Protocol's control measures that is being considered by the Committee for the first time and has had insufficient time to respond to the Secretariat's invitation to submit an explanation and, if relevant, a plan of action to address the deviation.

Standardized recommendation type 3 addresses the situation where a Party has submitted an explanation for its deviation from the Protocol's consumption or production control measures that confirms its non-compliance with those measures but has not submitted a plan of action.

Standardized recommendation type 4 addresses the situation where a Party has submitted an explanation for its deviation that confirms that the deviation did not constitute non-compliance with the Protocol.

Standardized recommendation type 5 addresses the situation where a Party has not submitted an explanation for its deviation or a plan of action.

Standardized recommendation type 6 addresses the situation where a Party has submitted an explanation for its deviation and a plan of action to return it to compliance that contains time-specific benchmarks and supporting regulatory and policy measures.

The text of these and all other types of standardized recommendations is contained in section 6.2. *Box 11*

5.4.6. Review of any information on requests for changes in baseline data

Under this agenda item a list is provided of all Parties that have submitted requests to the Implementation Committee, via the Ozone Secretariat, to change the data for the year or years used to calculate their baseline for a particular controlled substance and thereby determine their compliance status on a yearly basis with the Protocol's consumption and production control measure for that substance.

Decision XIII/15, paragraph 5: *"To advise Parties that request changes in reported baseline data... to present their requests before the Implementation Committee which will in turn work with the Ozone Secretariat and the Executive Committee to confirm the justification for the changes and present them to the Meeting of the Parties for approval."* *Box 12*

Details of the baseline year or years for each controlled substance are contained in section 6.1.1.

Decision XV/19 of the Fifteenth Meeting of the Parties sets out the methodology adopted by the Parties for reviewing requests to change baseline data.

The full text of decision XV/19 and all other compliance-related decisions adopted by the Meeting of the Parties is maintained on the Ozone Secretariat's website at <http://ozone.unep.org/Publications/index>.

The President reminds the Committee of any Parties that will not be individually considered and that the draft recommendations pertaining to those Parties will be adopted by the Committee at the Committee's end-of-meeting executive session in accordance with the "blanket approval" procedure (see section 4.3 above).

The Ozone Secretariat presents the Committee with information relating to those Parties that have been identified for individual consideration. The information the Secretariat presents is drawn from the meeting document prepared by the Secretariat on the cases of deviation from the Protocol's consumption and production reduction schedules and data-reporting requirements, as well as from documents submitted by Parties to the Committee. The meeting document prepared by the Secretariat also contains draft recommendations on each Party setting forth actions that the Committee might wish to recommend in respect of the Party. In its presentation, the Secretariat highlights any revised or additional information that it has received since the document was finalized and amends the Secretariat's draft recommendations as necessary.

For each Party, the meeting documents provide:

- (i) A summary of the Party's submission, presented with reference to the methodology contained in decision XV/19, namely: Identification of which of the baseline year's or years' data are considered incorrect and provision of the proposed new figure for that year or those years; Explanation as to why the existing baseline data is incorrect, including information on the methodology used to collect and verify that data, along with supporting documentation where available; Explanation as to why the requested changes should be considered correct, including information on the methodology used to collect and verify the accuracy of the proposed changes;
- (ii) Documentation substantiating collection and verification procedures and their findings, which could include:
 - a. Copies of invoices, shipping and customs documentation from either the requesting Party or its trading partners;
 - b. Copies of surveys and survey reports;
 - c. Information on the country's gross domestic product, ozone-depleting substance consumption and production trends and business activity in the ozone-depleting substance sectors concerned;
 - d. Information provided by the Multilateral Fund secretariat and the implementing agencies in relation to both the original data collection exercises and any exercises that resulted in the baseline revision request;
- (iii) The nature and status of any approved or planned assistance for the Party from the Multilateral Fund or the Global Environment Facility that relates to the controlled substance for which the data revision is sought;
- (iv) The identity of any implementing agency providing institutional strengthening assistance to the Party under the Multilateral Fund or the Global Environment Facility;
- (v) The status of the Party's system for the licensing of imports and exports of controlled substances and any other regulatory measures;
- (vi) Any other information that may assist the Committee to review the request. For example, information on the economic situation of the Party in the year or years subject to the request and consumption and production data trends in the years proximate to the year or years subject to the request.

As noted above, the document prepared by the Secretariat also contains draft recommendations on each Party prepared by the Secretariat. Typically, Parties requesting baseline data changes have not in the first instance submitted information that addresses each of the information requirements contained in decision XV/19. Consequently, the Secretariat's suggested recommendations often request the Parties to address the outstanding elements of decision XV/19.

A Party listed under this item will usually be invited by the Secretariat to send a representative to the meeting to respond to any questions which the Committee may wish to ask regarding the Party's situation. Should the Party accept the invitation, the President will propose that, to make the best use of its time with the Party's representative, the Committee identify the gaps in its understanding of the Party's situation and defer agreement on a recommendation pertaining to the Party until after consultation with the Party's representative.

Expected Committee actions

- (i) As necessary, to ask questions and seek clarification on the Parties' situations from the Ozone Secretariat, the Fund secretariat and the implementing agencies;
- (ii) For those Parties that have sent representatives to the meeting, to identify the information that should be sought from the representatives to enable the Committee to develop appropriate recommendations on the Parties' situations;
- (iii) For those Parties that have not sent representatives to the meeting, to discuss and agree on in executive session appropriate recommendations for each Party, to be adopted by the Committee at the executive session at the end of the meeting, with reference to the suggested recommendations of the Ozone Secretariat and the methodology contained in decision XV/19.

5.4.7. Information on compliance by Parties present at the invitation of the Implementation Committee

The provisional agenda does not list the Parties to be considered under this item as it must be circulated well in advance, generally before Parties confirm whether or not they are sending representatives.

The President indicates whether each of the invited Parties has consented to any request from the other invited Parties to observe its case. The President suggests that the representatives be invited to appear before the Committee in alphabetical order.

The Secretariat or the President presents to each representative in turn the queries collected from the members under the earlier agenda items. The representative provides responses to those or any other queries arising from subsequent discussion with the Committee, identifying those queries to which a response cannot be made at the current meeting.

Expected Committee actions

- (i) In the light of the representative's responses, to pose any additional questions required to develop a recommendation on the Party's situation;
- (ii) Once the Committee has completed its consultation with all invited Parties, to discuss and agree in executive session appropriate recommendations for each

Party, for adoption at the executive session at the end of the meeting, with reference to the suggested recommendations of the Ozone Secretariat and the responses provided by the representatives of the invited Parties.

5.4.8. Consideration of the report by the Secretariat on Parties that have established licensing systems (Article 4B, paragraph 4, of the Montreal Protocol)

This item is included only in the agenda of the end-of-year meeting.

The Ozone Secretariat presents its note on licensing systems (Article 4B, paragraph 4, of the Montreal Protocol).

The note contains a list of Parties that have ratified the Montreal Amendment to the Protocol, which introduced the obligation that each Party establish a system for licensing the import and export of new, used, recycled and reclaimed controlled substances. The note indicates which of these Parties have reported the establishment of licensing systems and which have not. With regard to the latter category, it indicates the dates on which the Article 5 Parties that had ratified the Montreal Amendment but not yet established licensing systems had started to receive financial assistance for establishing their systems, given that those Parties that had only recently begun to receive assistance could reasonably be expected to not yet have fully functional systems. The note also includes a list of those countries which are not yet parties to the Montreal Amendment but which have reported the establishment of licensing systems. The note also contains a draft recommendation prepared by the Secretariat. In its presentation, the Secretariat highlights any revised or additional information that it has received since the note was finalized and amends the Secretariat's draft recommendation as necessary.

As noted above, the note prepared by the Secretariat contains a draft recommendation prepared by the Secretariat. Customarily, that draft recommendation provides for the forwarding of a draft decision to the Meeting of the Parties for its consideration and possible adoption along the following lines:

Draft decision -/—: Report on the establishment of licensing systems under Article 4B of the Montreal Protocol

Noting that paragraph 3 of Article 4B of the Montreal Protocol requires each Party, within three months of the date of introducing its system for licensing the import and export of new, used, recycled and reclaimed substances in Annexes A, B, C and E of the Protocol, to report to the Secretariat on the establishment and operation of that system,

Noting with appreciation that [x] Parties to the Montreal Amendment to the Montreal Protocol have established import and export licensing systems, as required under the terms of the Amendment,

Noting also with appreciation that [x] Parties to the Montreal Protocol that have not yet ratified the Montreal Amendment have also established import and export licensing systems,

Recognizing that licensing systems bring the following benefits: monitoring of imports and exports of ozone-depleting substances; prevention of illegal trade; and enabling data collection,

Noting that Parties to the Montreal Amendment to the Protocol that have not yet established licensing systems are in non-compliance with Article 4B of the Protocol and can be subject to the non-compliance procedure under the Protocol,

1. To record that [*names of Parties*] are Parties to the Montreal Amendment to the Protocol, that they have not yet established import and export licensing systems for ozone-depleting substances and are therefore in non-compliance with Article 4B of the Protocol and that financial assistance has been approved for all of them;
2. To request each of the [] Parties listed in paragraph 1 to submit to the Secretariat as a matter of urgency and no later than [], for consideration by the Implementation Committee under the Non-Compliance Procedure of the Montreal Protocol at its [] meeting, a plan of action to ensure the prompt establishment and operation of an import and export licensing system for ozone-depleting substances;
3. To encourage all the remaining Parties to the Montreal Protocol that have not yet ratified the Montreal Amendment to ratify it and to establish import and export licensing systems if they have not yet done so;
4. To urge all Parties that already operate licensing systems to ensure that they are structured in accordance with Article 4B of the Protocol and that they are implemented and enforced effectively;
5. To review periodically the status of the establishment of import and export licensing systems by all Parties to the Montreal Protocol, as called for in Article 4B of the Protocol.

Expected Committee actions

- (i) As necessary, to ask questions and seek clarification on the situations of the Parties listed in the meeting document from the Ozone Secretariat, Fund Secretariat and implementing agencies;
- (ii) To discuss and agree on an appropriate recommendation or recommendations, to be forwarded to Committee for adoption at the executive session at the end of the meeting, with reference to the suggested recommendation of the Ozone Secretariat.

5.4.9. Implementation of paragraph 1 of decision XVII/12 with respect to the reporting of CFC production by non-Article 5 Parties to meet the basic domestic needs of Article 5 Parties

This item is included only in the agenda of the end-of-year meeting.

The Ozone Secretariat presents its report prepared in accordance with paragraph 2 of decision XVII/12 of the Seventeenth Meeting of the Parties.

That decision required the Secretariat to report to the end-of-year Meeting of the Parties:

- (i) the level of production of CFCs in non-Article 5 Parties to meet the basic domestic needs of Article 5 Parties, as compared to their allowed production set out in Article 2A of the Protocol;
- (ii) copies of the affirmations received from the Article 5 Parties that confirm that their import of the CFC from the non-Article 5 Party would not result in their non-compliance;
- (iii) data on transfer of production rights.

The report is contained in the meeting document on information provided by Parties in accordance with Article 7 of the Montreal Protocol. In accordance with decision XIX/28 of the Nineteenth Meeting of the Parties, the Committee reviews non-Article 5 Parties' implementation of paragraph 1 of decision XVII/12. That paragraph urges all non-Article 5 Parties to:

- (i) request written affirmations from Article 5 Parties that the CFCs are required by that Party and that the importation would not result in the Party's non-compliance; and
- (ii) include in their annual data reports to the Ozone Secretariat copies of the written affirmations they receive.

Expected Committee actions

- (i) As necessary, to ask questions and seek clarification on the situations of the Parties listed in the meeting document from the Ozone Secretariat, Fund Secretariat and implementing agencies;
- (ii) To discuss and agree on an appropriate recommendation or recommendations, to be forwarded to Committee for adoption at the executive session at the end of the meeting.

5.4.10. Information on those Parties that had not reported the destinations of all exports (including re-exports) for all controlled substances (including mixtures) in accordance with paragraph 4 of decision XVII/16

This item is included only in the agenda of the end-of-year meeting.

The Ozone Secretariat presents information on those Parties that had not reported the destinations of all exports (including re-exports) for all controlled substances (including mixtures) in accordance with paragraph 4 of decision XVII/16 of the Seventeenth Meeting of the Parties.

Paragraph 4 of decision XVII/16 urged the Parties to use the revised annual data reporting format to report the destination of all exports, including re-exports, for all controlled ozone-depleting substances, including mixtures. Decision XVII/16 also requested the Ozone Secretariat to report back aggregated information related to the controlled substance in question received from the exporting/re-exporting Party to the importing Party concerned.

The information is contained in the meeting document on information provided by Parties in accordance with Article 7 of the Montreal Protocol.

Expected Committee actions

- (i) As necessary, to ask questions and seek clarification on the situations of the Parties listed in the meeting document from the Ozone Secretariat, Fund Secretariat and implementing agencies;
- (ii) To discuss and agree on an appropriate recommendation or recommendations, to be forwarded to Committee for adoption at the executive session at the end of the meeting.

5.4.11. Adoption of the report of the meeting

The President recalls the customary practice of entrusting the President and Vice-President with finalizing the text of the report of the meeting, in cooperation with the Ozone Secretariat.

The President presents a compilation of draft recommendations for adoption and declares the Committee to be in executive session for the purpose of adopting the text of the draft recommendations.

Expected Committee actions

- (i) To consider and adopt each draft recommendation, including any agreed changes.

5.5. Post-meeting arrangements

The Committee entrusts the Secretariat, the President and Vice-President with the finalization of the report of the meeting, in cooperation with the Ozone Secretariat. The report contains a summary of the Committee's discussions during the meeting as well as the recommendations adopted by the Committee. The Secretariat circulates the report to all Parties and posts it on its website. It also communicates the text of the adopted recommendations by letter to the Parties concerned, sending copies where relevant to the Multilateral Fund secretariat and any implementing agencies assisting the Party in returning to compliance with the Protocol.

An oral report on the last Committee meeting of each year is presented to the Meeting of the Parties by the Committee President. The President also invites the Meeting to consider and adopt any draft decisions recommended by the Committee, which are contained in a conference-room paper circulated to the Meeting.

The draft decisions of the Committee that are adopted by the Meeting of the Parties are circulated to all Parties in the report of the Meeting of the Parties, which is also posted on the Ozone Secretariat's website (http://ozone.unep.org/Meeting_Documents). The Secretariat communicates the text of the adopted decisions by letter to the Parties concerned, sending copies where relevant to the Multilateral Fund secretariat and any implementing agencies assisting the Party in returning to compliance with the Protocol.

Those Parties subject to decisions containing plans of action for returning to compliance with the Protocol's control measures for the phase-out of the production and consumption of controlled substances are requested to submit an annual report to the Secretariat on their implementation of the commitments contained in their plan of action, for the consideration of the Committee.

6. REFERENCE MATERIALS

6.1. Montreal Protocol obligations and other matters that are most commonly the subject of Implementation Committee review

6.1.1. Summary of data-reporting obligations under the Protocol (Article 7)

A Party's data-reporting obligations are determined by the Montreal Protocol and any amendments to the Protocol that the Party has ratified.

Table 2: Base-year data (Article 7, paragraphs 1 and 2)

Year for which data required	Controlled substance	Due date
1986	Annex A, group I (CFCs) Annex A, group II (halons)	Within three months of becoming a Montreal Protocol Party
1989	Annex B, group I (other CFCs) Annex B, group II (carbon tetrachloride) Annex B, group III (methyl chloroform) Annex C, group I (HCFCs)	Within six months of ratification, acceptance or approval of or accession or succession to the London Amendment
1989	Annex C, group II (HBFCs)	Within six months of ratification, acceptance or approval of or accession or succession to the Copenhagen Amendment
1991	Annex E (methyl bromide)	Within six months of ratification, acceptance or approval of or accession or succession to the Copenhagen Amendment

Table 3: Baseline data (Article 2A–2F, 2H; Article 5, paragraphs 3 and 8 ter)

Controlled substance	Baseline non-Article 5	Baseline Article 5	Due Date
Annex A	1986	1995-97	Upon entry into force of the Protocol
Annex B	1989	1998-2000	Upon entry into force of the London Amendment
Annex C, group I (HCFCs)	1989 HCFCs 1989 Annex A/I CFCs*	2009-2010	Non-Article 5: Upon entry into force of the Copenhagen Amendment Article 5: Upon entry into force of the Copenhagen Amendment and the 2007 adjustments to the HCFC phase out schedule and passage of the year 2009 and 2010
Annex E	1991	1995–98	Upon ratification of the Copenhagen Amendment

* The HCFC consumption baseline for a non-Article 5 Party is the sum of 2.8% of its calculated level of consumption in 1989 of CFCs and its 1989 consumption of HCFCs.

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Table 4: Annual data report (Article 7, paragraphs 3 and 4)

Due date	Controlled substance	Commencement year
No later than 30 September of the year following the year to which the data relate, but decision XVIII/34 encourages the Parties to report the data by 30 June	Annex A, group I (CFCs) Annex A, group II (halons)	The year that falls three months after ratification, acceptance or approval of the Montreal Protocol
	Annex B, group I (other CFCs) Annex B, group II (carbon tetrachloride) Annex B, group III (methyl chloroform) Annex C, group I (HCFCs)	The year that falls three months after ratification, acceptance or approval of or accession or succession to the London Amendment
	Annex C, group II (HBFCs) Annex E (methyl bromide)	The year that falls three months after ratification, acceptance or approval of or accession or succession to the Copenhagen Amendment
	Annex C, group III (bromochloromethane)	The year that falls three months after ratification, acceptance or approval of or accession or succession to the Beijing Amendment

6.1.2. Summary of control measures applicable to Parties in the year 2007 under the Protocol (Articles 2A–2I and 5)

Table 5: Summary of control measures applicable to Parties in the year 2007 under the Protocol (Articles 2A–2I and 5)

Controlled substance	Applicable treaty instrument*	Non-Article 5	Article 5
Annex A/I (CFCs)	Montreal Protocol	100% reduction (with possible essential use exemptions)	85% reduction from baseline level (average of 1995–1997)
Annex A/II (halons)	Montreal Protocol	100% reduction (with possible essential use exemptions)	50% reduction from baseline level (average of 1995–1997)

Controlled substance	Applicable treaty instrument*	Non-Article 5		Article 5
Annex B/I ("other" CFCs)	London Amendment	100% reduction (with possible essential use exemptions)		85% reduction from baseline level (average of 1998–2000)
Annex B/II (carbon tetrachloride)	London Amendment	100% reduction (with possible essential use exemptions)		85% reduction from baseline level (average of 1998–2000)
Annex B/III (methyl chloroform)	London Amendment	100% reduction (with possible essential use exemptions)		30% reduction from baseline level (average of 1998–2000)
Annex C/I (HCFCs)	Consumption Copenhagen Amendment Production Beijing Amendment	<i>Consumption</i> 35% reduction from baseline level (1989 HCFC consumption + 2.8% of 1989 CFC consumption)	<i>Production</i> Freeze at baseline level (average of: 1989 HCFC production + 2.8% of 1989 CFC production & 1989 HCFC consumption + 2.8% 1989 CFC consumption)	N/A
Annex C/II (HBFCs)	Copenhagen Amendment	100% reduction (with possible essential use exemptions)		100% reduction (with possible essential use exemptions)
Annex C/III (bromochloromethane)	Beijing Amendment	100% reduction (with possible essential use exemptions)		100% reduction (with possible essential use exemptions)
Annex E (methyl bromide)	Copenhagen Amendment	100% reduction (with possible critical use exemptions)		20% reduction from baseline level (average of 1995-98)

* Parties are only required to have complied with the control measures for a particular controlled substance if they have ratified, accepted, acceded to, succeeded to or approved the treaty instrument listing that substance. In addition, where the treaty instrument is an amendment, only those Parties that have ratified, accepted, acceded to, succeeded to or approved the amendment more than three months prior to the end of 2007 are required to have complied with the stated control measures in 2007.

6.1.3. Trade with non-Parties (Article 4 of the Protocol)

Each amendment to the Montreal Protocol provides that the Parties to the amendment must impose bans on the import from and export to “States not party to this Protocol” of the controlled substances subject to the amendments. The term “States not party to this Protocol” is determined by the controlled substance that is the subject of the proposed trade and refers to countries that have not yet become Party to the amendment. It should be noted that paragraph 8 of Article 4 makes provision for the Meeting of the Parties to determine that a country should be considered a State party to the Protocol for the purpose of trade in a particular controlled substance.

Paragraph 3 of Article 7 requires Parties to report annually on imports from and exports to non-Parties.

The table below indicates when a Party must impose a ban on the import of a particular controlled substance.

Table 6: Trade with non-Parties and import and export bans (Article 4 of the Protocol)

Controlled substance	If a country is a Party to:	That Party must ban trade in the controlled substance with States not Party to:	The ban must commence
Annex A, group I (CFCs) Annex A, group II (halons)	London Amendment	Montreal Protocol	Within three months of becoming a Montreal Protocol Party
Annex B, group I (other CFCs) Annex B, group II (carbon tetrachloride) Annex B, group III (methyl chloroform)	London Amendment	London Amendment	Within six months of the Party's ratification, acceptance or approval of or accession or succession to the London Amendment
Annex C, group I (HCFCs)	Copenhagen Amendment	Beijing Amendment	Non-Article 5 Parties: within six months of the Party's ratification, acceptance or approval of or accession or succession to the Beijing Amendment Article 5 Parties: from 1 January 2016
Annex C, group II (HBFCs)	Copenhagen Amendment	Copenhagen Amendment	Within six months of the Party's ratification, acceptance or approval of or accession or succession to the Copenhagen Amendment

Controlled substance	If a country is a Party to:	That Party must ban trade in the controlled substance with States not Party to:	The ban must commence
Annex C, group III (bromochloromethane)	Beijing Amendment	Beijing Amendment	Within six months of the Party's ratification, acceptance or approval of or accession or succession to the Beijing Amendment*
Annex E (methyl bromide)	Montreal Amendment	Copenhagen Amendment	Within six months of the Party's ratification, acceptance or approval of or accession or succession to the Copenhagen Amendment

6.1.4. Establishment of a system for licensing the import and export of new, used, recycled and reclaimed controlled substances (Article 4B of the Protocol)

Within six months of ratifying the Montreal Amendment to the Montreal Protocol, Parties must establish and implement a system for licensing the import and export of new, used, recycled and reclaimed controlled substances in Annexes A, B, C and E of the Protocol. Once established, the Party should send written notification to the Ozone Secretariat.

6.1.5. Reporting on research, development, public awareness and exchange of information activities (Article 9 of the Protocol)

Article 9 of the Protocol requires the Parties to cooperate, either directly or through competent international bodies, in various activities including: promoting research and development; exchanging information on technologies for reducing emissions, alternatives to the use of controlled substances and the costs and benefits of relevant control strategies; and promoting awareness of the environmental effects of emissions of controlled substances and other substances that deplete the ozone layer.

In paragraph 3 of Article 9, the Protocol states that, every two years, the Parties shall submit to the Secretariat a summary of the activities that they have conducted pursuant to this Article.

In its decision XVII/24, the Seventeenth Meeting of the Parties in 2005 recognized that information relevant to the reporting obligation contained in paragraph 3 of Article 9 may be generated through cooperative efforts undertaken in the context of regional ozone networks, ozone research managers' activities under Article 3 of the Vienna Convention for the Protection of the Ozone Layer, participation by Parties in the assessment work of both the Technology and Economic Assessment Panel and

the Scientific Assessment Panel under Article 6 of the Montreal Protocol and national public awareness-raising initiatives. The decision also noted that the reporting under Article 9, paragraph 3, could be undertaken through electronic means.

6.2. Standardized recommendations addressing routine procedural matters of non-compliance with the Montreal Protocol

In accordance with recommendation 36/52 of the thirty-sixth meeting of the Implementation Committee, the Committee agreed that standardized recommendations would be used as a basis for adopting recommendations to address the following types of routine procedural matters of non-compliance, for the purpose of helping the Committee to manage its increasing workload more efficiently and effectively and to ensure the equitable treatment of Parties in like circumstances, while continuing to ensure that the individual circumstances of each Party subject to the non-compliance procedure are taken into full consideration.

Table 7: Routine procedural non-compliance matters for which standardized recommendation text has been agreed by the Committee

- 1 Request for an explanation and a plan of action
- 2 Deferral of compliance assessment in the light of limited time for a Party's response to Secretariat
- 3 Acknowledgement of an explanation and request for a plan of action
- 4 Acknowledgement of an explanation and resolution of a compliance matter
- 5 No explanation or plan of action submitted, resulting in the forwarding of a draft decision to the Meeting of the Parties
- 6 Acknowledgement of an explanation and a plan of action and forwarding of a draft decision to the Meeting of the Parties
- 7 Acknowledgement of a plan of action and forwarding of a draft decision to the Meeting of the Parties
- 8 No plan of action submitted, resulting in the forwarding of a draft decision to the Meeting of the Parties
- 9 Request for a report on some or all commitments contained in a decision that are due in a given year
- 10 Acknowledgement of failure to meet some or all ODS reduction commitments in a decision due in a given year and request for an explanation
- 11 Acknowledgement of return to compliance with the Protocol
- 12 Acknowledgement of implementation of a decision in advance of commitment in a given year

- 13 Acknowledgement of commitment satisfaction
- 14 Request for outstanding base year and baseline data
- 15 Required data has not been submitted, resulting in the forwarding of a draft decision to the Meeting of the Parties
- 16 Acknowledgement that required data has been submitted, resolving data reporting compliance matter

The flowcharts at the end of this section illustrate the sequence in which the above types of routine procedural matters of non-compliance usually occur.

A number of the standardized recommendations include draft decisions that make reference to indicative measures A, B and C of the non-compliance procedure. For ease of reference these measure are presented in the following box.

Indicative list of measures that might be taken by a Meeting of the Parties in respect of non-compliance with the Protocol

The “Indicative list of measures that might be taken by a meeting of the Parties in respect of non-compliance with the Protocol” was adopted by the Fourth Meeting of the Parties in 1992 in conjunction with the original version of the non-compliance procedure and was unchanged in the 1998 revision of the procedure. The measures contained in the indicative list are:

- Item A Appropriate assistance, including assistance for the collection and reporting of data, technical assistance, technology transfer and financial assistance, information transfer and training
- Item B Issuing cautions
- Item 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, the financial mechanism and institutional arrangements

To date, items A and B have been implemented by the Meeting of the Parties with regard to Parties subject to decisions on non-compliance. Item C has not been implemented to date, but has been referred to in a cautionary context in decisions on non-compliance

Box 13

Standardized recommendations

Type 1. Request for explanation and plan of action

Type 1 relates to the mid-year meetings of the Committee and applies when a Party has submitted annual data in accordance with Article 7 of the Protocol prior to a mid-

year meeting that reveals a deviation from the Party's obligations under the Protocol to phase out production or consumption of a particular controlled substance, the deviation is not exempted or otherwise allowed by a decision of the Meeting of the Parties and the Party has not submitted an explanation or plan of action for addressing the deviation.

The recommendation on this matter could read:

"The Committee agreed:

Noting with concern that [the Party] had reported [consumption] [production] of [x] ODP-tonnes of [ODS] in [year], in excess of the Protocol's requirement to limit [consumption] [production] of those substances in that year to no greater than [description of amount allowed by applicable control measure];

- (a) To request [the Party] to submit to the Secretariat as soon as possible, and no later than [date 10 weeks prior to the next Committee meeting], an explanation for this deviation and, if relevant, a plan of action with time-specific benchmarks for ensuring the Party's prompt return to compliance;
- (b) To invite [the Party], if necessary, to send a representative to the [xth] meeting of the Committee to discuss the matter;
- (c) In the absence of an explanation for the excess [consumption] [production], to forward for consideration by the [xth] Meeting of the Parties the draft decision contained in annex [x] (section [y]) to the present report, which would request the Party to act in accordance with subparagraph (a) above.

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Draft decision –/– Potential non-compliance in [year] with [consumption] [production] of the controlled substances in Annex [x] by [the Party], and request for a plan of action

Noting that [the Party] ratified the Montreal Protocol on [date and the London Amendment on etc] [,] [and] is classified as a Party [operating/not operating] under paragraph 1 of Article 5 of the Protocol [and had its country programme approved by the Executive Committee in [date]],

Noting also that the [Executive Committee of the Multilateral Fund for the Implementation of the Montreal Protocol] [Global Environment Facility] has approved [\$xxx] [from the Fund in accordance with Article 10 of the Protocol] to enable [the Party's] compliance,

1. That [the Party] has reported annual [consumption] [production] for the controlled substance in [Annex x (ODS)] for [year] of [x] ODP-tonnes, which exceeds the

Party's maximum allowable [consumption] [production] level of [x] ODP-tonnes for those controlled substances for that year, and is therefore presumed in the absence of further clarification to be in non-compliance in [year] with the [consumption] [production] control measures under the Montreal Protocol for [ODS],

2. To request [the Party] to submit to the Secretariat, as a matter of urgency and no later than [date 10 weeks prior to the next Committee meeting], for consideration by the Implementation Committee at its next meeting, an explanation for its excess [consumption] [production], together with a plan of action with time-specific benchmarks to ensure a prompt return to compliance. [The Party] may wish to consider including in its plan of action the establishment of [import quotas to support the phase-out schedule, a ban on imports of ozone-depleting-substance-using equipment and] policy and regulatory instruments that will ensure progress in achieving the phase-out;
3. To monitor closely the progress of [the Party] with regard to the phase-out of [ODS]. To the degree that the Party is working toward and meeting the specific Protocol control measures, it should continue to be treated in the same manner as a Party in good standing. In that regard, [the Party] should continue to receive international assistance to enable it to meet its commitments in accordance with item A of the indicative list of measures that may be taken by a Meeting of the Parties in respect of non-compliance;
4. To caution [the Party], in accordance with item B of the indicative list of measures, that, in the event that it fails to return to compliance in a timely manner, the Meeting of the Parties will consider measures consistent with item C of the indicative list of measures. Those measures may include the possibility of actions available under Article 4, such as ensuring that the supply of the [ODS] that [is] [are] the subject of non-compliance is ceased so that [exporting] [importing] Parties are not contributing to a continuing situation of non-compliance;"

Type 2. Deferral of compliance assessment in the light of limited time for Party's response to Secretariat

Type 2 relates to both the mid-year and end-of-year meetings of the Committee and applies when a Party has submitted annual data in accordance with Article 7 of the Protocol that contains a deviation from the Party's obligations under the Protocol to phase out production and consumption of a particular controlled substance, the deviation is not exempted or otherwise allowed by a decision of the Meeting of the Parties and the Party has not submitted an explanation for the deviation but the Committee has determined that the Party has had insufficient time to respond to the Secretariat's request for an explanation.

The recommendation on this matter could read:

“The Committee therefore *agreed* to defer consideration of the Party’s compliance with the Protocol’s control measures in [year] until its [xth] meeting, in the light of the limited time which [the Party] had had to review the data reports generated by the Secretariat from its [year] data submission and to respond to the Secretariat’s request for information on the apparent deviation[s] from its requirement to [control measure description] in that year.”

Type 3: Acknowledgement of explanation and request for plan of action

Type 3 relates to the mid-year meetings of the Committee and applies when a Party has submitted an explanation confirming its non-compliance with its obligations under the Protocol to phase out the consumption or production of a particular controlled substance but has not submitted a plan of action for addressing the non-compliance. The matter is becoming less common as, with the growth in the ozone community’s understanding of the non-compliance procedure, it is more likely that a Party submitting an explanation for a deviation which confirms its non-compliance will at the same time submit a plan of action to address that non-compliance. This is particularly likely to be the case if the Party has already been subject to a recommendation along the lines of Type 1 above.

The recommendation on this matter could read:

“The Committee therefore *agreed*:

Noting with appreciation [the Party’s] explanation for its reported [consumption] [production] of [x] ODP-tonnes of [ODS] in [year], in excess of the Protocol’s requirement to limit [consumption] [production] of those substances in that year to no greater than [description of amount allowed by applicable control measure];

- (a) To request [the Party] to submit to the Secretariat as soon as possible, and no later than [date 10 weeks prior to the next Committee meeting], a plan of action with time-specific benchmarks for ensuring the Party’s prompt return to compliance;
- (b) To invite [the Party], if necessary, to send a representative to the [xth] meeting of the Committee to discuss the matter;
- (c) In the absence of the submission of a plan of action, to forward for consideration by the [xth] Meeting of the Parties the draft decision contained in annex [x] (section [y]) to the present report, which would request the Party to act in accordance with subparagraph (a) above.

Draft decision -/-: Non-compliance with the Montreal Protocol by [the Party] and request for a plan of action

Noting that [the Party] ratified the Montreal Protocol on [date and the London Amendment on etc] [,] [and] is classified as a Party [operating/not operating] under paragraph 1 of Article 5 of the Protocol [and had its country programme approved by the Executive Committee in [date]];

Noting that the [Executive Committee of the Multilateral Fund for the Implementation of the Montreal Protocol] [Global Environment Facility] has approved [\$xxx] [from the Multilateral Fund in accordance with Article 10 of the Protocol] to enable [the Party]'s compliance);

1. That [the Party] has reported annual [consumption] [production] for the controlled substance in [Annex x] for [year] of [x] ODP-tonnes, which exceeds the Party's maximum allowable [consumption] [production] level of [x] ODP-tonnes for that controlled substance for that year, and was therefore in non-compliance in [year] with the [consumption][production] control measures under the Montreal Protocol for [ODS];
2. To request [the Party] to submit to the Secretariat, as a matter of urgency and no later than [date 10 weeks prior to the next Committee meeting], for consideration by the Implementation Committee at its next meeting, a plan of action with time-specific benchmarks to ensure a prompt return to compliance. [The Party] may wish to consider including in its plan of action the establishment of [import quotas to support the phase-out schedule, a ban on imports of ozone-depleting-substance-using equipment and] policy and regulatory instruments that will ensure progress in achieving the phase-out;
3. To monitor closely the progress of [the Party] with regard to the phase-out of the controlled substance in [Annex x (ODS)]. To the degree that the Party is working toward and meeting the specific Protocol control measures, it should continue to be treated in the same manner as a Party in good standing. In that regard, [the Party] should continue to receive international assistance to enable it to meet its commitments in accordance with item A of the indicative list of measures that may be taken by a Meeting of the Parties in respect of non-compliance.
4. To caution [the Party], in accordance with item B of the indicative list of measures, that, in the event that it fails to return to compliance in a timely manner, the Meeting of the Parties will consider measures consistent with item C of the indicative list of measures. Those measures may include the possibility of actions available under Article 4, such as ensuring that the supply of the [ODS] that [is] [are] the subject of non-compliance is ceased so that [importing/exporting] Parties are not contributing to a continuing situation of non-compliance;"

Type 4: Acknowledgement of explanation and resolution of compliance matter

Type 4 relates to both the mid-year and end-of-year meetings of the Committee and applies when a Party has submitted an explanation for a reported deviation from its obligations under the Protocol to phase out the consumption or production of a particular controlled substance or from its commitments contained in a plan of action to return it to compliance and the explanation resolves the deviation and confirms its compliance with the Protocol or the plan of action commitment.

The recommendation on this matter could read:

“The Committee therefore *agreed* to note with appreciation that [the Party] had [description of explanation: e.g., “submitted revised data for 2004 to correct the misclassification of imports as methyl chloroform and Annex B group I substances (other fully halogenated CFCs)”], which confirmed that the Party was in compliance with [the Protocol’s control measures in [year]] [the commitment[s] contained in decision [-/-] to [description of commitment(s)].”

Type 5: No explanation or plan submitted resulting in forwarding of draft decision to Meeting of Parties

Type 5 relates to the end-of-year meeting of the Committee and applies when a Party has submitted annual data in accordance with Article 7 of the Protocol after the mid-year meeting that contains a deviation from the Party’s obligations under the Protocol to phase out production and consumption of a particular controlled substance, the deviation is not exempted or otherwise allowed by a decision of the Meeting of the Parties and the Party has not submitted an explanation or plan of action for addressing the deviation. This routine procedural matter is becoming less common now that the Parties are increasingly reporting their data prior to the mid-year meeting of the Committee and thus becoming subject to Type 1 recommendations at that meeting when their reported data indicates potential non-compliance.

The recommendation on this matter could read:

“The Committee *agreed*:

Noting with concern that [the Party] had reported [consumption] [production] of [x] ODP-tonnes of [ODS] in [year], in excess of the Protocol’s requirement to limit [consumption] [production] of those substances in that year to no greater than [description of amount allowed by applicable control measure];

- (a) To request [the Party] to submit to the Secretariat as a matter of urgency, and no later than [date 10 weeks prior to the next Committee meeting], an explanation for this deviation and, if relevant, a plan of action with time-specific benchmarks for ensuring the Party’s prompt return to compliance;
- (b) To invite [the Party], if necessary, to send a representative to the [xth] meeting of the Committee to discuss the matter;

- (c) To forward for consideration by the [xth] Meeting of the Parties the draft decision contained in annex [x] (section [y]) to the present report, which would request the Party to act in accordance with subparagraph (a) above.

Draft decision -/- Potential non-compliance in [year] with [consumption] [production] of the controlled substances in Annex [x] by [the Party], and request for a plan of action

Refer to the draft decision text contained in Type 1 recommendation above.

Type 6: Acknowledgment of explanation and plan and forwarding of draft decision to Meeting of Parties

Type 6 relates to both the mid-year and end-of-year meetings of the Committee and applies when a Party has submitted an explanation for a deviation from its obligations under the Protocol to phase out production and consumption of a particular controlled substance and a plan of action containing time-specific benchmarks and supporting regulatory measures to return the Party to compliance.

The recommendation on this matter could read:

“The Committee therefore agreed:

Noting with appreciation [the Party’s] explanation for its reported [consumption] [production] of

[x] ODP-tonnes of [ODS] in [year], in excess of the Protocol’s requirement to limit [consumption] [production] of those substances in that year to no greater than [description of amount allowed by applicable control measure];

Noting also with appreciation the Party’s submission of a plan of action for returning to compliance with the Protocol’s control measures for that ozone-depleting substance in [year];

- (a) To forward to the [xth] Meeting of the Parties for its consideration a draft decision incorporating the plan of action, as contained in annex [x] (section [y]) to the present report.

Draft decision -/-: Non-compliance with the Montreal Protocol by [the Party]

Noting that [the Party] ratified the Montreal Protocol on [date and the London Amendment on etc] [,] [and] is classified as a Party [operating] [not operating] under paragraph 1 of Article 5 of the Protocol [and had its country programme approved by the Executive Committee in [date]];

Noting that the [Executive Committee of the Multilateral Fund for the Implementation of the Montreal Protocol] [Global Environment Facility] has approved [\$xxx] [from the Multilateral Fund in accordance with Article 10 of the Protocol] to enable [the Party’s] compliance;

1. That [the Party] has reported annual [consumption] [production] for the controlled substance in [Annex x] for [year] of [x] ODP-tonnes, which exceeds the Party's maximum allowable [consumption] [production] level of [x] ODP-tonnes for that controlled substance for that year, and was therefore in non-compliance in [year] with the control measures under the Montreal Protocol for [ODS];
2. To record with appreciation the submission by [Party] of a plan of action to ensure a prompt return to compliance with the Protocol's [ODS] [consumption] [production] control measures, under which, without prejudice to the operation of the financial mechanism of the Protocol, [the Party] specifically commits itself:
 - (a) To [time-specific benchmarks for reducing consumption] [production to compliance levels];
 - (b) To [monitoring] [the introduction by [date]] [description of regulatory measures, such as a licensing and quota system, import ban on bulk and equipment containing the ODS];
1. To also record with appreciation that the commitments listed in the present decision should enable [the Party] to return to compliance in [year];
2. To urge [the Party] to work with the relevant implementing agencies to implement its plan of action to phase out consumption of the controlled substance in Annex [x];
3. To monitor closely the progress of [the Party] with regard to the implementation of its plan of action and the phase-out of [ODS]. To the degree that the Party is working toward and meeting the specific Protocol control measures, it should continue to be treated in the same manner as a Party in good standing. In that regard, [the Party] should continue to receive international assistance to enable it to meet those commitments in accordance with item A of the indicative list of measures that may be taken by a Meeting of the Parties in respect of non-compliance;
4. To caution [the Party], in accordance with item B of the indicative list of measures, that, in the event that it fails to remain in compliance, the Parties will consider measures consistent with item C of the indicative list of measures. Those measures may include the possibility of actions available under Article 4, such as ensuring that the supply of the [ODS] that [is] [are] the subject of non-compliance is ceased so that [importing/exporting] Parties are not contributing to a continuing situation of non-compliance;"

Type 7: Acknowledgement of plan and forwarding of draft decision to Meeting of Parties

Type 7 relates to both the mid-year and end-of-year meetings of the Committee and applies when a Party has submitted an explanation for a deviation from its obligations under the Protocol to phase out production and consumption of a particular controlled substance at a previous Committee meeting and has subsequently submitted a plan of action containing time-specific benchmarks and supporting regulatory measures to return the Party to compliance. This procedural matter is becoming less common as the ozone community becomes increasingly familiar with the non-compliance procedure, since it is now more likely that a Party submitting an explanation for a deviation which confirms its non-compliance will at the same time submit a plan of action for addressing that non-compliance.

This situation does, however, also arise when a Party responds to a decision of the Meeting of the Parties noting that the Party's explanation for a deviation reveals the Party to be in non-compliance and requests the Party to submit a plan of action for addressing the deviation. It may also arise when the Committee needs to consult a Party over the course of successive meetings to clarify elements of the Party's plan of action, in which case the Party may also have been subject to non-routine recommendations.

The recommendation on this matter could read:

“The Committee therefore agreed:

Noting with appreciation [the Party's] submission [, in accordance with recommendation -/-or

decision -/-], of a plan of action for returning to compliance with the Protocol's [ODS] control measures by [date];

- (a) To forward to the [xth] Meeting of the Parties for its consideration a draft decision incorporating the plan of action, as contained in annex [x] (section [y]) to the present report.

Draft decision -/--: Non-compliance with the Montreal Protocol by [the Party]

Refer to the draft decision text contained in recommendation Type 4 above.

Type 8: No plan submitted, resulting in forwarding of draft decision to Meeting of Parties

Type 8 relates to the end-of-year meeting and applies when a Party has submitted an explanation for its reported deviation from its obligations under the Protocol to phase out production or consumption of a particular controlled substance confirming its non-compliance but has not submitted a plan of action for addressing the deviation.

The recommendation on this matter could read:

“The Committee therefore agreed:

Noting with appreciation [the Party’s] explanation for its reported [consumption] [production] of [x ODP tonnes of ODS] in [year], in excess of the Protocol’s requirement to limit [consumption] [production] of those substances in that year to no greater than [description of amount allowed by applicable control measure];

- (a) To request [the Party] to submit to the Secretariat as a matter of urgency, and no later than [date 10 weeks prior to the next Committee meeting], a plan of action with time-specific benchmarks for ensuring the Party’s prompt return to compliance;
- (b) To invite [the Party], if necessary, to send a representative to the [xth] meeting of the Committee to discuss the matter;
- (c) To forward for consideration by the [xth] Meeting of the Parties the draft decision contained in annex [x] (section [y]) to the present report, which would request the Party to act in accordance with subparagraph (a) above.

Draft decision -/-: Non-compliance with the Montreal Protocol by [the Party] and request for a plan of action

Refer to the draft decision text contained in recommendation Type 4 above.

Type 9: Request for report on some or all commitments contained in decision that are due in given year

Type 9 relates to the mid-year and end-of-year meetings of the Committee and applies when a Party subject to a decision detailing the various commitments which it has undertaken to ensure its return to compliance has not reported to the Secretariat on its implementation of any commitments due for completion.

With regard to a situation where the Committee is requesting a report on the implementation of a particular commitment or commitments for the first time, the recommendation on this matter could read:

“The Committee agreed:

Recalling that the ozone-depleting substances data for [year] submitted by [the Party] [description of compliance with the Protocol. For example, “returned it to compliance with the Protocol / placed it in advance of its compliance obligations under the Protocol / demonstrated progress toward compliance with the Protocol”];

- (a) To urge [the Party] to report to the Secretariat as soon as possible, and no later than [the date 10 weeks prior to the next Committee meeting or 30 September for commitments relating to data due in that year], on the status of its commitment contained in decision [-/-] to [description of commitment(s)], in time for consideration by the Committee at its [no.] meeting.”

With regard to a situation where the Committee is requesting a report on the implementation of a particular commitment or commitments for a second time, the recommendation on this matter could read:

“The Committee therefore *agreed*:

Recalling that the ozone-depleting substances data for [year] submitted by [the Party] [description of compliance with the Protocol. For example “had returned it to compliance with the Protocol / had placed it in advance of its compliance obligations under the Protocol / had demonstrated progress toward compliance with the Protocol”];

Noting with great concern that [the Party] had not reported, in accordance with recommendation [-/-], on the status of its commitment[s] contained in decision [-/-] to [description of commitment(s)]; (a) To urge [the Party] to submit the status report to the Secretariat, as a matter of priority and no later than [date 10 weeks prior to the next Committee meeting], in time for consideration by the Committee at its [xth] meeting.”

Type 10: Acknowledgement of failure to meet some or all ODS reduction commitments in decision due in a given year and request for explanation

Type 10 relates to the mid-year and end-of-year meetings of the Committee and applies when a Party subject to a decision detailing the various commitments which it has undertaken to ensure its return to compliance has reported failure to implement some or all of its commitments to reduce ozone-depleting substance consumption or production.

With regard to a Party that has reported its failure to meet a commitment or commitments at a mid-year meeting of the Committee, the recommendation on this matter could read:

“The Committee therefore *agreed*:

Noting that [the Party] had submitted its ozone-depleting substances data for [year], reporting [consumption] [production] of [x] ODP-tonnes of [ODS], [which represents a [reduction] [increase] in [consumption] [production] from the preceding year];

Noting with concern that this [consumption] [production] was inconsistent with the Party’s commitment[s] contained in decision [-/-] to [description of

time-specific benchmark] [description of compliance status relative to Protocol obligations. For example, “although it does maintain the Party’s compliance with the Protocol’s control measures / although it does demonstrate progress toward compliance with the Protocol’s control measures / and does not demonstrate progress toward compliance with the Protocol’s control measures”];

- (a) To request [the Party] to submit to the Secretariat as soon as possible, and no later than [date 10 weeks prior to the next Committee meeting], an explanation for this deviation;
- (b) To invite [the Party], if necessary, to send a representative to the [xth] meeting of the Committee to discuss the matter;
- (c) In the absence of an explanation for the deviation, to forward for consideration by the [xth] Meeting of the Parties the draft decision contained in annex [x] (section [y]) to the present report, which would request the Party to act in accordance with subparagraph (a) above.

Draft decision -/-: Potential non-compliance in [year] with decision [x] by [the Party]

Recalling decision -/-, which noted that [the Party] was in non-compliance [in/from [year(s)] with its obligations under Article [xx] of the Montreal Protocol to [description of control measure], but also noted with appreciation the plan of action submitted by [the Party] to ensure its prompt return to compliance;

1. That [the Party] reported annual [consumption] [production] for the controlled substances in Annex [x], group [y] in [year] of [x] ODP-tonnes, which was inconsistent with the Party’s commitment contained in decision -/- to [description of time-specific benchmark], and has not submitted to the Implementation Committee the requested explanation for this deviation;
2. To strongly urge [the Party] to submit to the Secretariat an explanation for the deviation, as a matter of priority and no later than [date 10 weeks prior to the next Committee meeting], in time for consideration by the Committee at its next meeting;
3. To remind the Party of paragraph [x] of decision [-/-], which records the agreement of the [xth] Meeting of the Parties to monitor the progress of [the Party] with regard to the phase-out of [ODS], particularly its progress in meeting the specific commitments contained in decision [-/-]. To the degree that [the Party] is working toward and meeting the specific Protocol control measures, it should continue to be treated in the same manner as a Party in good standing. In that regard, [the Party] should continue to receive international assistance to enable it to meet those commitments in accordance with item A of the indicative list of measures that may be taken by a Meeting of the Parties in respect of non-compliance;

3. To again caution [the Party], in accordance with item B of the indicative list of measures, that, in the event that it fails to meet the commitments noted above in the times specified, the Parties shall consider measures, consistent with item C of the indicative list of measures. These measures could include the possibility of actions that may be available under Article 4 designed to ensure that the supply of [ODS] that [is] [are] the subject of non-compliance is ceased so that [importing/exporting] Parties are not contributing to a continuing situation of non-compliance;”

With regard to a Party that has reported its failure to meet a commitment or commitments at an end-of-year meeting of the Committee, the recommendation on this matter could read:

“The Committee therefore *agreed*:

Noting that [the Party] has submitted its ozone-depleting substance data for [year], reporting [consumption] [production] of [x]ODP-tonnes of [ODS], [which represents a [reduction] [increase] in [consumption] [production] from the preceding year];

Noting with concern that this [consumption] [production] is inconsistent with the Party’s commitment[s] contained in decision [-/-] to [description of time-specific benchmark] [description of compliance status relative to Protocol obligations. For example, “although it does maintain the Party’s compliance with the Protocol’s control measures / although it does demonstrate progress toward compliance with the Protocol’s control measures / and does not demonstrate progress toward compliance with the Protocol’s control measures”];

- (a) To request [the Party] to submit to the Secretariat as a matter of urgency, and no later than [date 10 weeks prior to the next Committee meeting], an explanation for this deviation;
- (b) To invite [the Party], if necessary, to send a representative to the [xth] meeting of the Committee to discuss the matter;
- (c) To forward for consideration by the [xth] Meeting of the Parties the draft decision contained in annex [x] (section [y]) to the present report, which would request the Party to act in accordance with subparagraph (a) above.

Draft decision -/-: Potential non-compliance in [year] with decision [x] by [the Party]

Refer to the draft decision text contained in the above recommendation.

Type 11: Acknowledgement of return to compliance with Protocol

Type 11 relates to the mid-year and end-of-year meeting of the Committee and applies when a Party subject to a decision detailing the various commitments which it has

undertaken to ensure its return to compliance has reported annual data that confirms its return to compliance with the Protocol's control measures for the phase-out of the controlled substance to which the decision applies.

The recommendation on this matter could read:

“The Committee therefore *agreed* to congratulate [the Party] on its return to compliance in [year] with the [ODS] control measures of the Montreal Protocol as well as its implementation of its commitment[s] contained in decision [-/-] to [description of commitment(s)], as indicated by the Party's data report for [year].”

Type 12: Acknowledgement that implementation of decision is in advance of commitment due in given year

Type 12 relates to the mid-year and end-of-year meeting of the Committee and applies when a Party subject to a decision detailing the various commitments which it has undertaken to ensure its return to compliance has submitted information that places it in advance of some or all of the commitments contained in the decision.

With regard to ODS consumption or production commitments, the recommendation on this matter could read:

“The Committee therefore *agreed* to congratulate [the Party] on its reported data for the [consumption] [production] of Annex [x] group [y] substances [(ODS)] in [year], which showed that it was in advance of its commitment contained in decision [-/-] to [description of commitment] in that year.”

With regard to regulatory measure commitments, the recommendation on this matter could read:

“The Committee *agreed* to congratulate [the Party] on the [establishment] [introduction] of [description of regulatory measure] in [year], in advance of its commitment[s] contained in decision [-/-] to [description of commitment(s)] including year in which implementation of commitment due.”

Type 13: Acknowledgement of completion of commitment due in given year

Type 13 relates to the mid-year and end-of-year meeting of the Committee and applies when a Party subject to a decision detailing the various commitments which it has undertaken to ensure its return to compliance has submitted information that indicates completion of some or all of the commitments due for completion by the time of the meeting.

The recommendation on this matter could read:

“The Committee therefore *agreed* to note with appreciation that [the Party] had completed implementation in [year] of the commitment[s] contained in decision [-/-] to [description of commitment including year implementation of commitment due].”

Type 14: Request for outstanding data

Type 14 relates to the mid-year meeting of the Committee and applies when a Party has not submitted baseline, base-year or annual data in accordance with its data-reporting obligations under the Protocol.

The text of recommendations on this routine procedural matter varies with the nature of the outstanding data. It also varies depending on whether the Committee is considering a Party only with regard to outstanding data. The text varies with the nature of the outstanding data because the submission of baseline data by an Article 5 Party is critical to the assessment of that Party's compliance with the Protocol's control measures, whereas its submission of base-year data is not. In addition, paragraphs 1 and 2 of Article 7 of the Protocol provide that estimated data will satisfy the base-year data-reporting requirement. The text will also vary depending on whether the Committee is considering a Party only with regard to outstanding data because Parties with only outstanding data reporting issues are grouped together in a single recommendation, while Parties with additional compliance issues for consideration are addressed through individual, Party-specific recommendations.

The group recommendation on this matter for outstanding base-year, baseline and annual data, where the annual data was due for submission in a previous year (for example, annual data for the year 2004 and preceding years) could read:

“The Committee therefore *agreed* to remind the Parties in non-compliance with their base-year, baseline or year [year(s)] annual data-reporting obligations under the Protocol to submit their outstanding data as soon as possible, and no later than [date 10 weeks prior to the next Committee meeting], for consideration by the Committee at its [xth] meeting.”

The group recommendation on this matter for annual data that are yet to be reported for the immediately preceding year could read:

“The Committee therefore *agreed* to urge the Parties yet to report their data for the year [year immediately preceding the meeting] to submit that data as soon as possible, in accordance with paragraphs 3 and 4 of Article 7 of the Protocol, and preferably no later than [date 10 weeks prior to the next Committee meeting], in order that the Committee might assess the Parties' compliance with the Protocol at its [xth] meeting.”

The Party-specific recommendation on this matter with regard to outstanding baseline data could read:

“The Committee therefore *agreed* to urge [the Party] to submit its baseline data for the ozone-depleting substances in Annexes [x,y,z] of the Protocol, as a matter of priority and no later than [date 10 weeks prior to the next Committee meeting], in order that the Committee might assess the Party’s compliance with the Protocol at its [xth] meeting.”

The Party-specific recommendation on this matter with regard to outstanding base-year data could read:

“The Committee therefore *agreed*:

Recalling that paragraphs 1 and 2 of Article 7 of the Protocol state that best possible estimates of base-year data may be submitted where actual data are not available;

- (a). To request [the Party] to submit its base-year data for the ozone-depleting substances in Annexes [x,y,z] of the Protocol, as soon as possible and no later than [date 10 weeks prior to the next Committee meeting], for consideration by the Committee at its [xth] meeting;”

The Party-specific recommendation on this matter with regard to outstanding annual data due for submission in the immediately preceding year could read:

“The Committee therefore *agreed* to remind [the Party] to submit its data for the year [year preceding the meeting], in accordance with paragraphs 3 and 4 of Article 7 of the Protocol, and preferably no later than [date 10 weeks prior to the next Committee meeting], in order that the Committee might assess the Party’s compliance with the Protocol at its [xth] meeting.”

The Party-specific recommendation on this matter with regard to outstanding annual data due for submission in other previous years could read:

“The Committee therefore *agreed* to request [the Party] to submit its data for the year(s) [year(s)], as soon as possible and no later than [date 10 weeks prior to the next Committee meeting], for consideration by the Committee at its [xth] meeting.”

Type 15: Required data not submitted, resulting in the forwarding of a draft decision to Meeting of Parties

Type 15 relates to the end-of-year meeting of the Committee and applies when a Party has not submitted data in accordance with its data-reporting obligations under the Protocol by the closure of the end-of-year meeting.

The recommendation on this matter with regard to outstanding baseline data could read:

“The Committee therefore *agreed*:

Noting that [the Party] had not reported its outstanding baseline data for the controlled substances in Annex [x];

- (a) To include the Party in the draft decision contained in annex [x] (section [y]) to the present report in the event that the Party did not report the outstanding data prior to the adoption of the draft decision by the [xth] Meeting of the Parties.

Draft decision -/-: Non-compliance with data-reporting requirements for the purpose of establishing baselines under Article 5, paragraphs 3 and 8 ter (d)

Noting that the following Parties are required to report data for one or more of the years in order to establish their baselines for Annex [x] to the Protocol, as provided for by Article 5, paragraphs 3 and 8 ter (d): [the Parties];

Noting that failure to report such data would place those Parties in non-compliance with their data-reporting obligations under the Montreal Protocol until such time as the Secretariat received the outstanding data;

Stressing that compliance by those Parties with the Montreal Protocol cannot be determined without knowledge of those data;

[Acknowledging that all those Parties have only recently ratified either the Montreal Protocol or the amendments to the Protocol to which the data-reporting obligation relates,] [but also noting that the Parties have received assistance with data collection from the Multilateral Fund through the implementing agencies;]

1. To determine that the following Parties have not reported data for the years and controlled substances indicated, which are required to establish their baseline for the controlled substances contained in Annex [x], group [y] (ODS) of the Montreal Protocol, and are therefore in non-compliance with their data-reporting obligations under the Montreal Protocol until such time as the Secretariat receives their outstanding data:

(a) [Party]: Annex [x], group [y] [ODS] for years [z]

1. To urge those Parties to work together with the United Nations Environment Programme under that agency’s Compliance Assistance Programme and with other implementing agencies of the Multilateral Fund to report the data as a matter of urgency to the Secretariat;

2. To request the Implementation Committee to review the situation of those Parties with respect to data reporting at its next meeting;"

The recommendation on this matter with regard to outstanding base-year data could read:

"The Committee therefore agreed:

Noting that [the Party] had not reported its outstanding base-year data for the controlled substances in Annex [x];

- (a) To include the Party in the draft decision contained in annex [x] (section [y]) to the present report in the event that the Party did not report the outstanding data prior to the adoption of the draft decision by the [xth] Meeting of the Parties.

Draft decision -/-. Non-compliance with data-reporting requirements under Article 7,

paragraphs 1 and 2, of the Montreal Protocol

Noting that the following Parties are required to report data for one or more of the base years (1986, 1989 or 1991) for one or more groups of controlled substances, as required by Article 7, paragraphs 1 and 2, of the Montreal Protocol: [the Parties];

Noting that failure to report such data would place those Parties in non-compliance with their data-reporting obligations under the Montreal Protocol until such time as the Secretariat receives the outstanding data;

[Acknowledging that all those Parties have only recently ratified either the Montreal Protocol or the amendments to the Protocol to which the data-reporting obligation relates,] [but also noting that the Parties have received assistance with data collection from the Multilateral Fund through the implementing agencies;]

Noting that paragraphs 1 and 2 of Article 7 of the Protocol provide for Parties to submit best possible estimates of the data referred to in those provisions where actual data are not available;

1. To determine that the following Parties have not reported data for the base years and controlled substances indicated, and are therefore in non-compliance with their data-reporting obligations under Article 7, paragraphs 1 and 2, of the Protocol until such time as the Secretariat receives its outstanding data:
 - (a) [Party]: Annex [x], group [y] [ODS] for years [z]
1. To urge those Parties to work together with the United Nations Environment Programme under that agency's Compliance Assistance Programme and with other implementing agencies of the Multilateral Fund to report the data as soon as possible to the Secretariat;

2. To request the relevant implementing agencies of the Multilateral Fund to make available to the Secretariat any data that they have obtained which may be relevant;
3. To request the Secretariat to communicate with the Parties listed in the present decision and to offer assistance in reporting such estimates in accordance with Article 7, paragraphs 1 and 2;
4. To request the Implementation Committee to review the situation of those Parties with respect to data reporting at its next meeting;"

The recommendation on this matter with regard to outstanding annual consumption and production data could read:

"The Committee therefore agreed:

"Recalling the data report contained in document UNEP/OzL.Pro/ImpCom[xx] [xx] [citation of the Secretariat's report on Article 7 data],

- (a) To include in the draft decision contained in annex [x] (section [y]) to the present report those Parties that had not yet submitted their ozone-depleting substance data for [year] in accordance with Article 7 of the Montreal Protocol prior to the adoption of the draft decision by the [xth] Meeting of the Parties."

Draft decision -/-: Data and information provided by the Parties in accordance with Article 7 of the Montreal Protocol

Noting with appreciation that [x] Parties out of the [y] that should have reported data for [year] have done so and that [z] of those Parties reported their data by 30 June [year] in accordance with decision XV/15;

Noting with concern, however, that the following Parties have still not reported [year] data: [the Parties];

Noting that their failure to report their [year] data in accordance with Article 7 places those Parties in non-compliance with their data-reporting obligations under the Montreal Protocol until such time as the Secretariat receives their outstanding data;

Noting also that a lack of timely data reporting by Parties impedes effective monitoring and assessment of Parties' compliance with their obligations under the Montreal Protocol;

Noting further that reporting by 30 June each year greatly facilitates the work of the Executive Committee of the Multilateral Fund for the Implementation of the Montreal Protocol in assisting Parties operating under paragraph 1 of Article 5 of the Protocol to comply with the Protocol's control measures;

1. To urge the Parties listed in the present decision, where appropriate, to work closely with the implementing agencies to report the required data to the Secretariat as a matter of urgency;
2. To request the Implementation Committee to review the situation of those Parties at its next meeting;
3. To encourage Parties to continue to report consumption and production data as soon as figures are available, and preferably by 30 June each year, as agreed in decision XV/15;"

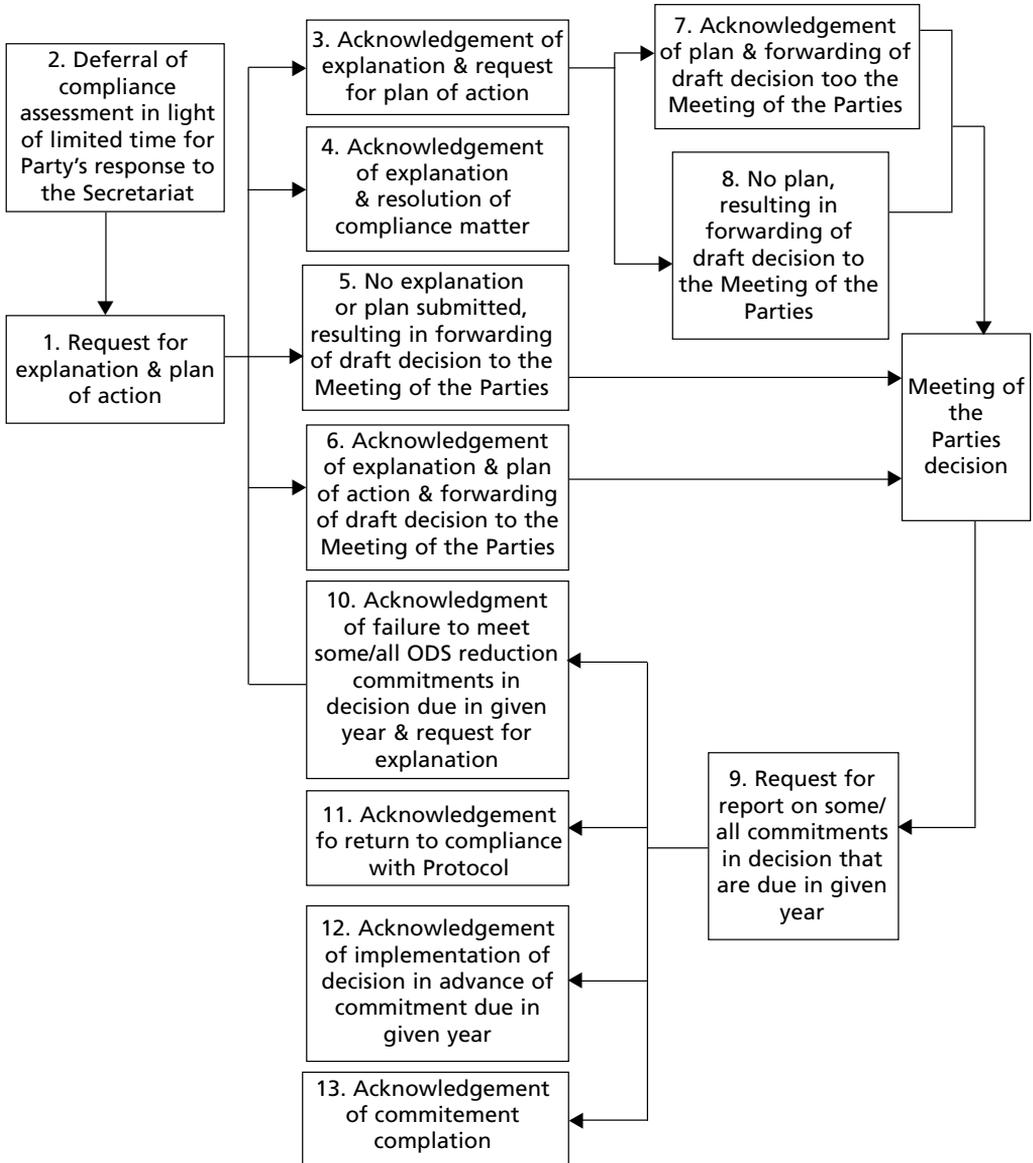
Type 16: Acknowledgement that data submitted, resolving data-reporting compliance matter

Type 16 relates to the mid-year and end-of-year meeting of the Committee and applies when a Party has submitted its outstanding data in accordance with its Protocol obligations and a prior decision of the Parties or recommendation of the Committee.

The recommendation on this matter could read:

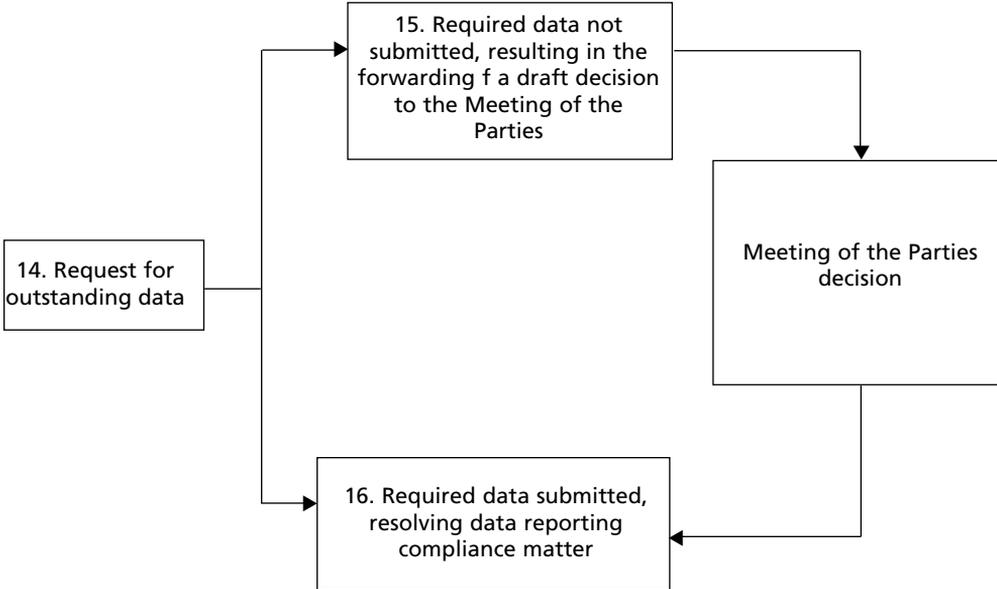
"The Committee therefore *agreed* to note with appreciation [the Party's] submission of all outstanding data in accordance with its data-reporting obligations under the Protocol and [decision/recommendation reference], which indicate that it was [description of compliance status, e.g., "in compliance with the Protocol's control measures in [year]"]."

Chart 2: Flowchart of routine types of recommendations that the Committee might adopt at the various stages of the application of the non-compliance procedure to non-compliance or potential non-compliance with the ozone-depleting substance phase-out schedules of the Protocol*



*Note that sometimes stages in routine recommendations are skipped. For example, a type 1 recommendation may be skipped because a Party submits an explanation and plan of action in response to the Secretariat's request for clarification of a deviation arising from the Party's annual data report.

Chart 3: Flowchart of routine types of recommendations that the Committee might adopt at the various stages of the application of the non-compliance procedure to non-compliance with the data-reporting requirements of the Protocol



Implementation Committee Primer: October 2007

6.3. Glossary of abbreviations, acronyms and specialized terms commonly encountered in ozone-related texts

A5	Party operating under Article 5, paragraph 1, of the Montreal Protocol
Annex A, group I	Chlorofluorocarbon-11, 12, 113, 114 and 115
Annex A, group II	Halon 1211, 1301 and 2402
Annex B, group I	Chlorofluorocarbon-13, 111, 112, 211, 212, 213, 214, 215, 216 and 217
Annex B, group II	Carbon tetrachloride
Annex B, group III	Methyl chloroform (1,1,1-trichloroethane)
Annex C, group I	Hydrochlorofluorocarbons
Annex C, group II	Hydrobromofluorocarbons
Annex C, group III	Bromochloromethane
Annex E	Methyl bromide
Baseline (data)	A quantity of consumption or production for a given controlled substance, calculated using historical annual consumption or production data for that substance reported by a Party, which is used to determine the Party's maximum allowable annual consumption or production of that substance in a given year.

Base-year data	The formulas used to calculate the baseline for each controlled substance are specified in section 6.1.1 of the primer, table 3. Consumption or production data for a controlled substance that are reported by a Party for a year prescribed by Article 7, paragraphs 1 and 2, of the Protocol.
BCM	Bromochloromethane
CAP	Compliance Assistance Programme
CEIT	Country with economy in transition
CFC	Chlorofluorocarbon
Consumption	Production + import – export of a controlled substance reported by a Party for a given year. Controlled substances The chemicals contained in Annexes A, B, C and E of the Montreal Protocol
CRP	Conference-room paper
CTC	Carbon tetrachloride
ExCom	Executive Committee
GEF	Global Environment Facility
<i>Reference material –</i>	
<i>Glossary</i>	
GTZ	German Agency for Technical Cooperation
HCFC	Hydrochlorofluorocarbon
ImpCom	Implementation Committee
Indicative list of measures	Actions specified in the non-compliance procedure of the the Montreal Protocol that might be taken by a meeting of the Parties in respect of non-compliance with the Protocol
Item A of the indicative list of measures	Appropriate assistance, including assistance for the collection and reporting of data, technical assistance, technology transfer and financial assistance, information transfer and training
Item B of the indicative list of measures	Issuing cautions
Item C of the indicative list of measures	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
INF	Information document
LVC	Low volume consuming country
MAC	Mobile air conditioning
MDI	Metered-dose inhaler
MLF	Multilateral Fund for the Implementation of the Montreal Protocol
MLFS	Multilateral Fund secretariat
MOP	Meeting of the Parties

NCP	Non-compliance procedure
Non-A5	Party not operating under Article 5 of the Montreal Protocol
NOO	National ozone officer
NOU	National ozone unit
ODP	Ozone-depleting potential
ODS	Ozone-depleting substance
OEWG	Open-ended Working Group
Production	Total Production – feedstock – destruction of a controlled substance reported by a Party for a given year
QPS	Quarantine and pre-shipment
R&R	Recovery and recycling
RMP	Refrigerant management plan
TCA	Methyl chloroform
TEAP	Technology and Economic Assessment Panel
TOC	Technical Options Committee
TPMP	Terminal phase-out management plan
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNIDO	United Nations Industrial Development Organization
WB	World Bank

Reference material – Box, chart and table references

6.4. Box, chart and table references **Box references**

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6.5. Useful website addresses

6.5.1. Useful website addresses

Implementation Committee members-only homepage, with links to meeting documents (contact Ozone Secretariat for access):

<https://ozone.unep.org/impcom/private>

Reports of the meetings of the Implementation Committee; compilation of recommendations adopted by the Implementation Committee; compilation of decisions adopted by the Meetings of the Parties on the non-compliance procedure

and matters considered by the Implementation Committee; Implementation Committee Primer:

http://ozone.unep.org/Meeting_Documents/impcom/

Reports of the Meetings of the Parties:

http://ozone.unep.org/Meeting_Documents/mop/

Ozone Secretariat homepage, including links to the text of the Protocol and its amendments and information on the status of ratification of these treaties and planned future meeting dates:

<http://ozone.unep.org/> http://ozone.unep.org/Treaties_and_Ratification/ <http://ozone.unep.org/Events/meetings2008and2009.pdf>

Multilateral Fund Secretariat homepage, with links to the reports of the meetings of the Executive Committee and documents for meetings since July 2005:

<http://www.multilateralfund.org/> <http://www.multilateralfund.org/documents.htm>

Website of the Global Environment Facility and link to its searchable project database:

<http://www.gefweb.org/> <http://www.gefonline.org/home.cfm>

Implementing agency homepages:

United Nations Development Programme

<http://www.undp.org/montrealprotocol/>

United Nations Environment Programme, OzonAction Programme

<http://www.uneptie.org/ozonaction>

United Nations Industrial Development Organization

<http://www.unido.org/doc/5072>

World Bank

<http://www.worldbank.org/montrealprotocol>

5. KYOTO PROTOCOL TO THE UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE 1997

5.1 Performance Review Information

5.1.1 Protocol Text – Article 5

1. Each Party included in Annex I shall have in place, no later than one year prior to the start of the first commitment period, a national system for the estimation of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol. Guidelines for such national systems, which shall incorporate the methodologies specified in paragraph 2 below, shall be decided upon by the Conference of the Parties serving as the meeting of the Parties to this Protocol at its first session.
2. Methodologies for estimating anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol shall be those accepted by the Intergovernmental Panel on Climate Change and agreed upon by the Conference of the Parties at its third session. Where such methodologies are not used, appropriate adjustments shall be applied according to methodologies agreed upon by the Conference of the Parties serving as the meeting of the Parties to this Protocol at its first session. Based on the work of, inter alia, the Intergovernmental Panel on Climate Change and advice provided by the Subsidiary Body for Scientific and Technological Advice, the Conference of the Parties serving as the meeting of the Parties to this Protocol shall regularly review and, as appropriate, revise such methodologies and adjustments, taking fully into account any relevant decisions by the Conference of the Parties. Any revision to methodologies or adjustments shall be used only for the purposes of ascertaining compliance with commitments under Article 3 in respect of any commitment period adopted subsequent to that revision.
3. The global warming potentials used to calculate the carbon dioxide equivalence of anthropogenic emissions by sources and removals by sinks of greenhouse gases listed in Annex A shall be those accepted by the Intergovernmental Panel on Climate Change and agreed upon by the Conference of the Parties at its third session. Based on the work of, inter alia, the Intergovernmental Panel on Climate Change and advice provided by the Subsidiary Body for Scientific and Technological Advice, the Conference of the Parties serving as the meeting of the Parties to this Protocol shall regularly review and, as appropriate, revise the global warming potential of each such greenhouse gas, taking fully into account any relevant decisions by the Conference of the Parties. Any revision to a global warming potential shall apply only to commitments under Article 3 in respect of any commitment period adopted subsequent to that revision.

5.1.2 CMP Decision 19/CMP.1 - Guidelines for national systems under Article 5, paragraph 1, of the Kyoto Protocol (2005)

The Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol,

Recalling Article 5, paragraph 1, of the Kyoto Protocol to the United Nations Framework Convention on Climate Change, in particular its provision that each Party included in Annex I shall have in place, no later than one year prior to the start of the first commitment period, a national system for the estimation of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol,

Recognizing the importance of such national systems for the implementation of other provisions of the Kyoto Protocol,

Having considered decision 20/CP.7, adopted by the Conference of the Parties at its seventh session,

1. Adopts the guidelines for national systems under Article 5, paragraph 1, of the Kyoto Protocol as contained in the annex to the present decision;
2. Urges Parties included in Annex I to implement the guidelines as soon as possible.

Annex

Guidelines for national systems for the estimation of anthropogenic greenhouse gas emissions by sources and removals by sinks under Article 5, paragraph 1, of the Kyoto Protocol.¹¹

I. Applicability

1. The provisions of these guidelines shall apply for each Party included in Annex I to the Convention which is also a Party to the Kyoto Protocol. Parties' implementation of national system requirements may differ according to national circumstances, but shall include the elements described in these guidelines. Any differences in implementation shall not impair the performance of the functions described in these guidelines.

¹¹ "Article" in these guidelines refers to an Article of the Kyoto Protocol, unless otherwise specified.

II. Definitions

A. Definition of national system

2. A national system includes all institutional, legal and procedural arrangements made within a Party included in Annex I for estimating anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, and for reporting and archiving inventory information.

B. Other definitions

3. The meaning of the following terms in these guidelines for national systems¹² is the same as in the glossary of the Intergovernmental Panel on Climate Change (IPCC) good practice guidance,¹³ accepted by the IPCC at its sixteenth session:¹⁴

- (a) Good practice is a set of procedures intended to ensure that greenhouse gas inventories are accurate in the sense that they are systematically neither over- nor underestimated as far as can be judged, and that uncertainties are reduced as far as possible. Good practice covers choice of estimation methods appropriate to national circumstances, quality assurance and quality control at the national level, quantification of uncertainties, and data archiving and reporting to promote transparency
- (b) Quality control (QC) is a system of routine technical activities to measure and control the quality of the inventory as it is being developed. The QC system is designed to:
 - (i) Provide routine and consistent checks to ensure data integrity, correctness and completeness;
 - (ii) Identify and address errors and omissions;
 - (iii) Document and archive inventory material and record all QC activities.

Quality control activities include general methods such as accuracy checks on data acquisition and calculations and the use of approved standardized procedures for emission calculations, measurements, estimating uncertainties, archiving information and reporting. Higher tier QC activities also include technical reviews of source categories, activity and emission factor data and methods

12 The guidelines for national systems for the estimation of anthropogenic greenhouse gas emissions by sources and removals by sinks under Article 5, paragraph 1, of the Kyoto Protocol are referred to herein as "guidelines for national systems".

13 The IPCC Good Practice Guidance and Uncertainty Management in National Greenhouse Gas Inventories is referred to as the "IPCC good practice guidance" in these guidelines for national systems.

14 Montreal, 1–8 May 2000.

- (c) Quality assurance (QA) activities include a planned system of review procedures conducted by personnel not directly involved in the inventory compilation development process, to verify that data quality objectives were met, ensure that the inventory represents the best possible estimate of emissions and sinks given the current state of scientific knowledge and data available, and support the effectiveness of the QC programme
 - (d) Key source category is one that is prioritized within the national inventory because its estimate has a significant influence on a country's total inventory of direct greenhouse gases in terms of the absolute level of emissions, the trend in emissions, or both
 - (e) Decision tree is a flow-chart describing the specific ordered steps which need to be followed to develop an inventory or an inventory component in accordance with the principles of good practice.
4. Recalculation, consistent with the UNFCCC reporting guidelines on annual inventories, is a procedure for re-estimating anthropogenic greenhouse gas (GHG)¹⁵ emissions by sources and removals by sinks of previously submitted inventories¹⁶ as a consequence of changes in methodologies, changes in the manner in which emission factors and activity data are obtained and used, or the inclusion of new source and sink categories.

III. Objectives

5. The objectives of national systems under Article 5, paragraph 1, for the estimation of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, referred to below as national systems, are:
- (a) To enable Parties included in Annex I to estimate anthropogenic GHG emissions by sources and removals by sinks, as required by Article 5, and to report these emissions by sources and removals by sinks in accordance with Article 7, paragraph 1, and relevant decisions of the Conference of the Parties (COP) and/or the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (COP/MOP);
 - (b) To assist Parties included in Annex I in meeting their commitments under Articles 3 and 7;

15 References to greenhouse gases (GHG) in these guidelines for national systems refer to GHGs not controlled by the Montreal Protocol.

16 "National GHG inventories" are referred to simply as "inventories" in these guidelines for the sake of brevity.

- (c) To facilitate the review of the information submitted under Article 7 by Parties included in Annex I, as required by Article 8;
- (d) To assist Parties included in Annex I to ensure and improve the quality of their inventories.

IV. Characteristics

- 6. National systems should be designed and operated to ensure the transparency, consistency, comparability, completeness and accuracy of inventories as defined in the guidelines for the preparation of inventories by Parties included in Annex I, in accordance with relevant decisions of the COP and/or COP/MOP.
- 7. National systems should be designed and operated to ensure the quality of the inventory through planning, preparation and management of inventory activities. Inventory activities include collecting activity data, selecting methods and emission factors appropriately, estimating anthropogenic GHG emissions by sources and removals by sinks, implementing uncertainty assessment and quality assurance/quality control (QA/QC) activities, and carrying out procedures for the verification of the inventory data at the national level, as described in these guidelines for national systems.
- 8. National systems should be designed and operated to support compliance with Kyoto Protocol commitments relating to the estimation of anthropogenic GHG emissions by sources and removals by sinks.
- 9. National systems should be designed and operated to enable Parties included in Annex I to consistently estimate anthropogenic emissions by all sources and removals by all sinks of all GHGs, as covered by the Revised 1996 IPCC Guidelines for National Greenhouse Gas Inventories and IPCC good practice guidance, in accordance with relevant decisions of the COP and/or COP/MOP.

V. General functions

- 10. In the implementation of its national system, each Party included in Annex I shall:
 - (a) Establish and maintain the institutional, legal and procedural arrangements necessary to perform the functions defined in these guidelines for national systems, as appropriate, between the government agencies and other entities responsible for the performance of all functions defined in these guidelines;
 - (b) Ensure sufficient capacity for timely performance of the functions defined in these guidelines for national systems, including data collection for estimating anthropogenic GHG emissions by sources and removals by

sinks and arrangements for technical competence of the staff involved in the inventory development process;

- (c) Designate a single national entity with overall responsibility for the national inventory;
- (d) Prepare national annual inventories and supplementary information in a timely manner in accordance with Article 5 and Article 7, paragraphs 1 and 2, and relevant decisions of the COP and/or COP/MOP;
- (e) Provide information necessary to meet the reporting requirements defined in the guidelines under Article 7 in accordance with the relevant decisions of the COP and/or COP/MOP.

VI. Specific functions

- 11. In order to meet the objectives and perform the general functions described above, each Party included in Annex I shall undertake specific functions relating to inventory planning, preparation and management.¹⁷

A. Inventory planning

- 12. As part of its inventory planning, each Party included in Annex I shall:
 - (a) Designate a single national entity with overall responsibility for the national inventory;
 - (b) Make available the postal and electronic addresses of the national entity responsible for the inventory;
 - (c) Define and allocate specific responsibilities in the inventory development process, including those relating to choice of methods, data collection, particularly activity data and emission factors from statistical services and other entities, processing and archiving, and QC and QA. This definition shall specify the roles of, and cooperation between, government agencies and other entities involved in the preparation of the inventory, as well as the institutional, legal and procedural arrangements made to prepare the inventory;
 - (d) Elaborate an inventory QA/QC plan which describes specific QC procedures to be implemented during the inventory development

¹⁷ For the purpose of these guidelines for national systems, the inventory development process encompasses inventory planning, preparation and management. These steps of the inventory development process are considered in these guidelines only in order to clearly identify the functions to be performed by the national systems, as described in paragraphs 12 to 17 of the present guidelines.

- process, facilitate the overall QA procedures to be conducted, to the extent possible, on the entire inventory and establish quality objectives;
- (e) Establish processes for the official consideration and approval of the inventory, including any recalculations, prior to its submission and to respond to any issues raised by the inventory review process under Article 8.
13. As part of its inventory planning, each Party included in Annex I should consider ways to improve the quality of activity data, emission factors, methods and other relevant technical elements of inventories. Information obtained from the implementation of the QA/QC programme, the review process under Article 8 and other reviews should be considered in the development and/or revision of the QA/QC plan and the quality objectives.

B. Inventory preparation

14. As part of its inventory preparation, each Party included in Annex I shall:
- (a) Identify key source categories following the methods described in the IPCC good practice guidance (chapter 7, section 7.2);
 - (b) Prepare estimates in accordance with the methods described in the Revised 1996 IPCC Guidelines for National Greenhouse Gas Inventories, as elaborated by the IPCC good practice guidance, and ensure that appropriate methods are used to estimate emissions from key source categories;
 - (c) Collect sufficient activity data, process information and emission factors as are necessary to support the methods selected for estimating anthropogenic GHG emissions by sources and removals by sinks;
 - (d) Make a quantitative estimate of inventory uncertainty for each source category and for the inventory in total, following the IPCC good practice guidance;
 - (e) Ensure that any recalculations of previously submitted estimates of anthropogenic GHG emissions by sources and removals by sinks are prepared in accordance with the IPCC good practice guidance and relevant decisions of the COP and/or COP/MOP;
 - (f) Compile the national inventory in accordance with Article 7, paragraph 1, and relevant decisions of the COP and/or COP/MOP;
 - (g) Implement general inventory QC procedures (tier 1) in accordance with its QA/QC plan following the IPCC good practice guidance.

15. As part of its inventory preparation, each Party included in Annex I should:
- (a) Apply source-category-specific QC procedures (tier 2) for key source categories and for those individual source categories in which significant methodological and/or data revisions have occurred, in accordance with the IPCC good practice guidance;
 - (b) Provide for a basic review of the inventory by personnel that have not been involved in the inventory development, preferably an independent third party, before the submission of the inventory, in accordance with the planned QA procedures referred to in paragraph 12 (d) above;
 - (c) Provide for a more extensive review of the inventory for key source categories, as well as source categories where significant changes in methods or data have been made;
 - (d) Based on the reviews described in paragraph 15 (b) and (c) above and periodic internal evaluations of the inventory preparation process, re-evaluate the inventory planning process in order to meet the established quality objectives referred to in paragraph 12 (d).

C. Inventory management

16. As part of its inventory management, each Party included in Annex I shall:
- (a) Archive inventory information for each year in accordance with relevant decisions of the COP and/or COP/MOP. This information shall include all disaggregated emission factors, activity data, and documentation about how these factors and data have been generated and aggregated for the preparation of the inventory. This information shall also include internal documentation on QA/QC procedures, external and internal reviews, documentation on annual key sources and key source identification and planned inventory improvements;
 - (b) Provide review teams under Article 8 with access to all archived information used by the Party to prepare the inventory, in accordance with relevant decisions of the COP and/or COP/MOP;
 - (c) Respond to requests for clarifying inventory information resulting from the different stages of the review process of the inventory information, and information on the national system, in a timely manner in accordance with Article 8.
17. As part of its inventory management, each Party included in Annex I should make the archived information accessible by collecting and gathering it at a single location.

VII. Updating of the guidelines

18. These guidelines shall be reviewed and revised, as appropriate, by consensus, in accordance with decisions of the COP/MOP, taking into account any relevant decisions of the COP.

5.1.3 Protocol Text - Article 7

1. Each Party included in Annex I shall incorporate in its annual inventory of anthropogenic emissions by sources and removals by sinks of greenhouse gases not controlled by the Montreal Protocol, submitted in accordance with the relevant decisions of the Conference of the Parties, the necessary supplementary information for the purposes of ensuring compliance with Article 3, to be determined in accordance with paragraph 4 below.
2. Each Party included in Annex I shall incorporate in its national communication, submitted under Article 12 of the Convention, the supplementary information necessary to demonstrate compliance with its commitments under this Protocol, to be determined in accordance with paragraph 4 below.
3. Each Party included in Annex I shall submit the information required under paragraph 1 above annually, beginning with the first inventory due under the Convention for the first year of the commitment period after this Protocol has entered into force for that Party. Each such Party shall submit the information required under paragraph 2 above as part of the first national communication due under the Convention after this Protocol has entered into force for it and after the adoption of guidelines as provided for in paragraph 4 below. The frequency of subsequent submission of information required under this Article shall be determined by the Conference of the Parties serving as the meeting of the Parties to this Protocol, taking into account any timetable for the submission of national communications decided upon by the Conference of the Parties.
4. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall adopt at its first session, and review periodically thereafter, guidelines for the preparation of the information required under this Article, taking into account guidelines for the preparation of national communications by Parties included in Annex I adopted by the Conference of the Parties. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall also, prior to the first commitment period, decide upon modalities for the accounting of assigned amounts.

5.1.4 CMP Decision 12/CMP.1, Guidance relating to registry systems under Article 7, paragraph 4 (2005)

The Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol,

Recalling decisions 15/CP.7, 16/CP.7, 17/CP.7, 18/CP.7, 19/CP.7, 24/CP.8, 19/CP.9 and 16/CP.10,

Welcoming the considerable progress that has been made by the secretariat, as the administrator of the international transaction log, with regard to the development of the international transaction log,

Noting that the international transaction log is essential to the implementation of the mechanisms under Articles 6, 12 and 17 of the Kyoto Protocol,

Noting that the planned date on which registry systems may begin initialization testing with the international transaction log, as indicated in the annual report of the administrator of the international transaction log (2005), is 31 October 2006,

1. Takes note of the annual report of the administrator of the international transaction log (2005) (FCCC/KP/CMP/2005/5);
2. Adopts the general design requirements for the technical standards for data exchange between registry systems under the Kyoto Protocol, as contained in the annex to decision 24/CP.8;
3. Endorses decision 16/CP.10 on issues relating to registry systems under Article 7, paragraph 4, of the Kyoto Protocol, including in relation to the role and functions of the administrator of the international transaction log;
4. Requests the administrator of the international transaction log to implement the international transaction log in 2006, with a view to allowing registry systems to successfully connect to the international transaction log by April 2007;
5. Requests the administrator of the international transaction log, in carrying out the tasks requested in decision 16/CP.10 and facilitating, in accordance with that decision, the cooperation among administrators of registry systems and the involvement of appropriate experts from Parties to the Kyoto Protocol not included in Annex I to the Convention, to plan the first meeting for March 2006;
6. Requests the administrator of the international transaction log to provide, at the meeting referred to in paragraph 5 above, sufficient information on the implementation and schedule of the international transaction log to ensure transparency and facilitate the planning of other registry systems, and the implementation of paragraphs 6 and 7 of decision 16/CP.10;
7. Requests the administrator of the international transaction log, once registry systems become available, to facilitate an interactive exercise, including with

experts from Parties to the Kyoto Protocol not included in Annex I to the Convention, demonstrating the functioning of the international transaction log with other registry systems and the full conformity of the performance of the international transaction log with relevant decisions and specifications for the international transaction log, and to include information on this exercise in its annual report to the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol;

8. Expresses its appreciation to Parties that have contributed to the UNFCCC Trust Fund for Supplementary Activities in relation to this work;
9. Requests the secretariat, at the earliest stage possible prior to the twenty-fourth sessions of the subsidiary bodies (May 2006), to inform Parties included in Annex I to the Convention that are Parties to the Kyoto Protocol of any further contributions to the UNFCCC Trust Fund for Supplementary Activities which are required in relation to the development and operation of the international transaction log and to provide a detailed specification of such funding requirements;
10. Requests the secretariat to report to the Subsidiary Body for Implementation, at its twenty-fourth session (May 2006), on progress made towards the implementation of the international transaction log, in particular in relation to the content and timing of the testing and initialization of registry systems;
11. Requests the Subsidiary Body for Implementation to consider, at its future sessions, annual reports of the administrator of the international transaction log, with a view to requesting the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol to provide guidance, as necessary, in relation to the operation of registry systems.

5.1.5 CMP Decision 13/CMP.1 - Modalities for the accounting of assigned amounts under Article 7, paragraph 4 (2005)

The Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol, Recalling Article 7, paragraph 4, of the Kyoto Protocol, Recalling decision 19/CP.7, Being aware of its decisions 2/CMP.1, 3/CMP.1, 9/CMP.1, 11/CMP.1, 15/CMP.1, 16/CMP.1, 19/CMP.1, 20/CMP.1, and 22/CMP.1 and decision 24/CP.7,

1. Adopts the modalities for the accounting of assigned amounts under Article 7, paragraph 4, of the Kyoto Protocol, as contained in the annex to the present decision;
2. Decides that each Party included in Annex I with a commitment inscribed in Annex B shall submit to the secretariat, prior to 1 January 2007 or one year after the entry into force of the Kyoto Protocol for that Party, whichever is later, the report referred to in paragraph 6 of the annex to the present decision. After

completion of the initial review under Article 8 and resolution of any question of implementation relating to adjustments under Article 5, paragraph 2, or its assigned amount pursuant to Article 3, paragraphs 7 and 8, the assigned amount pursuant to Article 3, paragraphs 7 and 8, of each Party shall be recorded in the database for the compilation and accounting of emissions and assigned amounts referred to in paragraph 50 of the annex to the present decision and shall remain fixed for the commitment period;

3. Decides that each Party included in Annex I with a commitment inscribed in Annex B shall submit to the secretariat, upon expiration of the additional period for fulfilling commitments, the report referred to in paragraph 49 of the annex to the present decision;
4. Requests the secretariat to begin publishing the annual compilation and accounting reports referred to in paragraph 61 of the annex to the present decision after completion of the initial review under Article 8 and resolution of any question of implementation relating to adjustments under Article 5, paragraph 2, or its assigned amount pursuant to Article 3, paragraphs 7 and 8, and to forward them to the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol, the Compliance Committee and each Party concerned;
5. Requests the secretariat to publish, after the additional period for fulfilling commitments, the final compilation and accounting reports referred to in paragraph 62 of the annex to the present decision and forward them to the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol, the Compliance Committee and each Party concerned.

Annex

Modalities for the accounting of assigned amounts under Article 7, paragraph 4, of the Kyoto Protocol¹⁸

I. Modalities

A. Definitions

1. An “emission reduction unit” or “ERU” is a unit issued pursuant to the relevant provisions in these modalities for the accounting of assigned amounts and is equal to one metric tonne of carbon dioxide equivalent, calculated using global warming potentials defined by decision 2/CP.3 or as subsequently revised in accordance with Article 5.

18 Hereinafter referred to as a “Party included in Annex I”.

2. A “certified emission reduction” or “CER” is a unit issued pursuant to Article 12 and requirements thereunder, as well as the relevant provisions in the annex to decision 3/CMP.1, and is equal to one metric tonne of carbon dioxide equivalent, calculated using global warming potentials defined by decision 2/CP.3 or as subsequently revised in accordance with Article 5.
3. An “assigned amount unit” or “AAU” is a unit issued pursuant to the relevant provisions in these modalities for the accounting of assigned amounts and is equal to one metric tonne of carbon dioxide equivalent, calculated using global warming potentials defined by decision 2/CP.3 or as subsequently revised in accordance with Article 5.
4. A “removal unit” or “RMU” is a unit issued pursuant to the relevant provisions in these modalities for the accounting of assigned amounts and is equal to one metric tonne of carbon dioxide equivalent, calculated using global warming potentials defined by decision 2/CP.3 or as subsequently revised in accordance with Article 5.

B. Calculation of the assigned amounts pursuant to Article 3, paragraphs 7 and 8

5. The assigned amount pursuant to Article 3, paragraphs 7 and 8, for the first commitment period, from 2008 to 2012, for each Party included in Annex I with a commitment inscribed in Annex B to the Kyoto Protocol¹⁹ shall be equal to the percentage inscribed for it in Annex B of its aggregate anthropogenic carbon dioxide equivalent emissions of the greenhouse gases, and from the sources, listed in Annex A to the Kyoto Protocol in the base year, multiplied by five, taking into account the following:
 - (a) The base year shall be 1990 except for those Parties undergoing the process of transition to a market economy that have selected a historical base year or period other than 1990, in accordance with Article 3, paragraph 5, and for those Parties that have selected 1995 as the base year for total emissions of hydrofluorocarbons, perfluorocarbons and sulphur hexafluoride, in accordance with Article 3, paragraph 8
 - (b) Those Parties for which land-use change and forestry (all emissions by sources and removals by sinks under category 5 of the Revised 1996 IPCC Guidelines for National Greenhouse Gas Inventories) constituted a net source of greenhouse gas emissions in the base year or period shall include in their emissions during that year or period the aggregate anthropogenic carbon dioxide equivalent emissions by sources minus removals by sinks in that year or period from land-use change (all

19 Hereinafter referred to as a “Party included in Annex I”.

emissions by sources minus removals by sinks reported in relation to the conversion of forests (deforestation))

- (c) Those Parties that have reached an agreement in accordance with Article 4 to fulfil their commitments under Article 3 jointly shall use the respective emission level allocated to each of the Parties in that agreement instead of the percentage inscribed for it in Annex B.
6. Each Party included in Annex I shall facilitate the calculation of its assigned amount pursuant to Article 3, paragraphs 7 and 8, for the commitment period and demonstrate its capacity to account for its emissions and assigned amount. To this end, each Party shall submit a report, in two parts, containing the information specified in paragraphs 7 and 8 below.
7. Part one of the report referred to in paragraph 6 above shall contain the following information, or references to such information where it has been previously submitted to the secretariat:
 - (a) Complete inventories of anthropogenic emissions by sources and removals by sinks of greenhouse gases not controlled by the Montreal Protocol for all years from 1990, or another approved base year or period under Article 3, paragraph 5, to the most recent year available, prepared in accordance with Article 5, paragraph 2, and relevant decisions of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (COP/MOP), taking into account any relevant decisions of the Conference of the Parties
 - (b) Identification of its selected base year for hydrofluorocarbons, perfluorocarbons and sulphur hexafluoride in accordance with Article 3, paragraph 8
 - (c) The agreement under Article 4, where the Party has reached such an agreement to fulfil its commitments under Article 3 jointly with other Parties
 - (d) Calculation of its assigned amount pursuant to Article 3, paragraphs 7 and 8, on the basis of its inventory of anthropogenic emissions by sources and removals by sinks of greenhouse gases not controlled by the Montreal Protocol.
8. Part two of the report referred to in paragraph 6 above shall contain the following information, or references to such information where it has been previously submitted to the secretariat:
 - (a) Calculation of its commitment period reserve in accordance with decision 11/CMP.1
 - (b) Identification of its selection of single minimum values for tree crown cover, land area and tree height for use in accounting for its activities

under Article 3, paragraphs 3 and 4, together with a justification of the consistency of those values with the information that has been historically reported to the Food and Agriculture Organization of the United Nations or other international bodies, and in the case of difference, an explanation of why and how such values were chosen, in accordance with decision 16/CMP.1

- (c) Identification of its election of activities under Article 3, paragraph 4, for inclusion in its accounting for the first commitment period, together with information on how its national system under Article 5, paragraph 1, will identify land areas associated with the activities, in accordance with decision 16/CMP.1
- (d) Identification of whether, for each activity under Article 3, paragraphs 3 and 4, it intends to account annually or for the entire commitment period
- (e) A description of its national system in accordance with Article 5, paragraph 1, reported in accordance with the guidelines for the preparation of the information required under Article 7 of the Kyoto Protocol
- (f) A description of its national registry, reported in accordance with the guidelines for the preparation of the information required under Article 7 of the Kyoto Protocol.

C. Recording of the assigned amounts pursuant to Article 3, paragraphs 7 and 8

- 9. After initial review under Article 8 and resolution of any questions of implementation relating to adjustments or the calculation of its assigned amount pursuant to Article 3, paragraphs 7 and 8, the assigned amount pursuant to Article 3, paragraphs 7 and 8, of each Party shall be recorded in the database for the compilation and accounting of emissions and assigned amounts referred to in paragraph 50 below.
- 10. Once recorded in the compilation and accounting database referred to in paragraph 50 below, the assigned amount pursuant to Article 3, paragraphs 7 and 8, of each Party shall remain fixed for the commitment period.

D. Additions to, and subtractions from, the assigned amounts pursuant to Article 3, paragraphs 7 and 8, for the accounting of the compliance assessment

- 11. At the end of the additional period for fulfilling commitments, the following additions to the assigned amount pursuant to Article 3, paragraphs 7 and 8, of a Party shall be made in accordance with Article 3, paragraphs 3, 4, 10, 12

and 13, for the accounting of the compliance assessment for the commitment period:

- (a) Acquisitions by the Party of ERUs in accordance with Articles 6 and 17
 - (b) Net acquisitions by the Party of CERs, where it acquires more CERs in accordance with Articles 12 and 17 than it transfers in accordance with Article 17
 - (c) Acquisitions by the Party of AAUs in accordance with Article 17
 - (d) Acquisitions by the Party of RMUs in accordance with Article 17
 - (e) Issuance by the Party of RMUs on the basis of its activities under Article 3, paragraph 3, and its elected activities under Article 3, paragraph 4, where such activities result in a net removal of greenhouse gases, as reported in accordance with Article 7, reviewed in accordance with Article 8, taking into account any adjustments applied under Article 5, paragraph 2, accounted in accordance with decision 16/CMP.1 and subject to any question of implementation relating to those activities having been resolved
 - (f) Carry-over by the Party of ERUs, CERs and/or AAUs from the previous commitment period, in accordance with paragraph 15 below.
12. At the end of the additional period for fulfilling commitments, the following subtractions from the assigned amount pursuant to Article 3, paragraphs 7 and 8, of a Party shall be made in accordance with Article 3, paragraphs 3, 4 and 11, for the accounting of the compliance assessment for the commitment period:
- (a) Transfers by the Party of ERUs in accordance with Articles 6 and 17
 - (b) Transfers by the Party of AAUs in accordance with Article 17
 - (c) Transfers by the Party of RMUs in accordance with Article 17
 - (d) Cancellation by the Party of ERUs, CERs, AAUs and/or RMUs on the basis of its activities under Article 3, paragraph 3, and its elected activities under Article 3, paragraph 4, where such activities result in a net source of greenhouse gas emissions, as reported in accordance with Article 7, reviewed in accordance with Article 8, taking into account any adjustments applied under Article 5, paragraph 2, and accounted in accordance with decision 16/CMP.1
 - (e) Cancellation by the Party of ERUs, CERs, AAUs and/or RMUs following determination by the Compliance Committee that the Party was not in compliance with its commitment under Article 3, paragraph 1, for the previous commitment period, in accordance with decision 24/CP.7
 - (f) Other cancellations by the Party of ERUs, CERs, AAUs and/or RMUs.

E. Basis for the compliance assessment

13. Each Party included in Annex I shall retire ERUs, CERs, AAUs and/or RMUs for the purpose of demonstrating its compliance with its commitment under Article 3, paragraph 1.
14. The assessment, after the expiration of the additional period for fulfilling commitments, of the compliance of a Party included in Annex I with its commitment under Article 3, paragraph 1, shall be based on the comparison of the quantity of ERUs, CERs, AAUs and/or RMUs, valid for the commitment period in question, retired by the Party in accordance with paragraph 13 above, with its aggregate anthropogenic carbon dioxide equivalent emissions of the greenhouse gases, and from the sources, listed in Annex A to the Kyoto Protocol during the commitment period as reported in accordance with Article 7 and reviewed in accordance with Article 8, taking into account any adjustments in accordance with Article 5, paragraph 2, as recorded in the compilation and accounting database referred to in paragraph 50 below.

F. Carry-over

15. After expiration of the additional period for fulfilling commitments and where the final compilation and accounting report referred to in paragraph 62 below indicates that the quantity of ERUs, CERs, AAUs and/or RMUs retired by the Party in accordance with paragraph 13 above is at least equivalent to its anthropogenic carbon dioxide equivalent emissions of the greenhouse gases, and from the sources, listed in Annex A to the Kyoto Protocol for that commitment period, the Party may carry over to the subsequent commitment period:
 - (a) Any ERUs held in its national registry, which have not been converted from RMUs and have not been retired for that commitment period or cancelled, to a maximum of 2.5 per cent of the assigned amount pursuant to Article 3, paragraphs 7 and 8, of that Party
 - (b) Any CERs held in its national registry, which have not been retired for that commitment period or cancelled, to a maximum of 2.5 per cent of the assigned amount pursuant to Article 3, paragraphs 7 and 8, of that Party
 - (c) Any AAUs held in its national registry, which have not been retired for that commitment period or cancelled.
16. RMUs may not be carried over to the subsequent commitment period.

II. Registry requirements

A. National registries

17. Each Party included in Annex I shall establish and maintain a national registry to ensure the accurate accounting of the issuance, holding, transfer, acquisition, cancellation and retirement of ERUs, CERs, AAUs and RMUs and the carry-over of ERUs, CERs and AAUs.
18. Each Party shall designate an organization as its registry administrator to maintain the national registry of that Party. Any two or more Parties may voluntarily maintain their respective national registries in a consolidated system, provided that each national registry remains distinct.
19. A national registry shall be in the form of a standardized electronic database which contains, inter alia, common data elements relevant to the issuance, holding, transfer, acquisition, cancellation and retirement of ERUs, CERs, AAUs and RMUs and the carry-over of ERUs, CERs and AAUs. The structure and data formats of national registries shall conform to technical standards to be adopted by the COP/MOP for the purpose of ensuring the accurate, transparent and efficient exchange of data between national registries, the clean development mechanism (CDM) registry and the international transaction log.
20. Each ERU, CER, AAU and RMU shall be held in only one account in one registry at a given time.
21. Each national registry shall have the following accounts:
 - (a) At least one holding account for the Party
 - (b) At least one holding account for each legal entity authorized by the Party to hold ERUs, CERs, AAUs and/or RMUs under its responsibility
 - (c) At least one cancellation account for each commitment period for the purposes of cancelling ERUs, CERs, AAUs and/or RMUs under paragraph 12 (d) above
 - (d) One cancellation account for each commitment period for the purposes of cancelling ERUs, CERs, AAUs and/or RMUs under paragraph 12 (e) above
 - (e) At least one cancellation account for each commitment period for the purposes of cancelling ERUs, CERs, AAUs and/or RMUs under paragraph 12 (f) above
 - (f) One retirement account for each commitment period.

22. Each account within a national registry shall have a unique account number comprising the following elements:
- (a) Party identifier: the Party in whose national registry the account is maintained, identified by means of the two-letter country code defined by the International Organization for Standardization (ISO 3166)
 - (b) A unique number: a number unique to that account for the Party in whose national registry the account is maintained.

B. Issuance of ERUs, AAUs and RMUs

23. Each Party included in Annex I shall, prior to any transactions taking place for that commitment period, issue a quantity of AAUs equivalent to its assigned amount pursuant to Article 3, paragraphs 7 and 8, calculated and recorded in accordance with paragraphs 5 to 10 above, in its national registry.
24. Each AAU shall have a unique serial number comprising the following elements:
- (a) Commitment period: the commitment period for which the AAU is issued
 - (b) Party of origin: the Party issuing the AAU, identified by means of the two-letter country code defined by ISO 3166
 - (c) Type: an element identifying the unit as an AAU
 - (d) Unit: a number unique to the AAU for the identified commitment period and Party of origin.
25. Each Party included in Annex I shall issue in its national registry RMUs equivalent to the net removals of anthropogenic greenhouse gases resulting from its activities under Article 3, paragraph 3, and its elected activities under Article 3, paragraph 4, accounted in accordance with decision 16/CMP.1 as reported under Article 7, paragraph 1, following completion of the review in accordance with Article 8, taking into account any adjustments applied in accordance with Article 5, paragraph 2, and resolution of any questions of implementation relating to the reported net removals of anthropogenic greenhouse gases. Each Party shall elect for each activity, prior to the start of the commitment period, to issue such RMUs annually or for the entire commitment period. The decision of a Party shall remain fixed for the first commitment period.
26. Where a question of implementation is identified by an expert review team under Article 8 in relation to the calculation of the net removals of greenhouse gases from the activities of a Party under Article 3, paragraph 3 or 4, or where adjustments exceed thresholds to be decided according to paragraph 2 of decision 22/CP.7, the Party shall not issue the RMUs relating to the reported net removals of anthropogenic greenhouse gases for each activity under Article 3, paragraph 3, and for each elected activity under Article 3, paragraph 4, until the question of implementation is resolved.

27. Each RMU shall have a unique serial number comprising the following elements:
 - (a) Commitment period: the commitment period for which the RMU is issued
 - (b) Party of origin: the Party included in Annex I issuing the RMU, identified by means of the two-letter country code defined by ISO 3166
 - (c) Type: an element identifying the unit as an RMU
 - (d) Activity: the type of activity for which the RMU was issued
 - (e) Unit: a number unique to the RMU for the identified commitment period and Party of origin.
28. Each Party included in Annex I shall ensure that the total quantity of RMUs issued into its registry pursuant to Article 3, paragraph 4, for the commitment period does not exceed the limits established for that Party as set out in decision 16/CMP.1.
29. Prior to their transfer, each Party shall issue ERUs into its national registry by converting AAUs or RMUs previously issued by that Party and held in its national registry. An AAU or RMU shall be converted into an ERU by adding a project identifier to the serial number and changing the type indicator in the serial number to indicate an ERU. Other elements of the serial number of the AAU or RMU shall remain unchanged. The project identifier shall identify the specific Article 6 project for which the ERU is issued, using a number unique to the project for the Party of origin, including whether the relevant reductions in anthropogenic emissions by sources or enhancements of anthropogenic removals by sinks were verified under the Article 6 Supervisory Committee.

C. Transfer, acquisition, cancellation, retirement and carry-over

30. ERUs, CERs, AAUs and RMUs may be transferred between registries in accordance with decisions 3/CMP.1, 9/CMP.1, 11/CMP.1 and 16/CMP.1, and may be transferred within registries.
31. Each Party included in Annex I shall ensure that its net acquisitions of CERs from afforestation and reforestation activities under Article 12 for the first commitment period do not exceed the limits established for that Party as set out in decision 16/CMP.1.
32. Each Party included in Annex I shall cancel CERs, ERUs, AAUs and/or RMUs equivalent to the net emissions of anthropogenic greenhouse gases resulting from its activities under Article 3, paragraph 3, and its elected activities under Article 3, paragraph 4, accounted in accordance with decision 16/CMP.1 as reported under Article 7, paragraph 1, following completion of the review in accordance with Article 8, taking into account any adjustments applied in accordance with Article 5, paragraph 2, and resolution of any questions

of implementation relating to the reported net emissions of anthropogenic greenhouse gases, in accordance with paragraph 12 (d) above, by transferring the ERUs, CERs, AAUs and/or RMUs to the appropriate cancellation account in its national registry. Each Party shall cancel ERUs, CERs, AAUs and/or RMUs for each activity for the same period for which it has elected to issue RMUs for that activity.

33. Each Party included in Annex I may cancel ERUs, CERs, AAUs and/or RMUs so they cannot be used in fulfilment of commitments under Article 3, paragraph 1, in accordance with paragraph 12 (f) above, by transferring ERUs, CERs, AAUs and/or RMUs to a cancellation account in its national registry. Legal entities, where authorized by the Party, may also transfer ERUs, CERs, AAUs and RMUs into a cancellation account.
34. Prior to the end of the additional period for fulfilling commitments, each Party included in Annex I shall retire ERUs, CERs, AAUs and/or RMUs valid for that commitment period for use towards meeting its commitments under Article 3, paragraph 1, in accordance with paragraph 13 above, by transferring ERUs, CERs, AAUs and/or RMUs to the retirement account for that commitment period in its national registry.
35. ERUs, CERs, AAUs and RMUs transferred to cancellation accounts or the retirement account for a commitment period may not be further transferred or carried over to the subsequent commitment period. ERUs, CERs, AAUs and RMUs transferred to cancellation accounts may not be used for the purpose of demonstrating the compliance of a Party with its commitment under Article 3, paragraph 1.
36. Each Party included in Annex I may carry over ERUs, CERs and/or AAUs held in its registry, that have not been cancelled or retired for a commitment period, to the subsequent commitment period in accordance with paragraph 15 above. Each ERU, CER and/or AAU carried over in this manner shall maintain its original serial number and shall be valid in the subsequent commitment period. ERUs, CERs, AAUs and RMUs of a previous commitment period held in the registry of a Party which have not been carried over in this manner shall be cancelled in accordance with paragraph 12 (f) above once the additional period for fulfilling commitments has ended.
37. Where the Compliance Committee determines that the Party is not in compliance with its commitment under Article 3, paragraph 1, for a commitment period, the Party shall transfer the quantity of ERUs, CERs, AAUs and/or RMUs calculated in accordance with decision 24/CP.7 into the relevant cancellation account, in accordance with paragraph 12 (e) above.

D. Transaction procedures

38. The secretariat shall establish and maintain an international transaction log to verify the validity of transactions, including issuance, transfer and acquisition between registries, cancellation and retirement of ERUs, CERs, AAUs and RMUs and the carry-over of ERUs, CERs and AAUs.
39. A Party included in Annex I shall initiate issuance of AAUs or RMUs by directing its national registry to issue AAUs or RMUs into a specific account within that registry. The Executive Board of the CDM shall initiate issuance of CERs by directing the CDM registry to issue CERs into its pending account in accordance with the requirements in Article 12 and requirements thereunder, as well as the relevant provisions in the annex to decision 3/CMP.1. A Party included in Annex I shall initiate issuance of ERUs by directing its national registry to convert specified AAUs or RMUs into ERUs within an account of that national registry. Subject to notification by the transaction log that there are no discrepancies pertaining to the issuance, the issuance shall be completed when specific ERUs, CERs, AAUs or RMUs are recorded in the specified account and, in the case of ERUs, the specified AAUs or RMUs are removed from the account.
40. A Party included in Annex I shall initiate any transfer of ERUs, CERs, AAUs or RMUs, including those to cancellation and retirement accounts, by directing its national registry to transfer specified ERUs, CERs, AAUs or RMUs to a specific account within that registry or another registry. The Executive Board of the CDM shall initiate any transfer of CERs held in the CDM registry by directing it to transfer specified CERs to a specific account within that registry or another registry. Subject to notification by the transaction log, where applicable, that there are no discrepancies pertaining to the transfer, the transfer shall be completed when the specified ERUs, CERs, AAUs or RMUs are removed from the transferring account and are recorded in the acquiring account.
41. Upon the initiation of any issuance, transfer between registries, cancellation or retirement of ERUs, CERs, AAUs or RMUs, and prior to the completion of those transactions:
 - (a) The initiating registry shall create a unique transaction number comprising: the commitment period for which the transaction is proposed; the Party identifier for the Party initiating the transaction (using the two-letter country code defined by ISO 3166); and a number unique to that transaction for the commitment period and initiating Party;
 - (b) The initiating registry shall send a record of the proposed transaction to the transaction log and, in the case of transfers to another registry, to the acquiring national registry. The record shall include: the transaction number; the transaction type (issuance, transfer, cancellation or retirement, further distinguished in accordance with the categories in paragraphs 11

and 12 above); the serial numbers of the relevant ERUs, CERs, AAUs or RMUs; and the relevant account numbers.

42. Upon receipt of the record, the transaction log shall conduct an automated check to verify that there is no discrepancy, with regard to:
 - (a) In all transactions: units previously retired or cancelled; units existing in more than one registry; units for which a previously identified discrepancy has not been resolved; units improperly carried over; units improperly issued, including those which infringe upon the limits contained in decision 16/CMP.1; and the authorization of legal entities involved to participate in the transaction;
 - (b) In the case of transfers between registries: the eligibility of Parties involved in the transaction to participate in the mechanisms; and infringement upon the commitment period reserve of the transferring Party;
 - (c) In the case of acquisitions of CERs from land use, land-use change and forestry projects under Article 12: infringement of the limits contained in decision 16/CMP.1;
 - (d) In the case of a retirement of CERs: the eligibility of the Party involved to use CERs to contribute to its compliance under Article 3, paragraph 1.
43. Upon completion of the automated check, the transaction log shall notify the initiating and, in the case of transfers to another registry, the acquiring registry of the results of the automated check. Depending on the outcome of the check, the following procedures shall apply:
 - (a) If a discrepancy is notified by the transaction log, the initiating registry shall terminate the transaction, notify the transaction log and, in the case of transfers to another registry, the acquiring registry of the termination. The transaction log shall forward a record of the discrepancy to the secretariat for consideration as part of the review process for the relevant Party or Parties under Article 8
 - (b) In the event of a failure by the initiating registry to terminate the transaction, the ERUs, CERs, AAUs or RMUs involved in the transaction shall not be valid for use towards compliance with commitments under Article 3, paragraph 1, until the problem has been corrected and any questions of implementation pertaining to the transaction have been resolved. Upon resolution of a question of implementation pertaining to a Party's transactions, that Party shall perform any necessary corrective action within 30 days
 - (c) If no discrepancy is notified by the transaction log, the initiating registry and, in the case of transfers to another registry, the acquiring registry shall complete or terminate the transaction and send the record and

a notification of completion or termination of the transaction to the transaction log. In the case of transfers to another registry, the initiating and acquiring registries shall also send their records and notifications to each other

- (d) The transaction log shall record, and make publicly available, all transaction records and the date and time of completion of each transaction, to facilitate its automated checks and the review under Article 8.

E. Publicly accessible information

- 44. Each national registry shall make non-confidential information publicly available and provide a publicly accessible user interface through the Internet that allows interested persons to query and view it.
- 45. The information referred to in paragraph 44 above shall include up-to-date information for each account number in that registry on the following:
 - (a) Account name: the holder of the account
 - (b) Account type: the type of account (holding, cancellation or retirement)
 - (c) Commitment period: the commitment period with which a cancellation or retirement account is associated
 - (d) Representative identifier: the representative of the account holder, using the Party identifier (the two-letter country code defined by ISO 3166) and a number unique to that representative within the Party's registry
 - (e) Representative name and contact information: the full name, mailing address, telephone number, facsimile number and e-mail address of the representative of the account holder.
- 46. The information referred to in paragraph 44 above shall include the following Article 6 project information, for each project identifier against which the Party has issued ERUs:
 - (a) Project name: a unique name for the project
 - (b) Project location: the Party and town or region in which the project is located
 - (c) Years of ERU issuance: the years in which ERUs have been issued as a result of the Article 6 project
 - (d) Reports: downloadable electronic versions of all publicly available documentation relating to the project, including proposals, monitoring, verification and issuance of ERUs, where relevant, subject to the confidentiality provisions in decision 9/CMP.1.

47. The information referred to in paragraph 44 above shall include the following holding and transaction information relevant to the national registry, by serial number, for each calendar year (defined according to Greenwich Mean Time):
- (a) The total quantity of ERUs, CERs, AAUs and RMUs in each account at the beginning of the year
 - (b) The total quantity of AAUs issued on the basis of the assigned amount pursuant to Article 3, paragraphs 7 and 8
 - (c) The total quantity of ERUs issued on the basis of Article 6 projects
 - (d) The total quantity of ERUs, CERs, AAUs and RMUs acquired from other registries and the identity of the transferring accounts and registries
 - (e) The total quantity of RMUs issued on the basis of each activity under Article 3, paragraphs 3 and 4
 - (f) The total quantity of ERUs, CERs, AAUs and RMUs transferred to other registries and the identity of the acquiring accounts and registries
 - (g) The total quantity of ERUs, CERs, AAUs and RMUs cancelled on the basis of activities under Article 3, paragraphs 3 and 4
 - (h) The total quantity of ERUs, CERs, AAUs and RMUs cancelled following determination by the Compliance Committee that the Party is not in compliance with its commitment under Article 3, paragraph 1
 - (i) The total quantity of other ERUs, CERs, AAUs and RMUs cancelled
 - (j) The total quantity of ERUs, CERs, AAUs and RMUs retired
 - (k) The total quantity of ERUs, CERs, and AAUs carried over from the previous commitment period
 - (l) Current holdings of ERUs, CERs, AAUs and RMUs in each account.
48. The information referred to in paragraph 44 above shall include a list of legal entities authorized by the Party to hold ERUs, CERs, AAUs and/or RMUs under its responsibility.

III. Compilation and accounting of emission inventories and assigned amounts

A. Report upon expiration of the additional period for fulfilling commitments

49. Upon expiration of an additional period for fulfilling commitments, each Party included in Annex I shall report to the secretariat and make available to the public, in a standard electronic format, the following information. This

information shall only include ERUs, CERs, AAUs and RMUs valid for the commitment period in question:

- (a) The total quantities of the categories of ERUs, CERs, AAUs and RMUs listed in paragraph 47 (a) to (j) above, for the current calendar year until the end of the additional period for fulfilling commitments (defined according to Greenwich Mean Time)
- (b) The total quantity and serial numbers of ERUs, CERs, AAUs and RMUs in its retirement account
- (c) The total quantity and serial numbers of ERUs, CERs and AAUs which the Party requests to be carried over to the subsequent commitment period.

B. Compilation and accounting database

50. The secretariat shall establish a database to compile and account for emissions and assigned amounts pursuant to Article 3, paragraphs 7 and 8, and additions to, and subtractions from, assigned amounts pursuant to Article 3, paragraphs 7 and 8, for the accounting of the compliance assessment, in accordance with paragraphs 11 and 12 above. The purpose of this database is to facilitate the assessment of the compliance of each Party included in Annex I with its commitment under Article 3, paragraph 1.
51. A separate record shall be maintained in the database for each Party included in Annex I for each commitment period. Information on ERUs, CERs, AAUs and RMUs shall only include units valid for the commitment period in question and shall be recorded separately for each type of unit.
52. The secretariat shall record in the database for each Party included in Annex I the following information:
 - (a) The assigned amount pursuant to Article 3, paragraphs 7 and 8
 - (b) For the first commitment period, the total allowable issuances of RMUs resulting from forest management activities under Article 3, paragraph 4, and limits on net acquisitions of CERs from afforestation and reforestation activities under Article 12 pursuant to decision 16/CMP.1.
53. The secretariat shall record in the database, for each Party included in Annex I, whether it is eligible to transfer and/or acquire ERUs, CERs, AAUs and RMUs pursuant to decisions 9/CMP.1 and 11/CMP.1 and to use CERs to contribute to its compliance under Article 3, paragraph 1, pursuant to decision 3/CMP.1.
54. The secretariat shall annually record the following information relating to emissions for each Party included in Annex I, following the annual review under Article 8, the application of any adjustment under Article 5, paragraph 2,

and the resolution of any questions of implementation pertaining to emission estimates:

- (a) Aggregate annual anthropogenic carbon dioxide equivalent emissions of the greenhouse gases, and from the sources, listed in Annex A to the Kyoto Protocol for each year of the commitment period that has been reported in accordance with Article 7
- (b) Any adjustments under Article 5, paragraph 2, recorded as the difference, in carbon dioxide equivalent terms, between the adjusted estimate and the inventory estimate reported under Article 7
- (c) Aggregate anthropogenic carbon dioxide equivalent emissions in the commitment period, calculated as the sum of the amounts in subparagraphs (a) and (b) above for all years of the commitment period to date.

55. The secretariat shall annually record in the database the following information for each Party included in Annex I relating to accounting for net emissions and removals of greenhouse gases resulting from its activities under Article 3, paragraph 3, and its elected activities under Article 3, paragraph 4, following the annual review under Article 8, the application of any adjustment under Article 5, paragraph 2, and the resolution of any relevant questions of implementation:

- (a) The calculation of whether the activities under Article 3, paragraphs 3 and 4, that have been reported in accordance with Article 7 result in net anthropogenic emissions or net anthropogenic removals of greenhouse gases pursuant to decision 16/CMP.1
- (b) For those activities for which the Party has elected to account annually, the net anthropogenic emissions and removals of greenhouse gases pursuant to decision 16/CMP.1 for the calendar year
- (c) For those activities for which the Party has elected to account for the entire commitment period, the net anthropogenic emissions and removals of greenhouse gases pursuant to decision 16/CMP.1 for the calendar year
- (d) Any adjustments under Article 5, paragraph 2, recorded as the difference in carbon dioxide equivalent terms between the adjusted estimate and the estimate reported under Article 7
- (e) The total net anthropogenic emissions and removals of greenhouse gases pursuant to decision 16/CMP.1 for the commitment period, calculated as the sum for all years of the commitment period to date of the amounts referred to in subparagraphs (b), (c) and (d) above.

56. Where a Party submits recalculated estimates of emissions and removals of greenhouse gases for a year of the commitment period, subject to the review in accordance with Article 8, the secretariat shall make appropriate amendments

- to the information contained in the database including, where relevant, the removal of previously applied adjustments.
57. The secretariat shall record and update the required level of the commitment period reserve for each Party included in Annex I, in accordance with decision 11/CMP.1.
 58. The secretariat shall annually record in the database for each Party included in Annex I the following information relating to transactions, for the previous calendar year and to date for the commitment period, following completion of the annual review under Article 8, including the application of any corrections, and resolution of any relevant questions of implementation:
 - (a) Total transfers of ERUs, CERs, AAUs and RMUs
 - (b) Total acquisitions of ERUs, CERs, AAUs and RMUs
 - (c) Net acquisitions of CERs resulting from afforestation and reforestation activities under Article 12
 - (d) Total issuances of RMUs relating to each activity under Article 3, paragraphs 3 and 4
 - (e) Total issuances of ERUs on the basis of Article 6 projects
 - (f) Total of ERUs, CERs and AAUs carried over from the previous commitment period
 - (g) Total cancellations of ERUs, CERs, AAUs and RMUs relating to each activity under Article 3, paragraphs 3 and 4
 - (h) Total cancellations of ERUs, CERs, AAUs and RMUs following determination by the Compliance Committee that the Party is not in compliance with its commitment under Article 3, paragraph 1
 - (i) Total of any other cancellations of ERUs, CERs, AAUs and RMUs
 - (j) Total retirements of ERUs, CERs, AAUs and RMUs.
 59. Upon expiration of the additional period for the fulfilment of commitments, and following review under Article 8 of the report submitted by the Party under paragraph 49 above, including the application of any corrections, and the resolution of any relevant questions of implementation, the secretariat shall record in the database the following information for each Party included in Annex I:
 - (a) The total additions to, or subtractions from, the assigned amount pursuant to Article 3, paragraphs 7 and 8, for the accounting of the compliance assessment, in accordance with paragraphs 11 and 12 above
 - (b) The total quantity of ERUs, CERs, AAUs and RMUs in the retirement account of the Party for that commitment period.

60. Upon completion of the Article 8 review of the annual inventory for the last year of the commitment period, and the resolution of any related question of implementation, the secretariat shall record in the database the aggregate anthropogenic carbon dioxide equivalent emissions of the greenhouse gases, and from the sources, listed in Annex A to the Kyoto Protocol of the Party for the commitment period.

C. Compilation and accounting reports

61. The secretariat shall publish an annual compilation and accounting report for each Party included in Annex I and forward it to the COP/MOP, the Compliance Committee and the Party concerned.

62. After the commitment period and the additional period for fulfilling commitments, the secretariat shall publish a final compilation and accounting report for each Party included in Annex I and forward it to the COP/MOP, the Compliance Committee and the Party concerned, indicating:

- (a) The aggregate anthropogenic carbon dioxide equivalent emissions of the Party for the commitment period as recorded under paragraph 60 above;
- (b) The total quantity of ERUs, CERs, AAUs and RMUs in the retirement account of the Party for the commitment period, as recorded under paragraph 59 (b) above;
- (c) Where applicable, the quantities of ERUs, CERs and AAUs in the registry available for carry-over to the subsequent commitment period;
- (d) Where applicable, the quantity in tonnes by which the aggregate anthropogenic carbon dioxide equivalent emissions exceed the total quantity of ERUs, CERs, AAUs and RMUs in the retirement account of the Party for the commitment period.

5.1.6 CMP Decision 15/CMP.1 - Guidelines for the preparation of the information required under Article 7 of the Kyoto Protocol (2005)

The Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol, Recalling Article 7 of the Kyoto Protocol to the United Nations Framework Convention on Climate Change,

Recalling that Parties have affirmed that the principles in decision 16/CMP.1 govern the treatment of land use, land-use change and forestry activities in the annex to that decision,

Having considered decision 22/CP.7,

Recognizing the importance of transparent reporting for facilitating the review process under Article 8 of the Kyoto Protocol,

1. Adopts the guidelines for the preparation of information under Article 7 of the Kyoto Protocol as contained in the annex to the present decision;
2. Decides that each Party included in Annex I, bearing in mind Article 7, paragraph 3, of the Kyoto Protocol and the needs of the review under Article 8 of the Kyoto Protocol, shall start reporting the information under Article 7, paragraph 1, of the Kyoto Protocol with the inventory submission due under the Convention for the first year of the commitment period after the Protocol has entered into force for that Party, but may start reporting this information from the year following the submission of the information referred to in paragraph 6 of the annex to decision 13/CMP.1 on a voluntary basis;
3. Decides that a Party included in Annex I shall fail to meet the methodological and reporting requirements under Article 7, paragraph 1, for the purpose of the eligibility requirements under paragraph 21 of the guidelines adopted under decision 16/CP.7, paragraph 31 of the guidelines adopted under decision 17/CP.7, and paragraph 2 of the guidelines adopted under decision 18/CP.7 if:
 - (a) The Party concerned has failed to submit an annual inventory of anthropogenic emissions by sources and removals by sinks of greenhouse gases not controlled by the Montreal Protocol, including the national inventory report and the common reporting format, within six weeks of the submission date established by the Conference of the Parties;
 - (b) The Party concerned has failed to include an estimate for an Annex A source category (as defined in chapter 7 of the Intergovernmental Panel on Climate Change Good Practice Guidance and Uncertainty Management in National Greenhouse Gas Inventories, hereinafter referred to as the IPCC good practice guidance) that individually accounted for 7 per cent or more of the Party's aggregate emissions, defined as aggregate submitted emissions of the gases and from the sources listed in Annex A to the Kyoto Protocol, in the most recent of the Party's reviewed inventories in which the source was estimated;
 - (c) For any single year during the commitment period, the aggregate adjusted greenhouse gas emissions for the Party concerned exceed the aggregate submitted emissions, defined as aggregate submitted emissions of the gases and from the sources listed in Annex A to the Kyoto Protocol, by more than 7 per cent;
 - (d) At any time during the commitment period the sum of the numerical values of the percentages calculated according to subparagraph (c) above for all years of the commitment period for which the review has been conducted exceeds 20;

- (e) An adjustment for any key source category (as defined in chapter 7 of the IPCC good practice guidance) of the Party concerned that accounted for 2 per cent or more of the Party's aggregate emissions of the gases from the sources listed in Annex A was calculated during the inventory review in three subsequent years, unless the Party has requested assistance from the facilitative branch of the Compliance Committee in addressing this problem, prior to the beginning of the first commitment period, and the assistance is being provided;
4. Requests the secretariat to prepare a report relating to paragraph 4 of section VI.1 of the annex to decision 5/CP.6, based on information contained in national communications from Parties and other relevant sources, for consideration by the Subsidiary Body for Scientific and Technological Advice. This report shall be prepared each time that the review process under Article 8 of the Kyoto Protocol relating to national communications and supplementary information from Parties included in Annex I is completed.

ANNEX

Guidelines for the preparation of the information required under Article 7 of the Kyoto Protocol²⁰

I. Reporting of supplementary information under Article 7, paragraph 1²¹

A. Applicability

1. The provisions of these guidelines shall apply for each Party included in Annex I which is also a Party to the Kyoto Protocol.

B. General approach

2. Each Party included in Annex I shall include the necessary supplementary information required by these guidelines, for the purpose of ensuring compliance with Article 3, in its annual inventory of anthropogenic emissions by sources and removals by sinks of greenhouse gases not controlled by the Montreal Protocol, prepared in accordance with Article 5, paragraph 2, and submitted in accordance with decisions of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (COP/MOP), taking into account any relevant decisions of the Conference of the Parties (COP). A Party included in Annex I need not separately submit an inventory under Article 12, paragraph 1 (a), of the Convention.

²⁰ Note that additional reporting requirements are included in the annex to decision 13/CMP.1.

²¹ "Article" in these guidelines refers to an Article of the Kyoto Protocol, unless otherwise specified.

C. Objectives

3. The objectives of these guidelines are:
 - (a) To enable Parties included in Annex I to meet their commitments for reporting information in accordance with Article 7, paragraph 1;
 - (b) To promote the reporting of consistent, transparent, comparable, accurate and complete information by Parties included in Annex I;
 - (c) To facilitate the preparation of the information to be submitted to the COP/MOP by Parties included in Annex I;
 - (d) To facilitate the review under Article 8 of inventories and supplementary information under Article 7, paragraph 1, from Parties included in Annex I.

D. Greenhouse gas inventory information

4. Each Party included in Annex I shall describe in its annual inventory any steps taken to improve estimates in areas that were previously adjusted.
5. Each Party included in Annex I shall include in its annual²² greenhouse gas inventory information on anthropogenic greenhouse gas emissions by sources and removals by sinks from land use, land-use change and forestry activities under Article 3, paragraph 3, and, if any, elected activities under Article 3, paragraph 4, in accordance with Article 5, paragraph 2, as elaborated by any good practice guidance in accordance with relevant decisions of the COP/MOP on land use, land-use change and forestry. Estimates for Article 3, paragraphs 3 and 4, shall be clearly distinguished from anthropogenic emissions from the sources listed in Annex A to the Kyoto Protocol. In reporting the information requested above, each Party included in Annex I shall include the reporting requirements specified in paragraphs 6 to 9 below, taking into consideration the selected values in accordance with paragraph 16 of the annex to decision 16/CMP.1.
6. General information to be reported for activities under Article 3, paragraph 3, and any elected activities²³ under Article 3, paragraph 4, shall include:
 - (a) Information on how inventory methodologies have been applied taking into account any IPCC good practice guidance on land use, land-use change and forestry agreed by the COP and recognizing the principles as laid out in decision 16/CMP.1

22 It is recognized in the Intergovernmental Panel on Climate Change (IPCC) Revised 1996 IPCC Guidelines for National Greenhouse Gas Inventories that the current practice on land use, land use change and forestry does not in every situation request annual data collection for the purpose of preparing annual inventories based on a sound scientific basis.

23 The elected activities shall be the same as those identified in the Party's report referred to in paragraph 8 of the annex to decision 13/CMP.1.

- (b) The geographical location of the boundaries of the areas that encompass:
 - (i) Units of land subject to activities under Article 3, paragraph 3
 - (ii) Units of land subject to activities under Article 3, paragraph 3, which would otherwise be included in land subject to elected activities under Article 3, paragraph 4, under the provisions of paragraph 8 of the annex to decision 16/CMP.1
 - (iii) Land subject to elected activities under Article 3, paragraph 4

The information aims to ensure that units of land and areas of land are identifiable. Parties are encouraged to elaborate on this information on the basis of any relevant decisions of the COP/MOP on good practice guidance associated with land use, land-use change and forestry under Article 8

- (c) The spatial assessment unit used for determining the area of accounting for afforestation, reforestation and deforestation
- (d) Information on anthropogenic greenhouse gas emissions by sources and removals by sinks²⁴ resulting from activities under Article 3, paragraphs 3 and 4, for all geographical locations reported in the current and previous years, under paragraph 6 (b), above, since the beginning of the commitment period or the onset of the activity, whichever comes later. In the latter case the year of the onset of the activity shall also be included. Once land is accounted for under Article 3, paragraph 3, or Article 3, paragraph 4, reporting shall continue throughout subsequent and contiguous commitment periods
- (e) Information on which, if any, of the following pools – above-ground biomass, belowground biomass, litter, dead wood and/or soil organic carbon – were not accounted for, together with verifiable information that demonstrates that these unaccounted pools were not a net source of anthropogenic greenhouse gas emissions.

7. Information²⁵ should also be provided which indicates whether anthropogenic greenhouse gas emissions by sources and removals by sinks from land use, land-use change and forestry activities under Article 3, paragraph 3, and elected activities under Article 3, paragraph 4, factor out removals from:

- (a) Elevated carbon dioxide concentrations above pre-industrial levels;

24 Such information shall be within levels of confidence as elaborated by any IPCC good practice guidance adopted by the COP/MOP and in accordance with relevant decisions of the COP/MOP on land use, land-use change and forestry.

25 This recognizes that the intent of the appendix to the annex to decision 16/CMP.1 is to factor out the effects described in paragraph 7 (a)–(c) of these guidelines for the first commitment period.

- (b) Indirect nitrogen deposition
 - (c) The dynamic effects of age structure resulting from activities prior to 1 January 1990.
8. Specific information to be reported for activities under Article 3, paragraph 3, shall include:
- (a) Information that demonstrates that activities under Article 3, paragraph 3, began on or after 1 January 1990 and before 31 December of the last year of the commitment period, and are directly human-induced
 - (b) Information on how harvesting or forest disturbance that is followed by the re-establishment of a forest is distinguished from deforestation
 - (c) Information on emissions and removals of greenhouse gases from lands harvested during the first commitment period following afforestation and reforestation on these units of land since 1990 consistent with the requirements under paragraph 4 of the annex to decision 16/CMP.1.
9. Specific information to be reported for any elected activities²⁶ under Article 3, paragraph 4, shall include:
- (a) A demonstration that activities under Article 3, paragraph 4, have occurred since 1 January 1990 and are human induced
 - (b) For Parties included in Annex I that elect cropland management and/or grazing land management and/or revegetation, anthropogenic greenhouse gas emissions by sources and removals by sinks for each year of the commitment period and for the base year for each of the elected activities on the geographical locations reported under paragraph 6 (b) above
 - (c) Information that demonstrates that emissions by sources and removals by sinks resulting from elected Article 3, paragraph 4, activities are not accounted for under activities under Article 3, paragraph 3
 - (d) For Parties included in Annex I that elect to account for forest management, under Article 3, paragraph 4, information that indicates to what extent the anthropogenic greenhouse gas removal by sinks offsets the debit incurred under Article 3, paragraph 3, if any, consistent with the requirements under paragraph 10 of the annex to decision 16/CMP.1.

26 See footnote 5.

E. Information on emission reduction units, certified emission reductions, temporary certified emission reductions, long-term certified emission reductions, assigned amount units and removal units²⁷

10. Each Party included in Annex I that is considered to have met the requirements to participate in the mechanisms shall report the supplementary information in this section of the guidelines beginning with information for the first calendar year in which it transferred or acquired emission reduction units (ERUs), certified emission reductions (CERs), temporary certified emission reductions (tCERs), long-term certified emission reductions (lCERs), assigned amount units (AAUs) and removal units (RMUs) in accordance with decision 13/CMP.1²⁸ and decision 5/CMP.1. This information shall be reported in conjunction with the inventory submission due under the Convention in the following year and until the first inventory submission due under the Protocol.
11. Each Party included in Annex I shall report, in a standard electronic format, the following information on ERUs, CERs, tCERs, lCERs, AAUs and RMUs from its national registry for the previous calendar year (based on Universal Time), distinguishing between units valid for different commitment periods:
 - (a) The quantities of ERUs, CERs, tCERs, lCERs, AAUs and RMUs in each account type specified in paragraph 21 (a), (e) and (f) of the annex to decision 13/CMP.1, the quantities of ERUs, CERs, AAUs and RMUs in each account type specified in paragraph 21 (c) and (d) of the annex to decision 13/CMP.1, the quantities of ERUs, CERs, tCERs, AAUs and RMUs in the replacement account specified in paragraph 43 of the annex to decision 5/CMP.1, the quantities of ERUs, CERs, lCERs, AAUs and RMUs in the replacement account specified in paragraph 47 of the annex to decision 5/CMP.1, and the quantities of ERUs, CERs, tCERs, lCERs, AAUs and RMUs in all accounts of the type referred to in paragraph 21 (b) of the annex to decision 13/CMP.1, at the beginning of the year
 - (b) The quantity of AAUs issued on the basis of the assigned amount pursuant to Article 3, paragraphs 7 and 8
 - (c) The quantity of ERUs issued on the basis of Article 6 projects and the corresponding quantities of AAUs and RMUs that were converted to ERUs
 - (d) The quantity of ERUs issued in accordance with paragraph 24 of the annex to decision 9/CMP.1 on the basis of Article 6 projects, verified

²⁷ These terms are defined in paragraphs 1–4 of the annex to decision 13/CMP.1 and paragraph 1 of the annex to decision 5/CMP.1.

²⁸ In accordance with paragraph 40 of the annex to decision 5/CMP.1, unless otherwise stated in that annex, all other provisions that pertain to CERs in the guidelines under Articles 7 and 8, as well as the modalities for the accounting of assigned amounts under Article 7, paragraph 4, shall also apply to tCERs and lCERs.

- under the supervision of the Article 6 supervisory committee, and the corresponding quantities of AAUs and RMUs that were converted to ERUs
- (e) The quantities of ERUs, CERs, tCERs, ICERs, AAUs and RMUs acquired from each transferring registry
 - (f) The quantity of RMUs issued on the basis of each activity under Article 3, paragraphs 3 and 4
 - (g) The quantities of ERUs, CERs, tCERs, ICERs, AAUs and RMUs transferred to each acquiring registry
 - (h) The quantity of ERUs transferred in accordance with paragraph 10 of the annex to decision 18/CP.7
 - (i) The quantities of ERUs, CERs, AAUs and RMUs cancelled under paragraph 32 of the annex to decision 13/CMP.1 on the basis of each activity under Article 3, paragraphs 3 and 4
 - (j) The quantities of ERUs, CERs, AAUs and RMUs cancelled under paragraph 37 of the annex to decision 13/CMP.1 following determination by the Compliance Committee that the Party is not in compliance with its commitment under Article 3, paragraph 1
 - (k) The quantities of other ERUs, CERs, tCERs, ICERs, AAUs and RMUs cancelled under paragraph 33 of the annex to decision 13/CMP.1
 - (l) The quantities of ERUs, CERs, tCERs, ICERs, AAUs and RMUs retired
 - (m) The quantity of tCERs that expired in its retirement account and tCER replacement account
 - (n) The quantity of ICERs that expired in its retirement account and ICER replacement account
 - (o) The quantity of tCERs and ICERs that expired in its holding accounts
 - (p) The quantities of ERUs, CERs, tCERs, AAUs and RMUs transferred to the tCER replacement account in accordance with paragraph 44 of the annex to decision 5/CMP.1
 - (q) The quantities of ERUs, CERs, AAUs and RMUs transferred to the ICER replacement account in accordance with paragraph 48 of the annex to decision 5/CMP.1
 - (r) The quantities of ERUs, CERs, ICERs, AAUs and RMUs transferred to the ICER replacement account in accordance with paragraph 49 of the annex to decision 5/CMP.1
 - (s) The quantities of ERUs, CERs, ICERs, AAUs and RMUs transferred to the ICER replacement account in accordance with paragraph 50 of the annex to decision 5/CMP.1

- (t) The quantities of expired tCERs and ICERs transferred to a cancellation account in accordance with paragraph 53 of the annex to decision 5/CMP.1
 - (u) The quantities of ERUs, CERs and AAUs carried over from the previous commitment period
 - (v) The quantities of ERUs, CERs, tCERs, ICERs, AAUs and RMUs in each account type specified in paragraph 21 (a), (e) and (f) of the annex to decision 13/CMP.1, the quantities of ERUs, CERs, AAUs and RMUs in each account type specified in paragraph 21 (c) and (d) of the annex to decision 5/CMP.1, the quantities of ERUs, CERs, tCERs, AAUs and RMUs in the replacement account specified in paragraph 43 of the annex to decision 5/CMP.1, the quantities of ERUs, CERs, ICERs, AAUs and RMUs in the replacement account specified in paragraph 47 of the annex to decision 5/CMP.1, and the quantities of ERUs, CERs, tCERs, ICERs, AAUs and RMUs in all accounts of the type referred to in paragraph 21 (b) of the annex to decision 13/CMP.1, at the end of the year.
12. Each Party included in Annex I shall report on any discrepancies²⁹ identified by the transaction log pursuant to paragraph 43 of the annex to decision 13/CMP.1 and paragraph 54 of the annex to decision 5/CMP.1, specifying whether the relevant transactions were completed or terminated and, in the case where transactions were not terminated, the transaction number(s) and serial numbers and quantities of ERUs, CERs, tCERs, ICERs, AAUs and RMUs concerned. The Party may also provide its explanation for not terminating the transaction.
 13. Each Party included in Annex I shall report on any notification it has received from the Executive Board of the clean development mechanism (CDM) directing the Party to replace ICERs in accordance with paragraph 49 of the annex to decision 5/CMP.1.
 14. Each Party included in Annex I shall report on any notification it has received from the Executive Board of the CDM directing the Party to replace ICERs in accordance with paragraph 50 of the annex to decision 5/CMP.1.
 15. Each Party included in Annex I shall report on any record of non-replacement identified by the transaction log in accordance with paragraph 56 of the annex to decision 5/CMP.1, specifying whether the replacement was subsequently undertaken and, in the case where replacement was not undertaken, the serial numbers and quantities of the tCERs and ICERs concerned. The Party should provide its explanation for not undertaking the replacement.

²⁹ Not including any record of non-replacement, which is to be reported separately under paragraph 15 below.

16. Each Party included in Annex I shall report the serial numbers and quantities of ERUs, CERs, tCERs, ICERs, AAUs and RMUs held in the national registry at the end of that year that are not valid for use towards compliance with commitments under Article 3, paragraph 1, pursuant to paragraph 43 (b) of the annex to decision 13/CMP.1.
17. Each Party included in Annex I shall report on any actions and the date of such actions taken to correct any problem that caused a discrepancy to occur, any changes to the national registry to prevent a discrepancy from reoccurring, and the resolution of any previously identified questions of implementation pertaining to transactions.
18. Each Party included in Annex I shall report the calculation of its commitment period reserve in accordance with the annex to decision 18/CP.7.
19. Each Party included in Annex I shall provide access, upon request of expert review teams, to information held in the national registry relating to holding accounts referred to in paragraph 21 (b) of the annex to decision 13/CMP.1, and other types of accounts and transactions for the previous calendar year, that substantiates the supplementary information reported under paragraphs 11 and 12 above.
20. Each Party included in Annex I shall, for the year of submission of the annual inventory for the last year of the commitment period, report the supplementary information described in this section of the guidelines that relates to the accounting of assigned amounts for that commitment period, in conjunction with the report upon expiration of the additional period for fulfilling commitments referred to in paragraph 49 of the annex to decision 13/CMP.1.

F. Changes in national systems in accordance with Article 5, paragraph 1

21. Each Party included in Annex I shall include in its national inventory report information on any changes that have occurred in its national system compared with information reported in its last submission, including information submitted in accordance with paragraphs 30 to 31 of these guidelines.

G. Changes in national registries

22. Each Party included in Annex I with a commitment inscribed in Annex B shall include in its national inventory report information on any changes that have occurred in its national registry, compared with information reported in its last submission, including information submitted in accordance with paragraph 32 of these guidelines.

H. Minimization of adverse impacts in accordance with Article 3, paragraph 14

23. Each Party included in Annex I shall provide information relating to how it is striving, under Article 3, paragraph 14, of the Kyoto Protocol, to implement its commitments mentioned in Article 3, paragraph 1, of the Kyoto Protocol in such a way as to minimize adverse social, environmental and economic impacts on developing country Parties, particularly those identified in Article 4, paragraphs 8 and 9, of the Convention.
24. Parties included in Annex II, and other Parties included in Annex I that are in a position to do so, shall incorporate information on how they give priority, in implementing their commitments under Article 3, paragraph 14, to the following actions, based on relevant methodologies referred to in paragraph 11 of decision 31/CMP.1:
 - (a) The progressive reduction or phasing out of market imperfections, fiscal incentives, tax and duty exemptions and subsidies in all greenhouse-gas-emitting sectors, taking into account the need for energy price reforms to reflect market prices and externalities
 - (b) Removing subsidies associated with the use of environmentally unsound and unsafe technologies
 - (c) Cooperating in the technological development of non-energy uses of fossil fuels, and supporting developing country Parties to this end
 - (d) Cooperating in the development, diffusion, and transfer of less-greenhouse-gas-emitting advanced fossil-fuel technologies, and/or technologies, relating to fossil fuels, that capture and store greenhouse gases, and encouraging their wider use; and facilitating the participation of the least developed countries and other non-Annex I Parties in this effort
 - (e) Strengthening the capacity of developing country Parties identified in Article 4, paragraphs 8 and 9, of the Convention for improving efficiency in upstream and downstream activities relating to fossil fuels, taking into consideration the need to improve the environmental efficiency of these activities
 - (f) Assisting developing country Parties which are highly dependent on the export and consumption of fossil fuels in diversifying their economies.
25. Where the information referred to in paragraphs 23 and 24 above has been provided in earlier submissions, the Party included in Annex I shall include information in its national inventory report on any changes that have occurred, compared with the information reported in its last submission.
26. The secretariat shall annually compile the supplementary information mentioned in paragraphs 23 to 25 above.

II. Reporting of supplementary information under Article 7, paragraph 2

A. Applicability

27. The provisions of these guidelines shall apply for each Party included in Annex I which is also a Party to the Kyoto Protocol.

B. General approach

28. Each Party included in Annex I shall include the necessary supplementary information required under these guidelines to demonstrate compliance with its commitments under the Protocol in its national communication submitted under Article 12 of the Convention, with the time frames for the obligations established by the Kyoto Protocol, and with the relevant decisions of the COP and the COP/MOP.

C. Objectives

29. The objectives of these guidelines are:
- (a) To enable Parties included in Annex I to meet their commitments for reporting information in accordance with Article 7, paragraph 2;
 - (b) To promote the reporting of consistent, transparent, comparable, accurate and complete information by Parties included in Annex I;
 - (c) To facilitate the preparation of the information to be submitted to the COP/MOP by Parties included in Annex I;
 - (d) To facilitate the review under Article 8 of national communications and of the supplementary information under Article 7, paragraph 2, from Parties included in Annex I.

D. National systems in accordance with Article 5, paragraph 1

30. Each Party included in Annex I shall provide a description of how it is performing the general and specific functions defined in the guidelines for national systems under Article 5, paragraph 1. The description shall contain the following elements:
- (a) The name and contact information for the national entity and its designated representative with overall responsibility for the national inventory of the Party
 - (b) The roles and responsibilities of various agencies and entities in relation to the inventory development process, as well as the institutional, legal and procedural arrangements made to prepare the inventory
 - (c) A description of the process for collecting activity data, for selecting emission factors and methods, and for the development of emission estimates

- (d) A description of the process and the results of key source identification and, where relevant, archiving of test data
 - (e) A description of the process for the recalculation of previously submitted inventory data
 - (f) A description of the quality assurance and quality control plan, its implementation and the quality objectives established, and information on internal and external evaluation and review processes and their results in accordance with the guidelines for national systems (g) A description of the procedures for the official consideration and approval of the inventory.
31. Where the Party included in Annex I has not performed all functions, the Party shall provide an explanation of which functions were not performed or were only partially performed and information on the action planned or taken to perform these functions in the future.

E. National registries

32. Each Party included in Annex I shall provide a description of how its national registry performs the functions defined in the annex to decision 13/CMP.1 and the annex to decision 5/CMP.1,³⁰ and complies with the requirements of the technical standards for data exchange between registry systems as adopted by the COP/MOP. The description shall include the following information:
- (a) The name and contact information of the registry administrator designated by the Party to maintain the national registry
 - (b) The names of the other Parties with which the Party cooperates by maintaining their national registries in a consolidated system
 - (c) A description of the database structure and capacity of the national registry
 - (d) A description of how the national registry conforms to the technical standards for data exchange between registry systems for the purpose of ensuring the accurate, transparent and efficient exchange of data between national registries, the clean development mechanism registry and the transaction log (decision 19/CP.7, paragraph 1)³¹

³⁰ In accordance with paragraph 40 of the annex to decision 5/CMP.1, unless otherwise stated in that annex, all other provisions that pertain to CERs in the guidelines under Articles 7 and 8, as well as the modalities for the accounting of assigned amount under Article 7, paragraph 4, also apply to tCERs and ICERs.

³¹ See decision 24/CP.8.

- (e) A description of the procedures employed in the national registry to minimize discrepancies in the issuance, transfer, acquisition, cancellation and retirement of ERUs, CERs, tCERs, ICERs, AAUs and/or RMUs, and replacement of tCERs and ICERs, and of the steps taken to terminate transactions where a discrepancy is notified and to correct problems in the event of a failure to terminate the transactions
- (f) An overview of security measures employed in the national registry to prevent unauthorized manipulations and to prevent operator error and of how these measures are kept up to date
- (g) A list of the information publicly accessible by means of the user interface to the national registry
- (h) The Internet address of the interface to its national registry
- (i) A description of measures taken to safeguard, maintain and recover data in order to ensure the integrity of data storage and the recovery of registry services in the event of a disaster
- (j) The results of any test procedures that might be available or developed with the aim of testing the performance, procedures and security measures of the national registry undertaken pursuant to the provisions of decision 19/CP.7 relating to the technical standards for data exchange between registry systems.

F. Supplimentarity relating to the mechanisms pursuant to Articles 6, 12 and 17

33. Each Party included in Annex I shall provide information on how its use of the mechanisms is supplemental to domestic action, and how its domestic action thus constitutes a significant element of the effort made to meet its quantified limitation and reduction commitments under Article 3, paragraph 1, in accordance with the provisions of decision 5/CP.6.

G. Policies and measures in accordance with Article 2

34. In providing information under part II, section V, of the guidelines for the preparation of national communications by Parties included in Annex I to the Convention (FCCC/CP/1999/7), each Party included in Annex I shall specifically address policies and measures implemented and/or further elaborated as well as cooperation with other such Parties in achieving its quantified emission limitation and reduction commitment under Article 3, in order to promote sustainable development. Such reporting shall take into account any relevant decision by the COP and the COP/MOP resulting from the process for further consideration of the issue of policies and measures (decision 13/CP.7).

35. With respect to aviation and marine bunker fuels, each Party included in Annex I shall, in pursuit of Article 2, paragraph 2, of the Kyoto Protocol, identify the steps it has taken to promote and/or implement any decisions by the International Civil Aviation Organization and the International Maritime Organization in order to limit or reduce emissions of greenhouse gases not controlled by the Montreal Protocol from aviation and marine bunker fuels.
36. Each Party included in Annex I shall also provide information not reported elsewhere under these guidelines on how it strives to implement policies and measures under Article 2 of the Kyoto Protocol in such a way as to minimize adverse effects, including the adverse effects of climate change, effects on international trade, and social, environmental and economic impacts on other Parties, especially developing country Parties and in particular those identified in Article 4, paragraphs 8 and 9, of the Convention, taking into account Article 3 of the Convention.

H. Domestic and regional programmes and/or legislative arrangements and enforcement and administrative procedures

37. Each Party included in Annex I shall report any relevant information on its domestic and regional legislative arrangements and enforcement and administrative procedures, established pursuant to the implementation of the Kyoto Protocol, according to its national circumstances. This information shall include:
 - (a) A description of any domestic and regional legislative arrangements and enforcement and administrative procedures the Party has in place to meet its commitments under the Kyoto Protocol, including the legal authority for such programmes, how they are implemented, and procedures for addressing cases of non-compliance under domestic law
 - (b) A description of any provisions to make information on these legislative arrangements and enforcement and administrative procedures (e.g. rules on enforcement and administrative procedures, action taken) publicly accessible
 - (c) A description of any institutional arrangements and decision-making procedures that it has in place to coordinate activities relating to participation in the mechanisms under Articles 6, 12 and 17, including the participation of legal entities.
38. Each Party included in Annex I shall provide a description of any national legislative arrangements and administrative procedures that seek to ensure that the implementation of activities under Article 3, paragraph 3, and any elected activities under Article 3, paragraph 4, also contribute to the conservation of biodiversity and sustainable use of natural resources.

I. Information under Article 10

39. Each Party included in Annex I shall report its activities, actions and programmes undertaken in fulfilment of its commitments under Article 10.
40. Each Party included in Annex I shall report on the steps it has taken to promote, facilitate and finance the transfer of technology to developing countries and to build their capacity, taking into account Article 4, paragraphs 3, 5 and 7, of the Convention, in order to facilitate the implementation of Article 10 of the Kyoto Protocol.

J. Financial resources

41. Each Party included in Annex II shall provide information on the implementation of Article 11 of the Kyoto Protocol, in particular information on what new and additional financial resources have been provided, in what way these resources are new and additional, and how that Party has taken into account the need for adequacy and predictability in the flow of these resources.
42. Each Party included in Annex II shall provide information on its contribution to the entity or entities entrusted with the operation of the financial mechanism.
43. Any Party included in Annex I that has provided funding for the adaptation fund established in accordance with decision 10/CP.7 shall report on its financial contributions to this fund. In doing so, the Party shall take into account the information reported in accordance with paragraph 6 of decision 10/CP.7.

III. Language

44. The information reported in accordance with these guidelines shall be submitted in one of the official languages of the United Nations. Parties included in Annex I are encouraged to submit a translation of the information under Article 7, paragraph 1, in English, in order to facilitate the annual review of the inventory information under Article 8.

IV. Updating

45. These guidelines shall be reviewed and revised, as appropriate, by consensus, in accordance with decisions of the COP/MOP, taking into account any relevant decisions of the COP.

5.1.7 Protocol Text - Article 8

1. The information submitted under Article 7 by each Party included in Annex I shall be reviewed by expert review teams pursuant to the relevant decisions of

the Conference of the Parties and in accordance with guidelines adopted for this purpose by the Conference of the Parties serving as the meeting of the Parties to this Protocol under paragraph 4 below. The information submitted under Article 7, paragraph 1, by each Party included in Annex I shall be reviewed as part of the annual compilation and accounting of emissions inventories and assigned amounts. Additionally, the information submitted under Article 7, paragraph 2, by each Party included in Annex I shall be reviewed as part of the review of communications.

2. Expert review teams shall be coordinated by the secretariat and shall be composed of experts selected from those nominated by Parties to the Convention and, as appropriate, by intergovernmental organizations, in accordance with guidance provided for this purpose by the Conference of the Parties.
3. The review process shall provide a thorough and comprehensive technical assessment of all aspects of the implementation by a Party of this Protocol. The expert review teams shall prepare a report to the Conference of the Parties serving as the meeting of the Parties to this Protocol, assessing the implementation of the commitments of the Party and identifying any potential problems in, and factors influencing, the fulfilment of commitments. Such reports shall be circulated by the secretariat to all Parties to the Convention. The secretariat shall list those questions of implementation indicated in such reports for further consideration by the Conference of the Parties serving as the meeting of the Parties to this Protocol.
4. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall adopt at its first session, and review periodically thereafter, guidelines for the review of implementation of this Protocol by expert review teams taking into account the relevant decisions of the Conference of the Parties.
5. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, with the assistance of the Subsidiary Body for Implementation and, as appropriate, the Subsidiary Body for Scientific and Technological Advice, consider:
 - (a) The information submitted by Parties under Article 7 and the reports of the expert reviews thereon conducted under this Article; and
 - (b) Those questions of implementation listed by the secretariat under paragraph 3 above, as well as any questions raised by Parties.
6. Pursuant to its consideration of the information referred to in paragraph 5 above, the Conference of the Parties serving as the meeting of the Parties to this Protocol shall take decisions on any matter required for the implementation of this Protocol.

5.1.8 CMP Decision 22/CMP.1, Guidelines for review under Article 8 (2005)

The Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol,
Recalling Article 8 of the Kyoto Protocol to the United Nations Framework Convention on Climate Change,

Having considered decision 23/CP.7, adopted by the Conference of the Parties at its seventh session,

Recognizing the importance of the review process under Article 8 for the implementation of other provisions of the Kyoto Protocol,

1. Adopts the guidelines for review under Article 8 of the Kyoto Protocol as contained in the annex to the present decision;
2. Decides that for each Party included in Annex I the review prior to the first commitment period shall be initiated upon receipt of the report as mentioned in paragraph 6 of the annex to decision 13/CMP.1. The review prior to the commitment period for each Party, including the procedures for adjustments under Article 5, paragraph 2, between the expert review team and the Party, shall be completed within 12 months of the initiation of the review and a report shall be forwarded expeditiously to the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol and the Compliance Committee. Further expertise and resources shall be provided to ensure the quality of the review in the case where review has to take place for several Parties at the same time;
3. Decides to start the periodic review for each Party included in Annex I when it submits its first national communication under the Kyoto Protocol;
4. Decides to start the annual review for each Party included in Annex I in the year that the Party commences reporting under Article 7, paragraph 1;
5. Decides to start the annual review in the year following the submission of the report referred to in paragraph 6 of the annex to decision 13/CMP.1 for those Parties included in Annex I that started reporting information under Article 7, paragraph 1, on a voluntary basis earlier than required under Article 7, paragraph 3;
6. Invites Parties that opt to submit information for review before January 2007 to notify the secretariat at their earliest convenience in order to facilitate the timely establishment of the expert review teams.

Annex

Guidelines for review under Article 8 of the Kyoto Protocol³²

32 "Article" in these guidelines refers to an article of the Kyoto Protocol, unless otherwise specified.

Part I: General approach to review

A. Applicability

1. Each Party included in Annex I to the Convention which is also a Party to the Kyoto Protocol will be subject to review of information submitted under Article 7 in accordance with the provisions of these guidelines. For these Parties, the review process established under these guidelines shall encompass any existing review under the Convention.

B. Objectives

2. The objectives for review under Article 8 of the Kyoto Protocol are:
 - (a) To establish a process for a thorough, objective and comprehensive technical assessment of all aspects of the implementation of the Kyoto Protocol by Parties included in Annex I;
 - (b) To promote consistency and transparency in the review of information submitted by Parties included in Annex I under Article 7 of the Kyoto Protocol;
 - (c) To assist Parties included in Annex I in improving their reporting of information under Article 7 and the implementation of their commitments under the Kyoto Protocol;
 - (d) To provide the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (COP/MOP), and the Compliance Committee, with a technical assessment of the implementation of the Kyoto Protocol by Parties included in Annex I.

C. General approach

3. The provisions of these guidelines shall apply to the review of information submitted by Parties included in Annex I under Article 7, relevant decisions of the COP/MOP and relevant decisions of the Conference of the Parties (COP) specific to Parties included in Annex I.
4. The expert review team shall provide a thorough and comprehensive technical assessment of all aspects of the implementation by a Party of the Kyoto Protocol and identify any potential problems in, and factors influencing, the fulfilment of commitments. The expert review team shall conduct technical reviews to provide information expeditiously to the COP/MOP and the Compliance Committee in accordance with the procedures in these guidelines.

5. At any stage in the review process, expert review teams may put questions to, or request additional or clarifying information from, the Parties included in Annex I regarding a potential problem identified by the team. The expert review team should offer advice to Parties included in Annex I on how to correct problems that they identify, taking into account the national circumstances of the Party. The expert review team shall also provide technical advice to the COP/MOP or the Compliance Committee, upon request.
6. Parties included in Annex I should provide the expert review team with access to information necessary to substantiate and clarify the implementation of their commitments under the Kyoto Protocol, in accordance with relevant guidelines adopted by the COP and/or the COP/MOP and, during the in-country visits, should also provide appropriate working facilities. Parties included in Annex I should make every reasonable effort to respond to all questions and requests from the expert review team for additional clarifying information relating to identified problems and correct such problems within the time limits set out in these guidelines.

1. Questions of implementation

7. If the expert review team identifies potential problems during the review, it shall put questions to the Party included in Annex I regarding these potential problems and offer advice to the Party on how to correct them. The Party may correct the problems or provide additional information within the time frame set out in these guidelines. Subsequently, a draft of each review report shall be forwarded to the Party subject to review for comment.
8. Only if an unresolved problem pertaining to language of a mandatory nature in these guidelines influencing the fulfilment of commitments still exists after the Party included in Annex I has been provided with opportunities to correct the problem within the time frames established under the relevant review procedures, shall that problem be listed as a question of implementation in the final review reports. An unresolved problem pertaining to language of a non-mandatory nature in these guidelines shall be noted in the final review report, but shall not be listed as a question of implementation.

2. Confidentiality

9. Pursuant to a request from the expert review team for additional data or information or access to data used in the preparation of the inventory, a Party included in Annex I may indicate whether such information and data are

confidential. In such a case, the Party should provide the basis for protecting such information, including any domestic law, and upon receipt of assurance that the data will be maintained as confidential by the expert review team, shall submit the confidential data in accordance with domestic law and in a manner that allows the expert review team access to sufficient information and data for the assessment of conformity with the Intergovernmental Panel on Climate Change (IPCC) Revised 1996 IPCC Guidelines for Greenhouse Gas Inventories as elaborated by the IPCC Good Practice Guidance and Uncertainty Management in National Greenhouse Gas Inventories and any good practice guidance adopted by the COP/MOP. Any confidential information and data submitted by a Party in accordance with this paragraph shall be maintained as confidential by the expert review team, in accordance with any decisions on this matter adopted by the COP/MOP.

10. An expert review team member's obligation not to disclose confidential information shall continue after termination of his or her service on the expert review team.

D. Timing and procedures

1. Initial review

11. Each Party included in Annex I shall be subject to review prior to the first commitment period or within one year after the entry into force of the Kyoto Protocol for that Party, whichever is later.
12. The expert review team shall review the following information contained or referenced in the report referred to in paragraph 6 of the annex to decision 13/CMP.1 for each Party included in Annex I:
 - (a) Complete inventories of anthropogenic emissions by sources and removals by sinks of greenhouse gases not controlled by the Montreal Protocol for all years from 1990, or other approved base year or period under Article 3, paragraph 5, to the most recent year available with an emphasis on the base year or period, including the selected base year for hydrofluorocarbons, perfluorocarbons and sulphur hexafluoride in accordance with Article 3, paragraph 8, and the most recent year, for conformity with Article 5, paragraph 2, in accordance with the procedures contained in part II of these guidelines
 - (b) The calculation of the assigned amount pursuant to Article 3, paragraphs 7 and 8, and the commitment period reserve, for conformity with the modalities for the accounting of assigned amounts under Article 7, paragraph 4, in accordance with the procedures contained in part III of these guidelines

- (c) The national system pursuant to Article 5, paragraph 1, in accordance with the procedures contained in part IV of these guidelines
 - (d) The national registry pursuant to Article 7, paragraph 4, in accordance with the procedures contained in part V of these guidelines.
13. The first national communication due under the Convention after the Kyoto Protocol has entered into force for that Party will be reviewed prior to the first commitment period in accordance with the provisions of paragraph 19 below.³³
14. For each Party included in Annex I, the elements specified in paragraph 12 (a) to 12 (d) above shall be reviewed in conjunction. An in-country visit shall be conducted as part of this review.

2. Annual review

15. Each Party included in Annex I shall be subject to an annual review of:
- (a) The annual inventory, including the national inventory report and the common reporting format (CRF), for conformity with Article 5, paragraph 2, in accordance with the procedures contained in part II of these guidelines
 - (b) The following supplementary information, in accordance with the guidelines for the preparation of the information required under Article 7, section I:
 - (i) Information provided during the commitment period for land use, land-use change and forestry activities under Article 3, paragraphs 3 and 4, for conformity with the requirements of relevant decisions of the COP/MOP, in accordance with the procedures contained in part II of these guidelines
 - (ii) Information on assigned amounts pursuant to Article 3, paragraphs 7 and 8, emission reduction units, certified emission reductions, assigned amount units and removal units, in accordance with the procedures contained in part III of these guidelines
 - (iii) Changes in national systems in accordance with the procedures contained in part IV of these guidelines
 - (iv) Changes in national registries in accordance with the procedures contained in part V of these guidelines

³³ This will be the case if this national communication is submitted prior to the first commitment period.

- (v) Information provided on matters relating to Article 3, paragraph 14, and supplementary information in accordance with the procedures contained in part VI of these guidelines.
16. The annual review, including adjustment procedures as part of the review of the annual or base year inventory, shall be concluded within one year of the due date for submission of the information to be reported under Article 7, paragraph 1.
 17. The elements specified in paragraph 15 (b) (iii) and (iv) above shall be subject to review as part of the annual review only if problems or significant changes have been identified by an expert review team or if the Party included in Annex I reports significant changes in its inventory report as defined in paragraphs 101 and 114 of these guidelines.
 18. The elements described in paragraph 15 above shall be reviewed together for each Party included in Annex I by a single expert review team.

3. Periodic review

19. Each national communication submitted under the Kyoto Protocol by a Party included in Annex I shall be subject to a scheduled in-country review in accordance with part VII of these guidelines.³⁴

E. Expert review teams and institutional arrangements

1. Expert review teams

20. Each submission under Article 7 shall be assigned to a single expert review team that shall be responsible for performing the review in accordance with the procedures and time frames established in these guidelines. A submission by a Party included in Annex I shall not be reviewed in two successive review years by expert review teams with identical composition.

³⁴ It is likely that the fourth national communication will be the first national communication under the Kyoto Protocol and that such review will occur prior to the first commitment period: Article 7, paragraph 3, states that each Party included in Annex I shall submit the information required under Article 7, paragraph 2, as part of the first national communication due under the Convention after the Protocol has entered into force for it and after adoption of guidelines for the preparation of information under Article 7. This Article also states that the COP/MOP shall determine the frequency of submission of national communications, taking into account any timetable for submission of national communications decided upon by the COP. Decision 11/CP.4 requests Parties included in Annex I to submit a third national communication by 30 November 2001 and subsequent national communications on a regular basis, at intervals of three to five years, to be decided at a future session, and requires that each of those national communications should be subject to an in-depth review coordinated by the secretariat.

21. Each expert review team shall provide a thorough and comprehensive technical assessment of information submitted under Article 7 and shall, under its collective responsibility, prepare a review report, assessing the implementation of the commitments of the Party included in Annex I and identifying any potential problems in, and factors influencing, the fulfilment of commitments. The expert review teams shall refrain from making any political judgement. If needed, the expert review teams shall calculate adjustments in accordance with any guidance under Article 5, paragraph 2, adopted by the COP/MOP, in consultation with the Party concerned.
22. Expert review teams shall be coordinated by the secretariat and shall be composed of experts selected on an ad hoc basis from the UNFCCC roster of experts and will include lead reviewers. Expert review teams formed for the tasks carried out under the provisions of these guidelines may vary in size and composition, taking into account the national circumstances of the Party under review and the different expertise needs of each review task.
23. Participating experts shall serve in their personal capacity.
24. Participating experts shall have recognized competence in the areas to be reviewed according to these guidelines. The training to be provided to experts, and the subsequent assessment after the completion of the training³⁵ and/or any other means needed to ensure the necessary competence of experts for participation in expert review teams shall be designed and operationalized in accordance with relevant decisions of the COP and the COP/MOP.
25. Experts selected for a specific review activity shall neither be nationals of the Party under review, nor be nominated or funded by that Party.
26. Experts shall be nominated by Parties to the Convention to the roster of experts and, as appropriate, by intergovernmental organizations, in accordance with guidance provided for this purpose by the COP.
27. Participating experts from Parties not included in Annex I and Parties included in Annex I with economies in transition shall be funded according to the existing procedures for participation in UNFCCC activities. Experts from other Parties included in Annex I shall be funded by their governments.
28. In the conduct of the review, expert review teams shall adhere to these guidelines and work on the basis of established and published procedures agreed upon by the Subsidiary Body for Scientific and Technological Advice (SBSTA), including quality assurance and control and confidentiality provisions.

35 Those experts that opt not to participate in the training have to undergo a similar assessment successfully in order to enable them to qualify for participation in expert review teams.

2. Competences

29. Competences required of members of the expert review teams for the review of annual information submitted under Article 7, paragraph 1, are:
 - (a) Greenhouse gas inventories in general and/or specific sectors (energy, industrial processes, solvents and other products use, agriculture, land use, land-use change and forestry, and waste);
 - (b) National systems, national registries, information on assigned amounts and information related to Article 3, paragraph 14.
30. Competences required of members of the expert review teams for the review of national communications and the supplementary information under Article 7, paragraph 2, are in those areas referred to in paragraph 135 (b) and (c) of these guidelines.

3. Composition of the expert review teams

31. The secretariat shall select the members of the review teams to review the annual information submitted under Article 7, paragraph 1, and to review national communications and the supplementary information under Article 7, paragraph 2, in a way that the collective skills of the team address the areas mentioned in paragraphs 29 and 30 above, respectively.
32. The secretariat shall select the members of the expert review teams with a view to achieving a balance between experts from Annex I and non-Annex I Parties in the overall composition of the expert review teams, without compromising the selection criteria referred to in paragraph 31 above. The secretariat shall make every effort to ensure geographical balance among those experts selected from non-Annex I Parties and among those experts selected from Annex I Parties.
33. The secretariat shall ensure that in any expert review team one co-lead reviewer shall be from a Party included in Annex I and one from a Party not included in Annex I.
34. Without compromising the selection criteria stated in paragraphs 31, 32 and 33 above, the formation of expert review teams should ensure, to the extent possible, that at least one member is fluent in the language of the Party under review.
35. The secretariat shall prepare an annual report to the SBSTA on the composition, including the selection of experts for the review teams and the lead reviewers, and the actions taken to ensure the application of the selection criteria stated in paragraphs 31 and 32 above.

4. Lead reviewers

36. Lead reviewers shall act as co-lead reviewers for the expert review teams under these guidelines.
37. Lead reviewers should ensure that the reviews in which they participate are performed according to the review guidelines and are performed consistently across Parties by each expert review team. They also should ensure the quality and the objectivity of the thorough and comprehensive technical assessments in the reviews and to provide for continuity, comparability and timeliness of the review.
38. Lead reviewers may be offered additional training to that referred to in paragraph 24 above to enhance their skills.
39. With the administrative support of the secretariat, lead reviewers shall, for each review activity:
 - (a) Prepare a brief work plan for the review activity;
 - (b) Verify that the reviewers have all the necessary information provided by the secretariat prior to the review activity;
 - (c) Monitor the progress of the review activity;
 - (d) Coordinate queries of the expert review team to the Party and coordinate the inclusion of the answers in the review reports;
 - (e) Provide technical advice to the ad hoc experts, if needed;
 - (f) Ensure that the review is performed and the review report is prepared in accordance with the relevant guidelines;
 - (g) For inventory reviews, verify that the review team gives priority to individual source categories for review in accordance with the guidelines.
40. Lead reviewers collectively shall also:
 - (a) Prepare an annual report to the SBSTA with suggestions on how to improve the review process in the light of paragraph 2 of the present guidelines;
 - (b) Advise on the standardized data comparisons of inventory information referred to in paragraph 67 below.
41. Lead reviewers shall comprise experts from Parties to the Convention nominated to the UNFCCC roster by Parties, and their collective skills shall address the areas mentioned in paragraph 29 above. During the period when national communications and the supplementary information under Article 7, paragraph 2, are reviewed, additional experts from Parties to the Convention nominated to the UNFCCC roster by Parties will act as lead reviewers whose collective skills relate to the areas referred to in paragraph 30 above.

42. Lead reviewers shall be assigned for a minimum period of two years and a maximum period of three years to ensure the continuity and consistency of the review process. Half of the lead reviewers shall be assigned initially for a term of two years and the other half for a term of three years. The terms of service of lead reviewers for a given period of service shall be designed and operationalized in accordance with relevant decisions of the COP and the COP/MOP.

5. Ad hoc review experts

43. Ad hoc review experts shall be selected from those nominated by Parties or, exceptionally and only when the required expertise for the task is not available among them, from the relevant intergovernmental organizations belonging to the UNFCCC roster of experts for specific annual or periodic reviews by the secretariat. They shall perform individual review tasks in accordance with the duties set out in their nomination.
44. Ad hoc review experts shall, as necessary, perform desk review tasks in their home countries and participate in in-country visits, centralized reviews and in review meetings.

6. Guidance by the SBSTA

45. The SBSTA shall provide general guidance to the secretariat on the selection of experts and coordination of the expert review teams and to the expert review teams on the expert review process. The reports mentioned in paragraphs 35 and 40 (a) above are intended to provide the SBSTA with inputs for elaborating such guidance.

F. Reporting and publication

46. The expert review team shall, under its collective responsibility, produce the following review reports for each Party included in Annex I:
 - (a) For the initial review, a report on the review of the elements described in paragraph 12 (a) to 12 (d) above in accordance with parts II, III, IV and V of these guidelines
 - (b) For the annual review, a status report after the initial check of the annual inventory and a final report on the annual review of the elements in paragraph 15 above in accordance with parts II, III, IV, V and VI of these guidelines

- (c) For the periodic review, a report on the review of the national communication in accordance with part VII of these guidelines.
47. Review reports for each Party included in Annex I shall follow a format and outline comparable to that set out in paragraph 48 below and shall include the specific elements described in parts II to VII of these guidelines.
48. All final review reports prepared by the expert review team, except for status reports, shall include the following elements:
- (a) An introduction and summary
 - (b) A description of the technical assessment of each of the elements reviewed according to the relevant sections on the scope of the review in parts II to VII of these guidelines, including:
 - (i) A description of any potential problems in, and factors influencing the fulfilment of, commitments identified during the review
 - (ii) Any recommendations provided by the expert review team to solve the potential problems
 - (iii) An assessment of any efforts by the Party included in Annex I to address any potential problems identified by the expert review team during the current review or during previous reviews that have not been corrected
 - (iv) Any questions of implementation of the commitments under the Kyoto Protocol
 - (c) Possible recommendations by the expert review team on the conduct of the review in subsequent years, including which parts may need to be considered in more depth
 - (d) Information on any other issue of concern deemed relevant by the expert review team
 - (e) The sources of information used in the formulation of the final report.
49. Following their completion, all final review reports, including status reports on initial checks on annual inventories, shall be published and forwarded by the secretariat, together with any written comments on the final review report by the Party which is subject of the report, to the COP/MOP, the Compliance Committee and the Party concerned.

Part II: Review of annual inventories

A. Purpose

50. The purpose of the review of annual inventories of Parties included in Annex I is:
- (a) To provide an objective, consistent, transparent, thorough and comprehensive technical assessment of annual inventories of anthropogenic emissions by sources and removals by sinks of greenhouse gases not controlled by the Montreal Protocol for conformity with the Revised 1996 IPCC Guidelines for National Greenhouse Gas Inventories³⁶ as elaborated by the IPCC report entitled Good Practice Guidance and Uncertainty Management in National Greenhouse Gas Inventories³⁷ and any good practice guidance adopted by the COP/MOP, and with section I of the guidelines for the preparation of the information required under Article 7;
 - (b) To assess if adjustments under Article 5, paragraph 2, may be needed and, if so, to calculate adjustments in accordance with relevant decisions of the COP/MOP relating to Article 5, paragraph 2, of the Kyoto Protocol;
 - (c) To ensure that the COP/MOP and the Compliance Committee have reliable information on the annual inventories of anthropogenic emissions by sources and removals by sinks of greenhouse gases not controlled by the Montreal Protocol of each Party included in Annex I.

B. General procedures

51. The review should cover:
- (a) The annual inventory, including the national inventory report and the common reporting format (CRF)
 - (b) Supplementary information under Article 7, paragraph 1, incorporated in the Party's national inventory according to section I.D, greenhouse gas inventory information, of the guidelines for the preparation of the information required under Article 7.
52. The annual inventory review shall consist of two elements:
- (a) Initial check by the expert review team, with the assistance of the secretariat
 - (b) Individual inventory review by the expert review team.

36 In these guidelines, the Revised 1996 IPCC Guidelines for National Greenhouse Gas Inventories are referred to as the IPCC Guidelines.

37 In these guidelines, the IPCC report entitled Good Practice Guidance and Uncertainty Management in National Greenhouse Gas Inventories is referred to as the IPCC good practice guidance.

53. The individual inventory review shall occur in conjunction with the review of assigned amount, changes in national systems and changes in national registries as set out in part I of these guidelines.
54. The base year inventory shall be reviewed only once prior to the commitment period and adjusted if appropriate.
55. The annual inventory review should be conducted as a desk or centralized review. In addition, each Party included in Annex I shall be subject to at least one in-country visit by an expert review team during the commitment period as part of its annual review.
56. In-country visits should be scheduled, planned and take place with the consent of the Party included in Annex I subject to review.
57. In years when an in-country visit is not scheduled, an expert review team can request an in-country visit if it believes, based on the findings of the desk or centralized review, that such a visit is necessary to allow for fuller investigation of a potential problem that the team has identified, subject to the consent of the Party included in Annex I. The expert review team shall provide a rationale for the additional country visit and shall compile a list of questions and issues to be addressed during the in-country visit to be sent to the Party included in Annex I in advance of the visit. If such an in-country visit occurs, the expert review team may recommend that a pending scheduled in-country visit is not necessary.
58. If a Party included in Annex I fails to provide to the expert review team the data and information necessary for the assessment of conformity with the IPCC Guidelines as elaborated by the IPCC good practice guidance and any good practice guidance adopted by the COP/MOP, the expert review team shall assume that the estimate was not prepared in accordance with the IPCC Guidelines as elaborated by the IPCC good practice guidance and any good practice guidance adopted by the COP/MOP.

C. Initial checks of annual inventories

1. Scope of the review

59. The expert review team shall conduct an initial check as a desk or centralized review to examine that each Party included in Annex I has submitted a consistent, complete and timely annual inventory, including the national inventory report and the common reporting format (CRF), and that data contained in the CRF are complete by means of computerized analysis and checks and in the correct format to enable subsequent review stages to occur.

60. The initial check shall identify whether:

- (a) The submission is complete and information has been provided in the correct format in accordance with reporting guidelines on annual inventories;
- (b) All sources, sinks and gases included in the IPCC Guidelines and any good practice guidance adopted by the COP/MOP are reported;
- (c) Any gaps are explained by use of notation keys, such as NE (not estimated) and NA (not applicable), in the CRF and whether there is frequent use of these notation keys;
- (d) Methodologies are documented with notations in the CRF;
- (e) Estimates for carbon dioxide (CO₂) emissions from fossil fuel combustion are reported using the IPCC reference approach, in addition to estimates derived using national methods;
- (f) Estimates for hydrofluorocarbon, perfluorocarbon and sulphur hexafluoride emissions are reported by individual chemical species;
- (g) A Party included in Annex I has failed to submit an annual inventory or the national inventory report or the common reporting format by the due date, or within six weeks of the due date;
- (h) A Party included in Annex I has failed to include an estimate for a source category (as defined in chapter 7 of the IPCC good practice guidance) that individually accounted for 7 per cent or more of the Party's aggregate emissions, defined as aggregate submitted emissions of the gases and from the sources listed in Annex A to the Kyoto Protocol, in the most recent of the Party's reviewed inventories in which the source was estimated;
- (i) A Party included in Annex I has failed to provide the supplementary information in accordance with paragraphs 5 to 9 of the annex to decision 15/CMP.1.

2. Timing³⁸

61. The initial check for each Party included in Annex I shall be performed and a draft status report shall be completed within four weeks after the submission date of the annual inventory and sent to the Party for comment. A delay in the preparation of the draft status report shall not shorten the time available for the Party concerned to comment on the draft status report. The secretariat shall immediately notify the Party concerned of any omissions or technical format problems identified in the initial check.

38 For the initial review, the time frames for the initial check may serve as an indication.

62. Any information, corrections, additional information or comments on the draft status report received from the Party included in Annex I within six weeks of the submission due date shall be subject to an initial check and shall be covered in the final status report. A delay in the submission of the annual inventory shortens the time available for the Party concerned to comment on the draft status report.
63. The status report on the initial check for each Party included in Annex I shall be finalized within 10 weeks from the submission due date to be used in the individual inventory review.

3. Reporting

64. The status report shall include:
 - (a) The date of receipt of the inventory submission by the secretariat
 - (b) An indication of whether the annual inventory, including the national inventory report and the CRF, has been submitted
 - (c) An indication of whether any source category or gas of a source category is missing and, if so, an indication of the magnitude of the likely emissions of that source category or gas, if possible relative to the last inventory for which the review has been completed
 - (d) Identification of any inventory problems according to the categories listed in paragraph 60 (g) to (i) above.

D. Individual inventory reviews

1. Scope of the review

65. The expert review team shall, inter alia:
 - (a) Examine application of the requirements of the IPCC Guidelines as elaborated by any IPCC good practice guidance adopted by the COP/MOP and the reporting guidelines on annual inventories and relevant decisions of the COP/MOP, and identify any departure from these requirements;
 - (b) Examine application of the reporting requirements of section I.D of the guidelines for the preparation of information required under Article 7;
 - (c) Examine whether the IPCC good practice guidance and any other good practice guidance adopted by the COP/MOP was applied and documented, in particular noting the identification of key source categories, selection and use of methodologies and assumptions, development and selection

of emission factors, collection and selection of activity data, reporting of consistent time-series, reporting of uncertainties relating to inventory estimates and methodologies used for estimating those uncertainties and identify any inconsistencies;

- (d) Compare emission or removal estimates, activity data, implied emission factors and any recalculations with data from previous submissions of the Party included in Annex I to identify any irregularities or inconsistencies;
 - (e) Compare the activity data of the Party included in Annex I with relevant external authoritative sources, if feasible, and identify sources where there are significant differences;
 - (f) Assess the consistency of information in the common reporting format with that in the national inventory report;
 - (g) Assess the extent to which issues and questions raised by expert review teams in previous reports have been addressed and resolved;
 - (h) Recommend possible ways for improving the estimation and the reporting of inventory information.
66. The expert review team may use relevant technical information in the review process, such as information from international organizations.
67. The secretariat shall, under the direction of the expert review team, conduct a standardized set of data comparisons to be performed on the electronic common reporting format submissions to be used in the review process.

2. Identification of problems

68. The individual inventory review shall identify any problems for which adjustments under Article 5, paragraph 2, would be appropriate and initiate procedures for calculation of adjustments.
69. Problems should be identified as a failure to follow agreed guidelines under Article 5, paragraph 2, in preparing greenhouse gas inventories, as a failure to follow section I of the guidelines for the preparation of the information required under Article 7, and as a failure to follow agreed methodologies for estimating and reporting activities under Article 3, paragraphs 3 and 4, as adopted by the COP/MOP. These may be further subdivided as problems of:
- (a) Transparency, as defined in the UNFCCC reporting guidelines on annual inventories,³⁹ including:

³⁹ "Guidelines for the preparation of national communications by Parties included in Annex I to the Convention, Part I: UNFCCC reporting guidelines on annual inventories" (FCCC/CP/1999/7) or any subsequent revision of these guidelines by the COP.

- (i) Inadequate documentation and description of methodologies, assumptions and recalculations;
 - (ii) Failure to disaggregate national activity data, emission factors and other factors used in national methods at the required level unless an issue of confidentiality exists;
 - (iii) Failure to provide justifications for recalculations, references and information sources for key factors and data;
- (b) Consistency, as defined in the UNFCCC reporting guidelines on annual inventories, including failure to provide consistent time-series in accordance with the IPCC good practice guidance;
- (c) Comparability, as defined in the UNFCCC reporting guidelines on annual inventories, including failure to use agreed reporting formats;
- (d) Completeness, as defined in the UNFCCC reporting guidelines on annual inventories, including:
- (i) Gaps in the inventory estimates for source categories or gases;
 - (ii) Inventory data that do not provide full geographic coverage of sources and sinks of a Party included in Annex I;
 - (iii) Failure to provide full coverage of sources in a source category;
- (e) Accuracy, as defined in the UNFCCC reporting guidelines on annual inventories, including failure to provide estimates of uncertainty and address uncertainty through the application of the good practice guidance.
70. The expert review team shall calculate:
- (a) The percentage by which the aggregate adjusted greenhouse gas emissions for a Party included in Annex I exceed the aggregate submitted emissions, defined as aggregate submitted emissions of the gases and from the sources listed in Annex A to the Kyoto Protocol, for any single year;
 - (b) The sum of the numerical values of the percentages calculated in paragraph 70 (a) above for all years of the commitment period for which the review has been conducted.
71. The expert review team shall identify whether the same key source category as defined in chapter 7 of the IPCC good practice guidance was adjusted in previous reviews and, if so, the team shall indicate the number of reviews that identified and adjusted the problem previously and the percentage that the key source category contributes to the aggregate submitted emissions, defined as

aggregate submitted emissions of the gases and from the sources listed in Annex A to the Kyoto Protocol.

3. Timing

72. The individual inventory review, including adjustment procedures, shall be concluded within one year of the due date of submission of the information to be reported under Article 7, paragraph 1.
73. The expert review team shall list all problems identified, indicating which would need an adjustment, and send this list to the Party included in Annex I no later than 25 weeks from the submission due date of the annual inventory, if the inventory was submitted at least six weeks after the submission due date.
74. The Party included in Annex I shall comment on these questions within six weeks and, where requested by the review team, may provide revised estimates.
75. The expert review team shall prepare a draft individual inventory review report, which includes, where appropriate, adjusted estimates calculated according to guidance under Article 5, paragraph 2, within eight weeks of the receipt of the comments on the questions posed and shall send the draft report to the Party concerned.
76. The Party included in Annex I shall be provided with four weeks to comment on the draft individual inventory review report and, where appropriate, on whether it accepts or rejects the adjustment.
77. The expert review team shall prepare a final individual inventory review report within four weeks of the receipt of the comments on the draft report.
78. If a Party included in Annex I, during the above steps, is able to comment earlier than in the time frames given above, the Party concerned may use the time saved to comment on the revised final report. A total of four additional weeks to comment may be granted to Parties included in Annex I whose national language is not one of the United Nations official languages.

4. Procedures for adjustments under Article 5, paragraph 2

79. Adjustments referred to in Article 5, paragraph 2, of the Kyoto Protocol shall be applied only when inventory data submitted by Parties included in Annex I are found to be incomplete and/or are prepared in a way that is not consistent with the IPCC Guidelines as elaborated by the IPCC good practice guidance and any good practice guidance adopted by the COP/MOP.

80. The procedure for the calculation of adjustments shall be as follows:
- (a) During the individual inventory review, the expert review team shall identify problems to which the criteria in the guidance for adjustments under Article 5, paragraph 2, apply. The expert review team shall officially notify the Party included in Annex I of the reason why an adjustment is considered necessary and provide advice on how the problem could be corrected;
 - (b) The adjustment procedure should only commence after the Party included in Annex I has had opportunities to correct a problem and if the expert review team finds that the Party included in Annex I has not adequately corrected the problem through the provision of an acceptable revised estimate, in accordance with the time frames set out in paragraphs 73 to 78 above;
 - (c) The expert review team shall calculate adjustments in accordance with any guidance under Article 5, paragraph 2, adopted by the COP/MOP, in consultation with the Party concerned and within the time frame set out in these guidelines;⁴⁰
 - (d) The expert review team shall officially notify the Party concerned of the calculated adjustment(s) within the time frame set out in these guidelines. This notification shall describe the assumptions, data and methodologies used to calculate the adjustment(s), as well as the value of the adjustment(s);
 - (e) Within the time frame set out in these guidelines, the Party concerned shall notify the secretariat of its intention to accept or reject the adjustment(s), with its rationale. Failure to respond by this date shall be considered as acceptance of the adjustment(s), as follows:
 - (i) If the Party concerned accepts the adjustment(s), the adjustment(s) shall be applied for the purpose of compilation and accounting of emissions inventories and assigned amounts;
 - (ii) If the Party concerned disagrees with the proposed adjustment(s), it should send a notification to the expert review team, including its rationale, and the expert review team should send the notification along with its recommendation in its final report to the COP/MOP and the Compliance Committee, which will resolve the disagreement in accordance with the procedures and mechanisms on compliance.

⁴⁰ Special arrangements in the composition of the expert review teams may be needed for the case where an adjustment needs to be calculated.

81. A Party included in Annex I may submit a revised estimate for a part of its inventory for a year of the commitment period to which an adjustment was previously applied, provided that the revised estimate is submitted, at the latest, in conjunction with the inventory for the year 2012.
82. Subject to a review under Article 8 and the acceptance of the revised estimate by the expert review team, the revised estimate shall replace the adjusted estimate. In the event of a disagreement between the Party included in Annex I and the expert review team regarding the revised estimate, the procedure set out in paragraph 80 (e) (ii) above shall be followed. The option for a Party included in Annex I to submit a revised estimate for a part of its inventory to which an adjustment was previously applied should not prevent Parties included in Annex I from making best efforts to correct the problem at the time it was initially identified and in accordance with the time frame set forth in the guidelines for review under Article 8.

5. Reporting

83. The following specific elements shall be included in the reports referred to in paragraph 46 (a) and (b) above:
 - (a) A summary of the results of the inventory review, including a description of emission trends, key sources and methodologies and a general assessment of the inventory
 - (b) Identification of any inventory problems according to the categories listed in paragraph 69 above and a description of factors influencing the fulfilment of the inventory-related obligations of the Party included in Annex I
 - (c) Information on adjustments, if applicable, including, inter alia,
 - (i) The original estimate, if applicable
 - (ii) The underlying problem
 - (iii) The adjusted estimate
 - (iv) The rationale for the adjustment
 - (v) The assumptions, data and methodology used to calculate the adjustment
 - (vi) A description of how the adjustment is conservative
 - (vii) The expert review team's identification of possible ways for the Party included in Annex I to address the underlying problem

- (viii) The magnitude of the numerical values relating to an adjusted problem as identified under paragraph 70 above
- (ix) Recurrence of adjustments as identified under paragraph 71 above
- (x) An indication of whether the adjustment was agreed upon by the Party included in Annex I and the expert review team.

Part III: Review of information on assigned amounts pursuant to Article 3, paragraphs 7 and 8, emission reduction units, certified emission reductions, assigned amount units and removal units

A. Purpose

84. The purpose of this review is:

- (a) To provide an objective, consistent, transparent and comprehensive technical assessment of annual information on assigned amounts pursuant to Article 3, paragraphs 7 and 8, emission reduction units (ERUs), certified emission reductions (CERs), temporary certified emission reductions (tCERs), long-term certified emission reductions (lCERs), assigned amount units (AAUs) and removal units (RMUs) for conformity with the provisions of the annexes to decision 13/CMP.1⁴¹ and decision 5/CMP.1, with the technical standards for data exchange between registry systems and any further guidance adopted by the COP/MOP, and with section I.E of the annex to decision 15/CMP.1;
- (b) To ensure that the COP/MOP and the Compliance Committee have reliable information on assigned amounts pursuant to Article 3, paragraphs 7 and 8, ERUs, CERs, tCERs, lCERs, AAUs and RMUs of each Party included in Annex I.

B. General procedures

85. The review of information on assigned amounts pursuant to Article 3, paragraphs 7 and 8, ERUs, CERs, tCERs, lCERs, AAUs and RMUs, shall comprise the following procedures:

- (a) A thorough review of the calculation of assigned amounts pursuant to Article 3, paragraphs 7 and 8, as reported in accordance with paragraph

41 In accordance with paragraph 40 of the annex to decision 5/CMP.1, unless otherwise stated in that annex, all other provisions that pertain to certified emission reductions in the guidelines under Articles 7 and 8, as well as the modalities for the accounting of assigned amounts under Article 7, paragraph 4, also apply to tCERs and lCERs.

6 of the annex to decision 13/CMP.1 as part of the initial review of each Party included in Annex I performed in accordance with the procedures contained in part I of these guidelines

- (b) An annual review of the information on ERUs, CERs, tCERS, ICERs, AAUs and RMUs and of information on discrepancies reported in accordance with section I.E of the annex to decision 15/CMP.1 for each Party included in Annex I
- (c) A desk or centralized review of the information of each Party included in Annex I to be reported upon expiration of the additional period for fulfilment of commitments in accordance with paragraph 49 of the annex to decision 13/CMP.1 and of the information referred to in paragraph 20 of the annex to decision 15/CMP.1.

C. Scope of the review

86. For each Party:

- (a) The initial review shall cover the calculation of its assigned amount pursuant to Article 3, paragraphs 7 and 8, as reported in accordance with paragraph 6 of the annex to decision 13/CMP.1;
- (b) The annual review shall cover the:
 - (i) Information on ERUs, CERs, tCERS, ICERs, AAUs and RMUs reported in accordance with section I.E of the annex to the decision 15/CMP.1
 - (ii) Transaction log records, including records of any discrepancies forwarded to the secretariat by the transaction log pursuant to paragraph 43 of the annex to decision 13/CMP.1, and any records of non-replacement forwarded by the transaction log in accordance with paragraph 56 of the annex to decision 5/CMP.1, including records of any discrepancies or non-replacement that were forwarded to the secretariat since the start of the previous review and until the start of the review
 - (iii) Information contained in the national registry that substantiates or clarifies the information reported. For this purpose Parties included in Annex I shall provide the expert review team with effective access to their national registry during the review. The relevant parts of paragraphs 9 and 10 of part I of these guidelines shall also apply to this information
- (c) The review upon expiration of the additional period for fulfilling commitments shall cover the report upon expiration of the additional period for fulfilling commitments in accordance with paragraph 49 of the annex to decision 13/CMP.1 and paragraph 59 of decision 5/CMP.1, including the information reported under paragraph 20 of the annex to decision 15/CMP.1, and shall

include oversight of the preparation of the final compilation and accounting report for that Party published by the secretariat.

Identification of problems

87. During the initial review the expert review team shall assess whether:
- (a) The information is complete and submitted in accordance with the relevant provisions of paragraphs 6, 7 and 8 of the annex to decision 13/CMP.1, section I of the annex to decision 15/CMP.1, and relevant decisions of the COP/MOP;
 - (b) The assigned amount pursuant to Article 3, paragraphs 7 and 8, is calculated in accordance with the annex to decision 13/CMP.1, and is consistent with reviewed and adjusted inventory estimates;
 - (c) The calculation of the required level of the commitment period reserve is in accordance with paragraph 6 of the annex to decision 18/CP.7.
88. During the annual review the expert review team shall assess whether:
- (a) The information is complete and submitted in accordance with section I.E of the annex to decision 15/CMP.1 and relevant decisions of the COP/MOP;
 - (b) The information relating to issuance, cancellations, retirement, transfers, acquisitions, replacement and carry-over is consistent with information contained in the national registry of the Party concerned and with the records of the transactions log;
 - (c) The information relating to transfers and acquisitions between national registries is consistent with the information contained in the national registry of the Party concerned and with the records of the transaction log, and with information reported by the other Parties involved in the transactions;
 - (d) The information relating to acquisitions of CERs, tCERs, and ICERs from the CDM registry is consistent with the information contained in the national registry of the Party concerned and with the records of the transaction log, and with the clean development mechanism (CDM) registry;
 - (e) ERUs, CERs, AAUs and RMUs have been issued, acquired, transferred, cancelled, retired, or carried over to the subsequent or from the previous commitment period in accordance with the annex to decision 13/CMP.1;
 - (f) tCERs and ICERs have been issued, acquired, transferred, cancelled, retired and replaced, in accordance with the annex to decision 13/CMP.1 and the annex to decision 5/CMP.1;

- (g) The information reported under paragraph 11 (a) of section I.E. in the annex to decision 15/CMP.1 on the quantities of units in accounts at the beginning of the year is consistent with information submitted the previous year, taking into account any corrections made to such information, on the quantities of units in accounts at the end of the previous year;
- (h) The required level of the commitment period reserve, as reported, is calculated in accordance with paragraph 6 of the annex to decision 18/CP.7;
- (i) The assigned amount is calculated to avoid double accounting in accordance with paragraph 9 of the annex to decision 16/CMP.1;
- (j) Any discrepancy has been identified by the transaction log relating to transactions initiated by the Party, and if so the expert review team shall:
 - (i) Verify that the discrepancy has occurred and been correctly identified by the transaction log;
 - (ii) Assess whether the same type of discrepancy has occurred previously for that Party;
 - (iii) Assess whether the transaction was completed or terminated;
 - (iv) Examine the cause of the discrepancy and whether the Party or Parties has or have corrected the problem that caused the discrepancy;
 - (v) Assess whether the problem that caused the discrepancy relates to the capacity of the national registry to ensure the accurate accounting, issuance, holding, transfer, acquisition, cancellation and retirement of ERUs, CERs, tCERS, ICERs, AAUs and RMUs, the replacement of tCERs and ICERs, and the carry-over of ERUs, CERs and AAUs, and if so, initiate a thorough review of the registry system in accordance with part V of these guidelines.
- (k) Any record of non-replacement has been sent to the Party by the transaction log in relation to tCERs or ICERs held by the Party, and if so the expert review team shall:
 - (i) Verify that the non-replacement has occurred and been correctly identified by the transaction log;
 - (ii) Assess whether non-replacement has occurred previously for that Party;
 - (iii) Assess whether the replacement was subsequently undertaken;
 - (iv) Examine the cause of the non-replacement and whether the Party has corrected the problem that caused the non-replacement;

- (v) Assess whether the problem that caused the non-replacement relates to the capacity of the national registry to ensure the accurate accounting, holding, transfer, acquisition, cancellation, and retirement of ERUs, CERs, tCERs, ICERs, AAUs and RMUs, and the replacement of tCERs and ICERs, and if so, initiate a thorough review of the registry system in accordance with part V of these guidelines.
89. During the review upon expiration of the additional period for fulfilling commitments, the expert review team shall review the information submitted by the Party under Article 7, paragraph 1, to assess whether:
- (a) The information is reported in accordance with paragraph 49 of the annex to decision 13/CMP.1;
 - (b) The information is consistent with the information contained in the compilation and accounting database maintained by the secretariat and with the information contained in the Party's registry;
 - (c) There are any problems or inconsistencies in the information provided by the Party in accordance with paragraph 88 above;
 - (d) The quantity of AAUs, CERs, tCERs, ERUs and RMUs transferred into the tCER replacement account for the commitment period is equal to the quantity of tCERs in the retirement account, and in the tCER replacement account, that expired at the end of the commitment period;
 - (e) The quantity of AAUs, CERs, ICERs, ERUs and RMUs transferred into the ICER replacement account for the commitment period is equal to the sum of the quantity of ICERs in the retirement account, and the quantity of ICERs in the ICER replacement account, that expired at the end of the commitment period, and the quantity of ICERs identified by the Executive Board of the CDM as requiring replacement within the registry for the commitment period.
90. During the review upon expiration of the additional period for fulfilling commitments, the expert review team shall review the information submitted in accordance with paragraph 20 of the annex to decision 15/CMP.1 in accordance with paragraph 88 above.
91. Following the completion of the steps set out in paragraph 89 above and, if possible, resolution of any problems relating to the reported information, and taking account of the information contained in the compilation and accounting database maintained by the secretariat, the expert review team shall assess whether aggregate anthropogenic carbon dioxide equivalent emissions for the commitment period exceed the quantities of ERUs, CERs, tCERs, ICERs, AAUs, and RMUs in the retirement account of the Party for the commitment period.

D. Timing

92. The review of the calculation of assigned amount pursuant to Article 3, paragraphs 7 and 8, as part of the initial review shall be concluded within one year of the due date for submission of the report to facilitate the calculation of the assigned amount pursuant to Article 3, paragraphs 7 and 8, referred to in paragraph 6 of the annex to decision 13/CMP.1 and shall follow the time frames and procedures established in paragraph 93 below.
93. The annual review of the information on ERUs, CERs, tCERs, ICERs, AAUs and RMUs reported in accordance with section I.E of the annex to decision 15/CMP.1 shall be concluded within one year of the due date for the submission of the information under Article 7, paragraph 1, and include the following steps:
- (a) The expert review team shall list all problems identified, indicating which problems would need corrections to previous accounting of AAUs, ERUs, CERs, tCERs, ICERs or RMUs, and send this list to the Party included in Annex I no later than 25 weeks from the due date for submission of the annual inventory, if the information was submitted within six weeks after the submission due date
 - (b) The Party included in Annex I shall comment on these questions within six weeks and, where requested by the review team, may provide revisions to the accounting of AAUs, ERUs, CERs, tCERs, ICERs or RMUs. The expert review team shall prepare a draft review report within eight weeks of the receipt of the comments on the questions posed and shall send the draft report to the Party concerned for comments
 - (c) The Party included in Annex I shall provide its comments on the draft review report within four weeks of receipt of the report. The expert review team shall prepare a final review report within four weeks of the receipt of the comments on the draft report.
94. The review of the report upon expiration of the additional period for fulfilling commitments and of the information submitted in accordance with paragraph 20 of the annex to decision 15/CMP.1 shall be completed within 14 weeks of the due date for the submission of the information. The expert review team shall prepare a draft report within eight weeks of the due date for submission of the information. The Party concerned may comment on the draft report within four weeks of its receipt. The expert review team shall prepare a final review report within two weeks of receipt of comments on the draft report by the Party.

E. Reporting

95. The final review reports referred to in paragraphs 93 and 94 above shall include an assessment of the specific problems identified in accordance with paragraphs 87 to 91 above and shall follow the format and outline contained in paragraph 48 of part I of these guidelines, as appropriate.

Part IV: Review of national systems

A. Purpose

96. The purpose of the review of national systems is:
- (a) To provide a thorough and comprehensive technical assessment of the capacity of a national system and the adequacy of its institutional, legal and procedural arrangements to produce an inventory of anthropogenic emissions by sources and removals by sinks in conformity with Article 5, paragraph 2;
 - (b) To assess the extent to which the guidelines for national systems under Article 5, paragraph 1, have been adhered to, and to assist Parties included in Annex I in meeting their commitments under Article 5, paragraph 1;
 - (c) To provide the COP/MOP and the Compliance Committee with reliable information on national systems established under Article 5, paragraph 1.

B. General procedures

97. The review of national systems shall take place in two parts:
- (a) A thorough review of the national system, as part of the review prior to the commitment period and its in-country visit
 - (b) A desk or centralized review of any reported changes in the national system reported since the first thorough review, conducted in conjunction with the annual inventory review.
98. The review of national systems shall be conducted, as appropriate, through interviews with personnel involved in inventory planning, preparation and management, and through examination of relevant records and documentation, including use of the inventory CRF and preparation of the national inventory report.
99. Based on any findings during the individual inventory review and on findings relating to reported changes in national systems considered by the expert review

team to be potentially significant in relation to an identified problem in the inventory of the Party included in Annex I, the expert review team may request an additional country visit to review the relevant components of the national system in conjunction with an in-country inventory review.

C. Scope of the review

1. In-country review

100. The expert review team shall conduct a thorough and comprehensive review of the national system of each Party included in Annex I. The review of national systems should cover:

- (a) Activities undertaken by the Party included in Annex I to implement, and performance of, the general functions described in paragraph 10 of the guidelines for national systems,⁴² and the specific functions relating to inventory planning, preparation and management in accordance with paragraphs 12 to 17 of those guidelines;
- (b) Reported and archived information on national systems in accordance with guidelines under Article 5, paragraph 1, and Article 7, including plans and internal documentation relating to the functions mentioned in paragraph 100 (a) above.

2. Review of changes in national systems

101. Any significant changes in the functions of the national systems reported by Parties included in Annex I or identified by the expert review team during the in-country visit that may affect the preparation of greenhouse gas inventories in conformity with Article 5, paragraph 2, and the guidelines for national systems should be reviewed annually in conjunction with the annual inventory review. The scope of such a review shall follow the scope set out for the in country review according to paragraph 100 above.

⁴² The guidelines for national systems for the estimation of anthropogenic greenhouse gas emissions by sources and removals by sinks under Article 5, paragraph 1, of the Kyoto Protocol are referred to as “guidelines for national systems” in the present annex. The full text of the guidelines can be found attached to decision 19/CMP.1.

3. Identification of problems

102. The expert review team shall assess whether the Party included in Annex I has established and maintained the specific inventory planning components covered in paragraph 12 of the guidelines for national systems, on the basis of a review of the information provided on the national system under Article 7 and any additional information gathered.
103. The expert review team shall assess whether the Party included in Annex I has completed the inventory preparation components covered in paragraph 14 (a) and (d) of the guidelines for national systems, on the basis of the review of the information provided on the national system under Article 7 and any additional information gathered.
104. The expert review team shall assess whether the inventory preparation components covered in paragraph 14 (c), (e) and (g) of the guidelines for national systems are functioning adequately, on the basis of an assessment of the most recent annual inventory, its consistency with good practice, and any additional information gathered.
105. The expert review team shall assess whether the Party included in Annex I has archived inventory information according to the provisions of paragraphs 16 and 17 of the guidelines for national systems as part of its inventory management. The expert review team shall assess whether the archiving is functioning adequately on the basis of an assessment of:
 - (a) The completeness of archived information for a sample of source categories as chosen by the expert review teams, including key source categories, as defined in accordance with IPCC Guidelines and IPCC good practice guidance;
 - (b) The ability of the Party included in Annex I to respond in a timely manner to requests for clarifying inventory information resulting from the different stages of the review process of the most recent inventory.
106. Based on the assessment carried out in accordance with paragraphs 102 to 105 above, expert review teams shall identify any potential problems in, and factors influencing, the fulfilment of commitments relating to the functions of national systems according to paragraphs 10, 12, 14 and 16 of the guidelines for national systems. In addition, the expert review teams shall recommend how deficiencies of functions described in paragraphs 13, 15 and 17 of the guidelines for national systems could be improved. These provisions shall apply to both in-country reviews and reviews of changes in national systems.

D. Timing

107. During the process of in-country visit, the expert review team shall list all problems identified, and notify the Party included in Annex I not later than six weeks after the country visit on the problems identified. The Party included in Annex I shall comment on these problems not later than within six weeks. The expert review team shall prepare a draft of a review report on the national system, within six weeks of the receipt of the comments on the questions posed. Any corrections, additional information or comments on the draft report received from the Party included in Annex I within four weeks after the report has been sent to the Party included in Annex I shall be subject to review and shall be included in the final inventory review report. The expert review team shall prepare a final report on the review of the national system within four weeks of the receipt of the comments on the draft report. The review of national systems shall be concluded within one year of the date of submission of the information.
108. The process of review of changes in national systems shall follow the timetable for the review of annual inventories defined in part II of these guidelines. If either the annual inventory review or the review of changes in national systems recommends an in-depth review of national systems, the process of inventory review of national systems should be conducted together with the following in-country review either of the annual inventory or of the periodic national communication, whichever is earlier.

E. Reporting

109. The following specific elements shall be included in the reports referred to in paragraph 46 (a) and (b) above:
- (a) An evaluation of the overall organization of the national system, including a discussion of the effectiveness and reliability of the institutional, procedural and legal arrangements for estimating greenhouse gas emissions
 - (b) A technical assessment of the performance of each of the national system functions defined in paragraphs 10 to 17 of the guidelines for national systems, including an assessment of the system's strengths and weaknesses
 - (c) Any recommendations by the review team for further improvement of the national system of the Party included in Annex I.

Part V: Review of national registries

A. Purpose

110. The purpose of the review of national registries is:
- (a) To provide a thorough and comprehensive technical assessment of the capacity of a national registry to ensure the accurate accounting of the issuance, holding, transfer, acquisition, cancellation and retirement of ERUs, CERs, tCERs, ICERs, AAUs and RMUs, the replacement of tCERs and ICERs, and the carry-over of ERUs, CERs and AAUs;
 - (b) To assess the extent to which the registry requirements contained in the annex to decision 13/CMP.1,⁴³ and the annex to decision 5/CMP.1 and any decisions by the COP/MOP have been adhered to, and to assist Parties included in Annex I in meeting their commitments;
 - (c) To assess the extent to which the national registry conforms to the technical standards for data exchange between registry systems adopted by the COP/MOP;
 - (d) To provide the COP/MOP and the Compliance Committee with reliable information on national registries.

B. General procedures

111. The review of national registries shall take place in two parts:
- (a) A thorough review of the national registry as part of the initial review in accordance with paragraphs 11 to 14 in part I of these guidelines and in conjunction with its periodic review;
 - (b) A desk or centralized review of any changes of the national registry reported in accordance with section I.G of the annex to decision 15/CMP.1 in conjunction with the annual review;
112. A thorough review of the national registry shall also be conducted if the final review reports under paragraph 48 in part I of these guidelines recommend a thorough review of the national registry or if findings relating to reported changes in national registries considered by the expert review team lead to the

43 In accordance with paragraph 40 of the annex to decision 5/CMP.1, unless otherwise stated in that annex, all other provisions that pertain to certified emission reductions in the guidelines under Articles 7 and 8, as well as the modalities for the accounting of assigned amounts under Article 7, paragraph 4, also apply to tCERs and ICERs.

recommendation of a thorough review in the final review report. The expert review team shall use the standard set of electronic tests described in paragraph 116 below for this purpose. An in-country visit shall be conducted only if standardized electronic tests are not sufficient to identify the problems.

C. Scope of the review

113. The expert review team shall conduct a thorough and comprehensive review of the national registry of each Party included in Annex I. The review of the national registry should cover the extent to which the registry requirements contained in the annex to decision 13/CMP.1, the annex to decision 5/CMP.1 and the technical standards for data exchange between registry systems adopted by the COP/MOP have been adhered to.

1. Review of changes in the national registry

114. The expert review team shall review the information submitted as supplementary information under Article 7, paragraph 1, and shall identify any significant changes in the national registry reported by the Party or any problems identified by the expert review team in the course of the review of ERUs, CERs, tCERs, ICERs, AAUs and RMUs and transaction log records that may affect the performance of the functions contained in the annex to decision 13/CMP.1, the annex to decision 5/CMP.1 and the adherence to the technical standards for data exchange between registry systems in accordance with relevant COP/MOP decisions. This review should take place in conjunction with the annual review in accordance with the relevant procedures in paragraphs 115 to 117 below.

2. Identification of problems

115. The expert review team shall review the national registry, including the information provided on it, to assess whether:

- (a) The information on the national registry is complete and submitted in accordance with section I of the annex to decision 15/CMP.1, and with relevant decisions of the COP and the COP/MOP;
- (b) The registry conforms to the technical standards for data exchange between registry systems for the purpose of ensuring accurate, transparent and efficient exchange of data between national registries, the clean development registry and the international transaction log;

- (c) The transaction procedures, including those relating to the transaction log, are in accordance with the modalities for the accounting of assigned amounts under Article 7, paragraph 4, contained in the annex to decision 13/CMP.1 and the annex to decision 5/CMP.1;
 - (d) There are adequate procedures to minimize discrepancies in the issuance, transfer, acquisition, cancellation and retirement of ERUs, CERs, tCERs, ICERs, AAUs and RMUs, and in the replacement of tCERs and ICERs, and to take steps to terminate transactions where a discrepancy is notified, and to correct problems in the event of a failure to terminate the transactions;
 - (e) There are adequate security measures to prevent and resolve unauthorized manipulations and minimize operator error, and procedures for updating them;
 - (f) Information is publicly available in accordance with the annex to decision 13/CMP.1;
 - (g) There are adequate measures to safeguard, maintain and recover data in order to ensure the integrity of data storage and the recovery of registry services in the event of a disaster.
116. During the thorough review, the expert review team shall use a test version of the transaction log and a standard set of electronic tests and sample data to assess the capacity of the registry to perform its functions, including all types of transactions, referred to in the annex to decision 13/CMP.1 and the annex to decision 5/CMP.1, and to assess the adherence to the technical standards for data exchange between registry systems adopted by the COP/MOP. The expert review team may draw upon the results of any other testing relevant to the review of the registry.
117. Based on the assessments carried out in accordance with paragraphs 115 and 116 above, expert review teams shall identify any potential problems in, and factors influencing, the fulfilment of commitments relating to the performance of the functions of the national registry and the adherence to technical standards for data exchange between registry systems. In addition, the expert review team shall recommend how problems could be addressed.

D. Timing

118. During the thorough review, the expert review team shall list all the problems identified and shall notify the Party included in Annex I of the problems identified no later than six weeks after the start of the review or after the in-country visit, as appropriate. The Party included in Annex I shall comment on these problems within six weeks of the notification. The expert review team shall prepare a draft review report on the national registry within six weeks of

the receipt of the comments on the questions posed. Any corrections, additional information or comments on the draft report received from the Party included in Annex I within four weeks after the report has been sent to that Party shall be subject to review and shall be included in the final inventory review report. The expert review team shall prepare a final report on the review of the national registry within four weeks of the receipt of the comments on the draft report. The review of the national registry shall be concluded within one year of the due date for submission of the information.

119. The review of changes in the national registry shall follow the time frames and procedures for the annual review of the information to be submitted in accordance with section I.E of the annex to decision 15/CMP.1 established in part III of these guidelines. If either the annual review or the review of changes in the national registry recommends a thorough review of the national registry, and if a country visit is considered necessary, this thorough review should be conducted together with the subsequent incountry visit of either the annual inventory or the periodic national communication, whichever is earlier.

E. Reporting

120. The final review reports shall include an evaluation of the overall functioning of the national registry and an assessment of the specific problems identified in accordance with paragraphs 115 to 117 above, and shall follow the format and outline in accordance with paragraph 48 of part I of these guidelines.

Part VI: Review of information on the minimization of adverse impacts in accordance with Article 3, paragraph 14

A. Purpose

121. The purpose of the review of information of each Party included in Annex I in relation to Article 3, paragraph 14, is:
- (a) To provide a thorough objective and comprehensive technical assessment of the information submitted relating to how the Party included in Annex I is striving to implement its commitments under Article 3, paragraph 14;
 - (b) To assess trends and the extent to which the Party included in Annex I is striving to implement action to minimize adverse impacts on developing countries in accordance with Article 3, paragraph 14, and taking into account any relevant decisions by the COP and the COP/MOP;
 - (c) To assist Parties included in Annex I to improve their reporting of information under Article 3, paragraph 14;

- (d) To ensure that the COP/MOP and the Compliance Committee have reliable information on the review of minimization of adverse impacts in accordance with Article 3, paragraph 14.

B. General procedures

- 122. The review of the information on the minimization of adverse impacts in accordance with Article 13, paragraph 14, shall take place in two parts:
 - (a) An annual desk or centralized review of additional information submitted by Parties included in Annex I, conducted in conjunction with the annual inventory review
 - (b) A thorough and comprehensive review through in-country visits, conducted in conjunction with the review of national communications.

C. Scope of the review

1. Annual review

- 123. The expert review team shall, inter alia:
 - (a) Check whether the Party included in Annex I submitted the supplementary information in accordance with paragraphs 23 and 25 of the annex to decision 15/CMP.1 on action relating to the minimization of adverse effects under Article 3, paragraph 14;
 - (b) For the first year that the Party included in Annex I provides the information mentioned in paragraph 123 (a) above, conduct a desk or centralized review to assess whether each Party included in Annex I has submitted consistent, complete and timely information. For subsequent years, conduct a desk or centralized review to assess whether Parties included in Annex I have submitted information on any changes that have occurred, compared with the information reported in their last submission;
 - (c) Notify the Party concerned of any questions the team has regarding information on actions relating to minimization of adverse effects under Article 3, paragraph 14, and relevant decisions of the COP and the COP/MOP;
 - (d) Assess the extent to which issues and questions raised by previous reports have been addressed and resolved;
 - (e) Recommend possible ways to improve the reporting of information, including possible recommendations to the workshop on reporting methodologies mentioned in decision 9/CP.7.

2. In-country visit

124. Each Party included in Annex I shall be subject to at least one in-country visit by an expert review team during the commitment period in conjunction with the review of the national communication.
125. The in-country review shall provide a detailed examination of supplementary information incorporated in the annual inventory, in accordance with paragraphs 23 and 25 of the annex to decision 15/CMP.1 compiled by the secretariat and reviewed in paragraph 124 above for all years since the initial review.
126. Based on the assessment carried out in accordance with paragraphs 123 and 124 above, expert review teams shall identify any potential problems in, and factors influencing, the fulfilment of commitments under Article 3, paragraph 14, and relevant decisions of the COP and the COP/MOP.

3. Identification of problems

127. The problems identified during the assessment relating to the supplementary information reported in accordance with paragraphs 23 and 25 of the annex to decision 15/CMP.1 shall be identified as relating to:
 - (a) Transparency
 - (b) Completeness
 - (c) Timeliness.
128. Failure to submit supplementary information reported in accordance with paragraphs 23 and 25 of the annex to decision 15/CMP.1 shall be considered as a potential problem.

D. Timing

129. The process of the in-country review shall follow the timetable for the review of the national communication of the Party included in Annex I defined in part VII of these guidelines. The annual review process shall follow the timetable for the review of annual inventories defined in part II of these guidelines. The preparation of the reports should also follow these respective timetables.

E. Reporting

130. The following specific elements shall be included in the report referred to in paragraph 46 (a) and (b) above:
- (a) A technical assessment of the elements specified in paragraphs 123 and 125 above
 - (b) An identification of problems in accordance with paragraphs 127 and 128 above
 - (c) Any recommendations by the review team for further improvement of reporting by a Party included in Annex I.

Part VII: Review of national communications and information on other commitments under the Kyoto Protocol

A. Purpose

131. The purpose of the guidelines on the review of national communications of Parties included in Annex I, including information reported under Article 7, paragraph 2, is:
- (a) To provide a thorough and comprehensive technical assessment of national communications and information reported under Article 7, paragraph 2, of the Kyoto Protocol;
 - (b) To examine in an objective and transparent manner whether quantitative and qualitative information was submitted by Parties included in Annex I in accordance with section II of the guidelines for the preparation of the information required under Article 7 of the Kyoto Protocol;
 - (c) To promote consistency in the review of the information contained in the national communications of Parties included in Annex I, including information reported under Article 7, paragraph 2;
 - (d) To assist Parties included in Annex I to improve reporting of information under Article 7, paragraph 2, and the implementation of their commitments under the Protocol;
 - (e) To ensure that the COP/MOP and the Compliance Committee have reliable information on the implementation of commitments under the Kyoto Protocol by each Party included in Annex I.

B. General procedures

132. Supplementary information under Article 7, paragraph 2, shall be incorporated into the national communications and shall be reviewed as part of the review

of the communications. Each national communication submitted under the Kyoto Protocol by a Party included in Annex I shall be subject to a scheduled in-country periodic review.

133. Prior to the in-country visit, the expert review team shall conduct a desk or centralized review of the national communication of the Party included in Annex I. The review team shall notify the Party concerned of any questions the team has regarding the national communication and of any focal areas for the in-country visit.

C. Scope of the review

134. The review of the national communication shall also cover supplementary information reported under Article 7, paragraph 2.

135. The individual review shall:

- (a) Provide an assessment of the completeness of the national communication, including supplementary information reported under Article 7, paragraph 2, in accordance with the reporting requirements under Article 7, paragraph 2, and an indication of whether it was submitted on time;
- (b) Provide a detailed examination of each part of the national communication, as well as procedures and methodologies used in the preparation of the information, such as:
 - (i) National circumstances relevant to greenhouse gas emissions and removals;
 - (ii) Policies and measures;
 - (iii) Projections and the total effect of policies and measures;
 - (iv) Vulnerability assessment, climate change impacts and adaptation measures;
 - (v) Financial resources;
 - (vi) Transfer of technology;
 - (vii) Research and systematic observation;⁴⁴
 - (viii) Education, training and public awareness;

⁴⁴ Information provided under this heading includes a summary of the information provided on global climate observation systems.

- (c) Provide a detailed examination of supplementary information provided under Article 7, paragraph 2:
 - (i) Supplimentarity relating to the mechanisms pursuant to Articles 6, 12 and 17;
 - (ii) Policies and measures in accordance with Article 2;
 - (iii) Domestic and regional programmes and/or legislative arrangements and enforcement and administrative procedures;
 - (iv) Information under Article 10;
 - (v) Financial resources;
 - (d) Identify any potential problems in and factors influencing, the fulfilment of commitments relating to each part of the national communication and to the reporting of supplementary information under Article 7, paragraph 2.
136. All common elements in paragraph 135 (b) and (c) above are to be reviewed in conjunction. Identification of problems
137. The problems identified during the assessment relating to individual sections of the national communication, including supplementary information reported under Article 7, paragraph 2, shall be identified as relating to:
- (a) Transparency
 - (b) Completeness
 - (c) Timeliness.
138. Failure to submit any section of the national communication shall be considered as a potential problem.

D. Timing

139. If a Party included in Annex I expects difficulties with the timeliness of its national communication submission, it should inform the secretariat before the due date of the submission. If the national communication is not submitted within six weeks after the due date, the delay shall be brought to the attention of the COP/MOP and the Compliance Committee and made public.
140. The expert review teams shall make every effort to complete the individual review of national communications within two years of the national communication submission for each Party included in Annex I.
141. If additional information is requested during the in-country visit, it should be provided by the Party included in Annex I within six weeks after the visit.
142. The expert review team for each Party included in Annex I shall, under its collective responsibility, produce a draft of the national communication review

report following the format below to be finalized within eight weeks after the in-country visit.

143. The draft of each national communication review report will be sent to the Party included in Annex I subject to review for comment. The Party concerned shall be provided with four weeks of receipt of the draft report to provide comments on it.
144. The expert review team shall produce the finalized national communication review report taking into account comments of the Party included in Annex I within four weeks of receipt of the comments.

E. Reporting

145. The following specific elements shall be included in the report referred to in paragraph 46 (c) above:
 - (a) A technical assessment of the elements specified in paragraph 135 (b) and (c) above
 - (b) An identification of problems in accordance with paragraphs 137 and 138 above.
146. The secretariat shall produce a report on the compilation and synthesis of national communications for all Parties included in Annex I in accordance with the decisions of the COP/MOP.

Part VIII: Expedited procedure for the review for the reinstatement of eligibility to use the mechanisms

A. Purpose

147. The purpose of the review of information relating to a request, by a Party included in Annex I, for reinstatement of eligibility to use the mechanisms established under Articles 6, 12 and 17, pursuant to paragraph 2 of chapter X of the procedures and mechanisms relating to compliance, is:
 - (a) To provide an objective, transparent, thorough and comprehensive technical assessment of information provided by a Party on matters relating to Articles 5 and 7 which led to the suspension of its eligibility to use the mechanisms;
 - (b) To provide for an expedited review procedure for the reinstatement of eligibility to use the mechanisms for a Party included in Annex I which is able to demonstrate that it is no longer failing to meet eligibility requirements under Articles 6, 12 and 17;

- (c) To ensure that the enforcement branch of the Compliance Committee has reliable information to enable it to consider the request of a Party for the reinstatement of its eligibility to use the mechanisms.

B. General procedure

- 148. The review for the reinstatement of eligibility to use the mechanisms shall be an expedited procedure limited to the review of the matter or matters which led to the suspension of the eligibility. However, the expedited nature of this review procedure shall not compromise the thoroughness of the examination by the expert review team.
- 149. Any Party included in Annex I that has been suspended from eligibility to use the mechanisms may, at any time following suspension, submit information to the secretariat on the matter or matters which led to the suspension of eligibility. To enable the expert review team to perform its tasks, the information submitted by the Party concerned shall be additional to information previously submitted prior to or during the review that led to the suspension of eligibility. However, information previously submitted by the Party may also be included in the submission, if relevant. The information submitted by the Party shall be reviewed expeditiously in accordance with these guidelines.
- 150. The secretariat shall organize the review in the most expeditious way possible following the procedures established in these guidelines and taking into account the planned review activities in the regular review cycle. The secretariat shall convene an expert review team for conducting the expedited review procedures established in these guidelines in accordance with the relevant provisions of section E of part I of these guidelines and shall forward the information referred to in paragraph 149 above to this expert review team.
- 151. To ensure objectivity, the expert review team for the reinstatement of eligibility shall not be composed of the same members and lead reviewers who formed part of the expert review team that conducted the review which led to the suspension of eligibility of the Party concerned, and shall be composed of members with the necessary expertise for addressing the matter or matters contained in the Party's submission.
- 152. Depending on the issue that led to the suspension of the eligibility to participate in the mechanisms, the review shall be performed as a centralized review or an in-country review as provided for in parts II, III, IV and V of these guidelines, as deemed appropriate by the secretariat.⁴⁵

⁴⁵ For example, if the failure to have in place a national system for the estimation of anthropogenic emissions led to loss of eligibility and such a system has not previously been reviewed, the national system shall be reviewed in accordance with part IV of these guidelines, and such a review to include an in-country visit.

C. Scope of the review

153. The review shall cover the information submitted by the Party. The expert review team may also consider any other information, including information previously submitted by the Party and any information relating to the Party's subsequent inventory, which the expert review team considers necessary in order to complete its task. The expert review team shall assess, consistent with the applicable provisions in parts II, III, IV or V of these guidelines, whether the question or questions of implementation that led to suspension of eligibility have been addressed and resolved.
154. If the expedited review for reinstatement of eligibility relates to the submission of a revised estimate for a part of its inventory to which an adjustment was previously applied, the expert review team shall assess whether the revised estimate is prepared in accordance with the IPCC Guidelines as elaborated by the IPCC good practice guidance or whether the new information substantiates the original emission estimate provided by the Party.

D. Timing

155. A Party included in Annex I that intends to submit information under paragraph 149 above to the secretariat on the matter or matters which led to its suspension of eligibility should provide the secretariat with at least six weeks notice of the date on which it intends to submit such information. The secretariat, on receipt of such notice, should undertake the necessary preparations with the aim of ensuring that an expert review team is convened and ready to start consideration of the information within two weeks of the receipt of the submission of information under paragraph 149 above from the Party concerned.
156. For the expedited procedure for the review for reinstatement of eligibility, the following time frames shall apply from the date of receipt of the information:
 - (a) The expert review team shall prepare a draft expedited review report within five weeks of the receipt of information from the Party concerned
 - (b) The Party concerned shall be provided with up to three weeks to comment upon the draft expedited review report. If the Party concerned notifies the expert review team, within that period of time, that it does not intend to provide comments, then the draft expedite review report becomes the final expedited review report upon receipt of such notification. If the Party concerned does not provide any comments within that period of time, the draft expedited review report becomes the final expedited review report
 - (c) If comments by the Party are received within the time frame indicated above, the expert review team shall prepare a final expedited review report within three weeks of the receipt of comments on the draft report.

157. The time periods in paragraph 156 (a) to (c) above are considered maximum time periods. The expert review team and the Party should strive to complete the review in the shortest time possible. However, the expert review team may, with the agreement of the Party, extend the time periods in paragraph 156 (a) to (c) above for the expedited review procedure for an additional four weeks.
158. Where the start of the consideration of information by the expert review team is delayed due to the Party giving shorter notice than provided in paragraph 155 above, the expert review team may extend the time in paragraph 156 (a) up to the difference in time between the period for notification in paragraph 155 and the actual notification given by the Party.

E. Reporting

159. The expert review team shall, under its collective responsibility, produce a final review report on the reinstatement of eligibility in accordance with the relevant provisions of paragraph 48 of these guidelines and in accordance with the relevant provisions for review reports in parts II, III, IV or V of these guidelines depending on the specific reason for the suspension of eligibility.
160. The expert review team shall include a statement whether the team considered thoroughly all questions of implementation that led to the suspension of the eligibility in the time available for the reinstatement procedure and shall indicate whether there is or is not any longer a question of implementation with respect to the eligibility of the Party concerned to use the mechanisms established under Articles 6, 12 and 17.

5.2 Multilateral Procedures to Consider Non-Compliance

5.2.1 Protocol Text - Article 18

The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first session, approve appropriate and effective procedures and mechanisms to determine and to address cases of non-compliance with the provisions of this Protocol, including through the development of an indicative list of consequences, taking into account the cause, type, degree and frequency of non-compliance. Any procedures and mechanisms under this Article entailing binding consequences shall be adopted by means of an amendment to this Protocol.

5.2.2 CMP Decision 27/CMP.1 - Procedures and mechanisms relating to compliance under the Kyoto Protocol (2005)

The Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol, Recalling decision 24/CP.7 containing an annex on procedures and mechanisms relating to compliance under the Kyoto Protocol,

Recalling also Articles 18 and 20 of the Kyoto Protocol,

Noting the recommendation in decision 24/CP.7, paragraph 2, and the prerogative of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol to decide on the legal form of the procedures and mechanisms relating to compliance in terms of Article 18,

Noting also the proposal by Saudi Arabia to amend the Kyoto Protocol in this regard, Emphasizing the need for Parties to do their utmost for an early resolution of this issue,

1. Approves and adopts the procedures and mechanisms relating to compliance under the Kyoto Protocol, as contained in the annex to this decision, without prejudice to the outcome of the process outlined in paragraph 2 of this decision;
2. Decides to commence consideration of the issue of an amendment to the Kyoto Protocol in respect of procedures and mechanisms relating to compliance in terms of Article 18, with a view to making a decision by the third session of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol;
3. Requests the Subsidiary Body for Implementation to commence consideration of the issue noted in paragraph 2 above at its twenty-fourth session (May 2006) and report on the outcome to the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol at its third session (December 2007);
4. Also decides that the first meeting of the Compliance Committee shall be held in Bonn, Germany, early in 2006, and requests the secretariat to organize the meeting.

ANNEX

Procedures and mechanisms relating to compliance under the Kyoto Protocol

In pursuit of the ultimate objective of the United Nations Framework Convention on Climate Change, hereinafter referred to as “the Convention”, as stated in its Article 2, Recalling the provisions of the United Nations Framework Convention on Climate Change, and the Kyoto Protocol to the Convention, herein after referred to as “the Protocol”,

Being guided by Article 3 of the Convention,

Pursuant to the mandate adopted in decision 8/CP.4 by the Conference of the Parties at its fourth session,

The following procedures and mechanisms have been adopted:

I. Objective

The objective of these procedures and mechanisms is to facilitate, promote and enforce compliance with the commitments under the Protocol.

II. Compliance Committee

1. A compliance committee, hereinafter referred to as “the Committee”, is hereby established.
2. The Committee shall function through a plenary, a bureau and two branches, namely, the facilitative branch and the enforcement branch.
3. The Committee shall consist of twenty members elected by the Conference of the Parties serving as the meeting of the Parties to the Protocol, ten of whom are to be elected to serve in the facilitative branch and ten to be elected to serve in the enforcement branch.
4. Each branch shall elect, from among its members and for a term of two years, a chairperson and a vice-chairperson, one of whom shall be from a Party included in Annex I and one from a Party not included in Annex I. These persons shall constitute the bureau of the Committee. The chairing of each branch shall rotate between Parties included in Annex I and Parties not included in Annex I in such a manner that at any time one chairperson shall be from among the Parties included in Annex I and the other chairperson shall be from among the Parties not included in Annex I.
5. For each member of the Committee, the Conference of the Parties serving as the meeting of the Parties to the Protocol shall elect an alternate member.
6. Members of the Committee and their alternates shall serve in their individual capacities. They shall have recognized competence relating to climate change and in relevant fields such as the scientific, technical, socio-economic or legal fields.
7. The facilitative branch and the enforcement branch shall interact and cooperate in their functioning and, as necessary, on a case-by-case basis, the bureau of the Committee may designate one or more members of one branch to contribute to the work of the other branch on a non-voting basis.
8. The adoption of decisions by the Committee shall require a quorum of at least three fourths of the members to be present.

9. The Committee shall make every effort to reach agreement on any decisions by consensus. If all efforts at reaching consensus have been exhausted, the decisions shall as a last resort be adopted by a majority of at least three fourths of the members present and voting. In addition, the adoption of decisions by the enforcement branch shall require a majority of members from Parties included in Annex I present and voting, as well as a majority of members from Parties not included in Annex I present and voting. "Members present and voting" means members present and casting an affirmative or a negative vote.
10. The Committee shall, unless it decides otherwise, meet at least twice each year, taking into account the desirability of holding such meetings in conjunction with the meetings of the subsidiary bodies under the Convention.
11. The Committee shall take into account any degree of flexibility allowed by the Conference of the Parties serving as the meeting of the Parties to the Protocol, pursuant to Article 3, paragraph 6, of the Protocol and taking into account Article 4, paragraph 6, of the Convention, to the Parties included in Annex I undergoing the process of transition to a market economy.

III. Plenary of the Committee

1. The plenary shall consist of the members of the facilitative branch and the enforcement branch. The chairpersons of the two branches shall be the co-chairpersons of the plenary.
2. The functions of the plenary shall be:
 - (a) To report on the activities of the Committee, including a list of decisions taken by the branches, to each ordinary session of the Conference of the Parties serving as the meeting of the Parties to the Protocol;
 - (b) To apply the general policy guidance referred to in section XII (c) below, received from the Conference of the Parties serving as the meeting of the Parties to the Protocol;
 - (c) To submit proposals on administrative and budgetary matters to the Conference of the Parties serving as the meeting of the Parties to the Protocol for the effective functioning of the Committee;
 - (d) To develop any further rules of procedure that may be needed, including rules on confidentiality, conflict of interest, submission of information by intergovernmental and non governmental organizations, and translation, for adoption by the Conference of the Parties serving as the meeting of the Parties to the Protocol by consensus; and

- (e) To perform such other functions as may be requested by the Conference of the Parties serving as the meeting of the Parties to the Protocol for the effective functioning of the Committee.

IV. Facilitative Branch

1. The facilitative branch shall be composed of:
 - (a) One member from each of the five regional groups of the United Nations and one member from the small island developing States, taking into account the interest groups as reflected by the current practice in the Bureau of the Conference of the Parties;
 - (b) Two members from Parties included in Annex I; and
 - (c) Two members from Parties not included in Annex I.
2. The Conference of the Parties serving as the meeting of the Parties to the Protocol shall elect five members for a term of two years and five members for a term of four years. Each time thereafter, the Conference of the Parties serving as the meeting of the Parties to the Protocol shall elect five new members for a term of four years. Members shall not serve for more than two consecutive terms.
3. In electing the members of the facilitative branch, the Conference of the Parties serving as the meeting of the Parties to the Protocol shall seek to reflect competences in a balanced manner in the fields referred to in section II, paragraph 6, above.
4. The facilitative branch shall be responsible for providing advice and facilitation to Parties in implementing the Protocol, and for promoting compliance by Parties with their commitments under the Protocol, taking into account the principle of common but differentiated responsibilities and respective capabilities as contained in Article 3, paragraph 1, of the Convention. It shall also take into account the circumstances pertaining to the questions before it.
5. Within its overall mandate, as specified in paragraph 4 above, and falling outside the mandate of the enforcement branch, as specified in section V, paragraph 4, below, the facilitative branch shall be responsible for addressing questions of implementation:
 - (a) Relating to Article 3, paragraph 14, of the Protocol, including questions of implementation arising from the consideration of information on how a Party included in Annex I is striving to implement Article 3, paragraph 14, of the Protocol; and
 - (b) With respect to the provision of information on the use by a Party included in Annex I of Articles 6, 12 and 17 of the Protocol as supplemental to its domestic action, taking into account any reporting under Article 3, paragraph 2, of the Protocol.

6. With the aim of promoting compliance and providing for early warning of potential noncompliance, the facilitative branch shall be further responsible for providing advice and facilitation for compliance with:
 - (a) Commitments under Article 3, paragraph 1, of the Protocol, prior to the beginning of the relevant commitment period and during that commitment period;
 - (b) Commitments under Article 5, paragraphs 1 and 2, of the Protocol, prior to the beginning of the first commitment period; and
 - (c) Commitments under Article 7, paragraphs 1 and 4, of the Protocol prior to the beginning of the first commitment period.
7. The facilitative branch shall be responsible for applying the consequences set out in section XIV below.

V. Enforcement Branch

1. The enforcement branch shall be composed of:
 - (a) One member from each of the five regional groups of the United Nations and one member from the small island developing States, taking into account the interest groups as reflected by the current practice in the Bureau of the Conference of the Parties;
 - (b) Two members from Parties included in Annex I; and
 - (c) Two members from Parties not included in Annex I.
2. The Conference of the Parties serving as the meeting of the Parties to the Protocol shall elect five members for a term of two years and five members for a term of four years. Each time thereafter, the Conference of the Parties serving as the meeting of the Parties to the Protocol shall elect five new members for a term of four years. Members shall not serve for more than two consecutive terms.
3. In electing the members of the enforcement branch, the Conference of the Parties serving as the meeting of the Parties to the Protocol shall be satisfied that the members have legal experience.
4. The enforcement branch shall be responsible for determining whether a Party included in Annex I is not in compliance with:
 - (a) Its quantified emission limitation or reduction commitment under Article 3, paragraph 1, of the Protocol;
 - (b) The methodological and reporting requirements under Article 5, paragraphs 1 and 2, and Article 7, paragraphs 1 and 4, of the Protocol; and
 - (c) The eligibility requirements under Articles 6, 12 and 17 of the Protocol.

5. The enforcement branch shall also determine whether to apply:
 - (a) Adjustments to inventories under Article 5, paragraph 2, of the Protocol, in the event of a disagreement between an expert review team under Article 8 of the Protocol and the Party involved; and
 - (b) A correction to the compilation and accounting database for the accounting of assigned amounts under Article 7, paragraph 4, of the Protocol, in the event of a disagreement between an expert review team under Article 8 of the Protocol and the Party involved concerning the validity of a transaction or such Party's failure to take corrective action.
6. The enforcement branch shall be responsible for applying the consequences set out in section XV below for the cases of non-compliance mentioned in paragraph 4 above. The consequences of noncompliance with Article 3, paragraph 1, of the Protocol to be applied by the enforcement branch shall be aimed at the restoration of compliance to ensure environmental integrity, and shall provide for an incentive to comply.

VI. Submissions

1. The Committee shall receive, through the secretariat, questions of implementation indicated in reports of expert review teams under Article 8 of the Protocol, together with any written comments by the Party which is subject to the report, or questions of implementation submitted by:
 - (a) Any Party with respect to itself; or
 - (b) Any Party with respect to another Party, supported by corroborating information.
2. The secretariat shall forthwith make available to the Party in respect of which the question of implementation is raised, hereinafter referred to as "the Party concerned", any question of implementation submitted under paragraph 1 above.
3. In addition to the reports referred to in paragraph 1 above, the Committee shall also receive, through the secretariat, other final reports of expert review teams.

VII. Allocation and preliminary examination

1. The bureau of the Committee shall allocate questions of implementation to the appropriate branch in accordance with the mandates of each branch set out in section IV, paragraphs 4–7, and Section V, paragraphs 4–6.
2. The relevant branch shall undertake a preliminary examination of questions of implementation to ensure that, except in the case of a question raised by a Party with respect to itself, the question before it:
 - (a) Is supported by sufficient information;

- (b) Is not de minimis or ill-founded; and
 - (c) Is based on the requirements of the Protocol.
3. The preliminary examination of questions of implementation shall be completed within three weeks from the date of receipt of these questions by the relevant branch.
 4. After the preliminary examination of questions of implementation, the Party concerned shall, through the secretariat, be notified in writing of the decision and, in the event of a decision to proceed, be provided with a statement identifying the question of implementation, the information on which the question is based and the branch that will consider the question.
 5. In the event of the review of eligibility requirements for a Party included in Annex I under Articles 6, 12 and 17 of the Protocol, the enforcement branch shall also, through the secretariat, notify forthwith the Party concerned, in writing, of the decision not to proceed with questions of implementation relating to eligibility requirements under those articles.
 6. Any decision not to proceed shall be made available by the secretariat to other Parties and to the public.
 7. The Party concerned shall be given an opportunity to comment in writing on all information relevant to the question of implementation and the decision to proceed.

VIII. General procedures

1. Following the preliminary examination of questions of implementation, the procedures set out in this section shall apply to the Committee, except where otherwise provided in these procedures and mechanisms.
2. The Party concerned shall be entitled to designate one or more persons to represent it during the consideration of the question of implementation by the relevant branch. This Party shall not be present during the elaboration and adoption of a decision of the branch.
3. Each branch shall base its deliberations on any relevant information provided by:
 - (a) Reports of the expert review teams under Article 8 of the Protocol;
 - (b) The Party concerned;
 - (c) The Party that has submitted a question of implementation with respect to another Party;
 - (d) Reports of the Conference of the Parties, the Conference of the Parties serving as the meeting of the Parties to the Protocol, and the subsidiary bodies under the Convention and the Protocol; and

- (e) The other branch.
4. Competent intergovernmental and non-governmental organizations may submit relevant factual and technical information to the relevant branch.
 5. Each branch may seek expert advice.
 6. Any information considered by the relevant branch shall be made available to the Party concerned. The branch shall indicate to the Party concerned which parts of this information it has considered. The Party concerned shall be given an opportunity to comment in writing on such information. Subject to any rules relating to confidentiality, the information considered by the branch shall also be made available to the public, unless the branch decides, of its own accord or at the request of the Party concerned, that information provided by the Party concerned shall not be made available to the public until its decision has become final.
 7. Decisions shall include conclusions and reasons. The relevant branch shall forthwith, through the secretariat, notify the Party concerned in writing of its decision, including conclusions and reasons therefor. The secretariat shall make final decisions available to other Parties and to the public.
 8. The Party concerned shall be given an opportunity to comment in writing on any decision of the relevant branch.
 9. If the Party concerned so requests, any question of implementation submitted under section VI, paragraph 1; any notification under section VII, paragraph 4; any information under paragraph 3 above; and any decision of the relevant branch, including conclusions and reasons therefor, shall be translated into one of the six official languages of the United Nations.

IX. Procedures for the Enforcement Branch

1. Within ten weeks from the date of receipt of the notification under section VII, paragraph 4, the Party concerned may make a written submission to the enforcement branch, including rebuttal of information submitted to the branch.
2. If so requested in writing by the Party concerned within ten weeks from the date of receipt of the notification under section VII, paragraph 4, the enforcement branch shall hold a hearing at which the Party concerned shall have the opportunity to present its views. The hearing shall take place within four weeks from the date of receipt of the request or of the written submission under paragraph 1 above, whichever is the later. The Party concerned may present expert testimony or opinion at the hearing. Such a hearing shall be held in public, unless the enforcement branch decides, of its own accord or at the request of the Party concerned, that part or all of the hearing shall take place in private.

3. The enforcement branch may put questions to and seek clarification from the Party concerned, either in the course of such a hearing or at any time in writing, and the Party concerned shall provide a response within six weeks thereafter.
4. Within four weeks from the date of receipt of the written submission of the Party concerned under paragraph 1 above, or within four weeks from the date of any hearing pursuant to paragraph 2 above, or within fourteen weeks from the notification under section VII, paragraph 4, if the Party has not provided a written submission, whichever is the latest, the enforcement branch shall:
 - (a) Adopt a preliminary finding that the Party concerned is not in compliance with commitments under one or more of the articles of the Protocol referred to in section V, paragraph 4; or
 - (b) Otherwise determine not to proceed further with the question.
5. The preliminary finding, or the decision not to proceed, shall include conclusions and reasons therefor.
6. The enforcement branch shall forthwith, through the secretariat, notify the Party concerned in writing of its preliminary finding or decision not to proceed. The secretariat shall make the decision not to proceed available to the other Parties and to the public.
7. Within ten weeks from the date of receipt of the notification of the preliminary finding, the Party concerned may provide a further written submission to the enforcement branch. If the Party concerned does not do so within that period of time, the enforcement branch shall forthwith adopt a final decision confirming its preliminary finding.
8. If the Party concerned provides a further written submission, the enforcement branch shall, within four weeks from the date it received the further submission, consider it and adopt a final decision, indicating whether the preliminary finding, as a whole or any part of it to be specified, is confirmed.
9. The final decision shall include conclusions and reasons therefor.
10. The enforcement branch shall forthwith, through the secretariat, notify the Party concerned in writing of its final decision. The secretariat shall make the final decision available to the other Parties and to the public.
11. The enforcement branch, when the circumstances of an individual case so warrant, may extend any time frames provided for in this section.
12. Where appropriate, the enforcement branch may, at any time, refer a question of implementation to the facilitative branch for consideration.

X. Expedited procedures for the Enforcement Branch

1. Where a question of implementation relates to eligibility requirements under Articles 6, 12 and 17 of the Protocol, sections VII to IX shall apply, except that:
 - (a) The preliminary examination referred to in section VII, paragraph 2, shall be completed within two weeks from the date of receipt of the question of implementation by the enforcement branch;
 - (b) The Party concerned may make a written submission within four weeks from the date of receipt of the notification under section VII, paragraph 4;
 - (c) If so requested in writing by the Party concerned within two weeks from the date of receipt of the notification under section VII, paragraph 4, the enforcement branch shall hold a hearing as referred to in section IX, paragraph 2, that shall take place within two weeks from the date of receipt of the request or of the written submission under subparagraph (b) above, whichever is the later;
 - (d) The enforcement branch shall adopt its preliminary finding or a decision not to proceed within six weeks of the notification under section VII, paragraph 4, or within two weeks of a hearing under section IX, paragraph 2, whichever is the shorter;
 - (e) The Party concerned may make a further written submission within four weeks from the date of receipt of the notification referred to in section IX, paragraph 6;
 - (f) The enforcement branch shall adopt its final decision within two weeks from the date of receipt of any further written submission referred to in section IX, paragraph 7; and
 - (g) The periods of time stipulated in section IX shall apply only if, in the opinion of the enforcement branch, they do not interfere with the adoption of decisions in accordance with subparagraphs (d) and (f) above.
2. Where the eligibility of a Party included in Annex I under Articles 6, 12 and 17 of the Protocol has been suspended under section XV, paragraph 4, the Party concerned may submit a request to reinstate its eligibility, either through an expert review team or directly to the enforcement branch. If the enforcement branch receives a report from the expert review team indicating that there is no longer a question of implementation with respect to the eligibility of the Party concerned, it shall reinstate that Party's eligibility, unless the enforcement branch considers that there continues to be such a question of implementation, in which case the procedure referred to in paragraph 1 above shall apply. In response to a request submitted to it directly by the Party concerned, the enforcement branch shall decide as soon as possible, either that there no longer continues to be

a question of implementation with respect to that Party's eligibility in which case it shall reinstate that Party's eligibility, or that the procedure referred to in paragraph 1 above shall apply.

3. Where the eligibility of a Party to make transfers under Article 17 of the Protocol has been suspended under section XV, paragraph 5 (c), the Party may request the enforcement branch to reinstate that eligibility. On the basis of the compliance action plan submitted by the Party in accordance with section XV, paragraph 6, and any progress reports submitted by the Party including information on its emissions trends, the enforcement branch shall reinstate that eligibility, unless it determines that the Party has not demonstrated that it will meet its quantified emission limitation or reduction commitment in the commitment period subsequent to the one for which the Party was determined to be in noncompliance, hereinafter referred to as "the subsequent commitment period". The enforcement branch shall apply the procedure referred to in paragraph 1 above, adapted insofar as necessary for the purposes of the procedure in the present paragraph.
4. Where the eligibility of a Party to make transfers under Article 17 of the Protocol has been suspended under section XV, paragraph 5 (c), the enforcement branch shall reinstate that eligibility forthwith if the Party demonstrates that it has met its quantified emission limitation or reduction commitment in the subsequent commitment period, either through the report of the expert review team under Article 8 of the Protocol for the final year of the subsequent commitment period or through a decision of the enforcement branch.
5. In the event of a disagreement whether to apply adjustments to inventories under Article 5, paragraph 2, of the Protocol, or whether to apply a correction to the compilation and accounting database for the accounting of assigned amounts under Article 7, paragraph 4, of the Protocol, the enforcement branch shall decide on the matter within twelve weeks of being informed in writing of such disagreement. In doing so, the enforcement branch may seek expert advice.

XI. Appeals

1. The Party in respect of which a final decision has been taken may appeal to the Conference of the Parties serving as the meeting of the Parties to the Protocol against a decision of the enforcement branch relating to Article 3, paragraph 1, of the Protocol if that Party believes it has been denied due process.
2. The appeal shall be lodged with the secretariat within 45 days after the Party has been informed of the decision of the enforcement branch. The Conference of the Parties serving as the meeting of the Parties to the Protocol shall consider the appeal at its first session after the lodging of the appeal.

3. The Conference of the Parties serving as the meeting of the Parties to the Protocol may agree by a three-fourths majority vote of the Parties present and voting at the meeting to override the decision of the enforcement branch, in which event the Conference of the Parties serving as the meeting of the Parties to the Protocol shall refer the matter of the appeal back to the enforcement branch.
4. The decision of the enforcement branch shall stand pending the decision on appeal. It shall become definitive if, after 45 days, no appeal has been made against it. XII.

XII. Relationship with the Conference of the Parties serving as the meeting of the Parties to the Protocol

The Conference of the Parties serving as the meeting of the Parties to the Protocol shall:

- (a) In considering the reports of the expert review teams in accordance with Article 8, paragraphs 5 and 6 of the Protocol, identify any general problems that should be addressed in the general policy guidance referred to in subparagraph (c) below;
- (b) Consider the reports of the plenary on the progress of its work;
- (c) Provide general policy guidance, including on any issues regarding implementation that may have implications for the work of the subsidiary bodies under the Protocol;
- (d) Adopt decisions on proposals on administrative and budgetary matters; and
- (e) Consider and decide appeals in accordance with section XI.

XIII. Additional period for fulfilling commitments

For the purpose of fulfilling commitments under Article 3, paragraph 1, of the Protocol, a Party may, until the hundredth day after the date set by the Conference of the Parties serving as the meeting of the Parties to the Protocol for the completion of the expert review process under Article 8 of the Protocol for the last year of the commitment period, continue to acquire, and other Parties may transfer to such Party, emission reduction units, certified emission reductions, assigned amount units and removal units under Articles 6, 12 and 17 of the Protocol, from the preceding commitment period, provided the eligibility of any such Party has not been suspended in accordance with section XV, paragraph 4.

XIV. Consequences applied by the Facilitative Branch

The facilitative branch, taking into account the principle of common but differentiated responsibilities and respective capabilities, shall decide on the application of one or more of the following consequences:

- (a) Provision of advice and facilitation of assistance to individual Parties regarding the implementation of the Protocol;
- (b) Facilitation of financial and technical assistance to any Party concerned, including technology transfer and capacity building from sources other than those established under the Convention and the Protocol for the developing countries;
- (c) Facilitation of financial and technical assistance, including technology transfer and capacity building, taking into account Article 4, paragraphs 3, 4 and 5, of the Convention; and
- (d) Formulation of recommendations to the Party concerned, taking into account Article 4, paragraph 7, of the Convention.

XV. Consequences applied by the Enforcement Branch

1. Where the enforcement branch has determined that a Party is not in compliance with Article 5, paragraph 1 or paragraph 2, or Article 7, paragraph 1 or paragraph 4, of the Protocol, it shall apply the following consequences, taking into account the cause, type, degree and frequency of the non-compliance of that Party:
 - (a) Declaration of non-compliance; and
 - (b) Development of a plan in accordance with paragraphs 2 and 3 below.
2. The Party not in compliance under paragraph 1 above, shall, within three months after the determination of non-compliance, or such longer period that the enforcement branch considers appropriate, submit to the enforcement branch for review and assessment a plan that includes:
 - (a) An analysis of the causes of non-compliance of the Party;
 - (b) Measures that the Party intends to implement in order to remedy the non-compliance; and
 - (c) A timetable for implementing such measures within a time frame not exceeding twelve months which enables the assessment of progress in the implementation.
3. The Party not in compliance under paragraph 1 above shall submit to the enforcement branch progress reports on the implementation of the plan on a regular basis.

4. Where the enforcement branch has determined that a Party included in Annex I does not meet one or more of the eligibility requirements under Articles 6, 12 and 17 of the Protocol, it shall suspend the eligibility of that Party in accordance with relevant provisions under those articles. At the request of the Party concerned, eligibility may be reinstated in accordance with the procedure in section X, paragraph 2.
5. Where the enforcement branch has determined that the emissions of a Party have exceeded its assigned amount, calculated pursuant to its quantified emission limitation or reduction commitment inscribed in Annex B to the Protocol and in accordance with the provisions of Article 3 of the Protocol as well as the modalities for the accounting of assigned amounts under Article 7, paragraph 4, of the Protocol, taking into account emission reduction units, certified emission reductions, assigned amount units and removal units the Party has acquired in accordance with section XIII, it shall declare that that Party is not in compliance with its commitments under Article 3, paragraph 1, of the Protocol, and shall apply the following consequences:
 - (a) Deduction from the Party's assigned amount for the second commitment period of a number of tonnes equal to 1.3 times the amount in tonnes of excess emissions;
 - (b) Development of a compliance action plan in accordance with paragraphs 6 and 7 below; and
 - (c) Suspension of the eligibility to make transfers under Article 17 of the Protocol until the Party is reinstated in accordance with section X, paragraph 3 or paragraph 4.
6. The Party not in compliance under paragraph 5 above shall, within three months after the determination of non-compliance or, where the circumstances of an individual case so warrant, such longer period that the enforcement branch considers appropriate, submit to the enforcement branch for review and assessment a compliance action plan that includes:
 - (a) An analysis of the causes of the non-compliance of the Party;
 - (b) Action that the Party intends to implement in order to meet its quantified emission limitation or reduction commitment in the subsequent commitment period, giving priority to domestic policies and measures; and
 - (c) A timetable for implementing such action, which enables the assessment of annual progress in the implementation, within a time frame that does not exceed three years or up to the end of the subsequent commitment period, whichever occurs sooner. At the request of the Party, the enforcement branch may, where the circumstances of an individual case so warrant, extend the time for implementing such action for a period

which shall not exceed the maximum period of three years mentioned above.

7. The Party not in compliance under paragraph 5 above shall submit to the enforcement branch a progress report on the implementation of the compliance action plan on an annual basis.
8. For subsequent commitment periods, the rate referred to in paragraph 5 (a) above shall be determined by an amendment.

XVI. Relationship with Articles 16 and 19 of the Protocol The procedures and mechanisms relating to compliance shall operate without prejudice to Articles 16 and 19 of the Protocol.

XVII. Secretariat

The secretariat referred to in Article 14 of the Protocol shall serve as the secretariat of the Committee.

5.2.3 CMP Decision 4/CMP.2 - Compliance Committee (2006)

The Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol,

Recalling Article 18 of the Kyoto Protocol,

Recalling also its decision 27/CMP.1,

Having considered the annual report of the Compliance Committee to the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol,¹

Noting with appreciation the work done by the Compliance Committee of the Kyoto Protocol,

1. Adopts the rules of procedure of the Compliance Committee as contained in the annex to this decision, in accordance with the provisions of section III, paragraph 2 (d), of the annex to decision 27/CMP.1;
2. Invites Parties to make voluntary contributions to the Trust Fund for Supplementary Activities in support of the work of the Compliance Committee in 2007.

5.2.4 CMP Decision 4/CMP.4 – Compliance Committee (2008)

The Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol,

Recalling Article 18 of the Kyoto Protocol,

Recalling also decisions 27/CMP.1, 4/CMP.2 and 5/CMP.3,

Having considered the annual report of the Compliance Committee to the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol,⁴⁶

Noting the proposals of the Compliance Committee to amend the rules of procedure of the Committee in the light of the experience gained by its enforcement branch in its consideration of questions of implementation,

Recognizing the need to continue to ensure the stable, consistent and predictable application of the procedures and mechanisms relating to compliance and the rules of procedure of the Compliance Committee,

Emphasizing that it is not necessary to revisit these procedures and mechanisms and rules of procedure on a regular basis, unless needed and appropriate,

Noting the request of the Compliance Committee regarding funding for the costs of travel to and participation in meetings of the Compliance Committee,⁴⁷

Noting also the request of the Compliance Committee that the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol at its fourth session take into account, in its consideration of privileges and immunities for individuals serving in constituted bodies under the Kyoto Protocol, the situation of experts from whom advice is sought by the facilitative branch or the enforcement branch of the Compliance Committee,

Cognizant of decision -/CMP.43 on the issue of privileges and immunities for individuals serving on constituted bodies,

1. Notes with appreciation the work carried out by the Compliance Committee during the reporting period;
2. Adopts the amendments to the rules of procedure of the Compliance Committee as contained in the annex to this decision, in accordance with the provisions in decision 27/CMP.1, annex, section III, paragraph 2 (d);
3. Decides that:
 - (a) The length of term for each member of the Compliance Committee also applies to his or her alternate member;
 - (b) Alternate members are not to serve for more than two consecutive terms as alternate members;

46 FCCC/KP/CMP/2008/5.

47 FCCC/KP/CMP/2008/5, paragraph 4 (f).

4. Requests the secretariat to provide, together with the information requested in decision 5/CMP.3, paragraph 3, information to Parties on the implications of the proposal by the Compliance Committee that the United Nations rules and regulations on official travel applied to United Nations staff also be applied to eligible members and alternate members of the Compliance Committee, with a view to the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol considering this proposal at its fifth session, including taking any decision in this regard, as appropriate;
5. Invites Parties to make voluntary contributions to the Trust Fund for Supplementary Activities in support of the work of the Compliance Committee in the biennium 2008–2009.

ANNEX

Amendments to the rules of procedure of the Compliance Committee of the Kyoto Protocol

1. The following text should be inserted following rule 13:

“9 bis. CALCULATION OF TIME PERIODS

Rule 13 bis

For the purposes of calculating time periods:

- (a) The day of the act or event from which the period of time begins to run shall not be included. The last day of the period so calculated shall be included, unless it is a Saturday, Sunday or official UNFCCC holiday, or official national holiday in the case of a time limit applicable to a Party concerned, in which case the period shall be deemed to run until the end of the next working day;
 - (b) Subject to subparagraph (a) above, where a period of time is expressed in weeks, months or years, the day on which the period of time expires shall be the same day of the week, month or year as the day from which the period of time begins to run, or if the month does not have such a date, the last day of that month.”
2. Rule 18 should be revised as follows, in order to extend coverage to the proposed new rule 25 bis, below:

“1. Any submission or comment under rules 14, 15, and 17 and 25 bis shall be signed by the agent of the Party and be delivered to the secretariat in hard copy and by electronic means.”

3. The following text should be inserted as a new paragraph 3 under rule 25:

“3. The entitlement of the Party concerned to designate one or more persons to represent it during the consideration of a question of implementation pursuant to paragraph 2 of section VIII extends to any meeting convened:

 - (a) To consider reinstatement of eligibility under paragraphs 2, 3 and 4 of section X;
 - (b) To consider adjustments and corrections under paragraph 5 of section X;
 - (c) To review and assess any plan submitted to the enforcement branch under paragraph 2 or paragraph 6 of section XV;
 - (d) To consider any progress report on the implementation of this plan submitted to the enforcement branch under paragraph 3 or paragraph 7 of section XV.”
4. The following text should be inserted following rule 25:

“Rule 25 bis

 1. A plan to be submitted by the Party concerned to the enforcement branch under paragraph 2 or paragraph 6 of section XV shall explicitly:
 - (a) Address, in separate sections, each of the elements specified in paragraph 2 or paragraph 6 of section XV;
 - (b) Respond to any specific issues raised in the part of the final decision of the enforcement branch applying the consequences.
 2. The enforcement branch shall endeavour to conduct the review and assessment of the plan under paragraph 2 or paragraph 6 of section XV within four weeks from the date of receipt of the plan.
 3. In its review and assessment, the enforcement branch shall assess whether the plan submitted:
 - (a) Sets out and adequately addresses the elements and issues referred to in paragraph 1 above;
 - (b) If implemented, is expected to remedy the non-compliance or to meet the quantified emission limitation or reduction commitment of the Party concerned in the subsequent commitment period, as envisaged in paragraph 2 and paragraph 6 of section XV, respectively.”

5.2.5 Rules of procedure of the Compliance Committee of the Kyoto Protocol (as amended) (2005/2008)

Part 1: Conduct of Business

1. SCOPE

Rule 1

These rules of procedure shall apply to the Compliance Committee, including its enforcement branch and facilitative branch, as defined in the “Procedures and mechanisms relating to compliance under the Kyoto Protocol”, contained in the annex to decision 27/CMP.1. They shall be read together with and in furtherance of these procedures and mechanisms.

2. DEFINITIONS

Rule 2

For the purposes of these rules section numbers refer to the section so numbered in the annex to decision 27/CMP.1, unless otherwise noted, and:

- (a) “Committee” means the Compliance Committee established by section II, paragraph 1;
- (b) “Plenary” means the plenary of the Committee as set out in section III;
- (c) “Branch” means the facilitative branch or the enforcement branch as set out in sections IV and V;
- (d) “Bureau” means the bureau of the Committee constituted in accordance with section II, paragraph 4;
- (e) “Co-chairpersons” means the chairperson of the enforcement branch and the chairperson of the facilitative branch acting together in the plenary of the Committee in accordance with section III, paragraph 1;
- (f) “Member” means a member of the Committee elected under section II, paragraph 3;
- (g) “Alternate member” means an alternate member elected under section II, paragraph 5;
- (h) “Party” means a Party to the Kyoto Protocol to the United Nations Framework Convention on Climate Change;
- (i) “Party concerned” means a Party in respect of which a question of implementation is raised, as set out in section VI, paragraph 2;

- (j) “Diplomatic agent” means the head of the mission or a designated member of the diplomatic staff of the mission of a Party who is accredited to the host country of the secretariat;
- (k) “Agent” means the Head of State or Government, the Minister of Foreign Affairs, the diplomatic agent or another person duly authorized by the Head of State or Government or by the Minister of Foreign Affairs or, in the case of a regional economic integration organization, by the competent authority of that organization;
- (l) “Representative” means a person designated by the Party concerned to represent it during the consideration of a question of implementation, in accordance with section VIII, paragraph 2;
- (m) “Secretariat” means the secretariat referred to in section XVII.

3. MEMBERS

Rule 3

1. The term of service of each member and alternate member shall start on 1 January of the calendar year immediately following his or her election and shall end on 31 December, two or four years thereafter, as applicable.
2. Subject to these rules, alternate members are entitled to participate in the proceedings of the plenary or the respective branch to which they belong, without the right to vote. An alternate member may cast a vote only if serving as the member.
3. During the absence of a member from all or part of a meeting of the plenary or of the branch to which he or she has been elected, his or her alternate shall serve as the member.
4. When a member resigns or is otherwise unable to complete the assigned term or the functions of a member, his or her alternate shall serve as a member for the same branch, ad interim.
5. When a member or alternate member resigns or is otherwise unable to complete the assigned term or the functions of a member or alternate member, the Committee shall request the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol to elect a new member or alternate member for the remainder of the term at its next session.

Rule 4

1. Each member and alternate member shall serve in his or her individual capacity and, with respect to any matter that is under consideration by the Committee, act in an independent and impartial manner and avoid real or apparent conflicts of interest.

2. Each member and alternate member shall take and agree to respect a written oath of service before assuming his or her service. The oath of service shall read as follows: "I solemnly declare that I will perform my duties and exercise my authority as member/alternate member of the Compliance Committee of the Kyoto Protocol established in decision 27/CMP.1 honourably, faithfully, impartially and conscientiously.

"I further solemnly declare that, subject to my responsibilities within the Compliance Committee, I shall not disclose, even after the termination of my functions, any confidential information coming to my knowledge by reason of my duties in the Compliance Committee. "I shall disclose immediately to the Executive Secretary of the United Nations Framework Convention on Climate Change any interest in any matter under discussion before the Compliance Committee which may constitute a conflict of interest or which might be incompatible with the requirements of independence and impartiality expected of a member or alternate member of the Compliance Committee and I shall refrain from participating in the work of the Compliance Committee in relation to such matter."

3. Where the Executive Secretary of the United Nations Framework Convention on Climate Change receives any disclosure made in accordance with paragraph 2, he or she shall forthwith notify the bureau. The bureau shall inform the plenary that the member or alternate member will refrain from participating in the work of the Committee in relation to the matter that is the subject of the disclosure.
4. Where the Executive Secretary of the United Nations Framework Convention on Climate Change receives evidence from a Party on circumstances which may indicate a conflict of interest or which might be incompatible with the requirements of independence and impartiality expected of a member or alternate member of the Committee, he or she shall forthwith notify the bureau as well as the member or alternate member concerned. The evidence shall be submitted to the plenary for its consideration, unless the member or alternate member informs the bureau that he or she will refrain from participating in the work of the Committee in relation to the matter to which the evidence relates. The bureau shall inform the plenary that the member or alternate member will refrain from participating in the work of the Committee in relation to the matter that is the subject of the disclosure. Otherwise, the plenary may decide to excuse the member or alternate member from consideration of one or more questions of implementation and the elaboration and adoption of a decision of a branch, after having provided a reasonable opportunity for the member or alternate member to be heard.
5. If the plenary considers that a material violation of the requirements of independence and impartiality expected of a member or alternate member of the Committee has occurred, it may decide to suspend, or recommend to the Conference of the Parties serving as the meeting of the Parties to the Kyoto

Protocol to revoke, the membership of any member or alternate member concerned, after having provided a reasonable opportunity for the member or alternate member to be heard.

6. All decisions of the Committee taken under this rule shall be noted in the annual report of the Committee to the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol.

4. OFFICERS

Rule 5

1. In addition to exercising the powers conferred upon him or her elsewhere in these rules, an officer chairing a meeting shall:
 - (a) Declare the opening and closure of the meeting;
 - (b) Preside over the meeting;
 - (c) Ensure the observance of these rules;
 - (d) Accord the right to speak;
 - (e) Put questions to the vote and announce decisions;
 - (f) Rule on any points of order;
 - (g) Subject to these rules, have complete control over the proceedings and maintain order.
2. An officer chairing a meeting may also propose:
 - (a) The closure of the list of speakers;
 - (b) A limitation on the time to be allowed to speakers and on the number of times they may speak on an issue;
 - (c) The adjournment or closure of debate on an issue;
 - (d) The suspension or adjournment of the meeting.
3. Any officer chairing a meeting, in the exercise of his or her functions, remains under the authority of the plenary or, as the case may be, of the enforcement branch or facilitative branch.

Rule 6

1. If a chairperson is temporarily unable to fulfil the functions of his or her office, the vice chairperson of the relevant branch shall act as chairperson of that branch and co-chairperson of the plenary ad interim.
2. If the chairperson and the vice-chairperson of the same branch are temporarily unable to fulfil the functions of their offices at the same time, the branch shall

elect a chairperson for that branch ad interim having regard to section II, paragraph 4.

3. If a chairperson or vice-chairperson of a branch resigns or is otherwise unable to complete the assigned term or the functions of his or her office, the branch shall elect, in accordance with section II, paragraph 4, a replacement from among its members for the remainder of the term of that officer.

5. AGENDA

Rule 7

1. In agreement with the bureau, the secretariat shall draft the provisional agenda for each meeting of the plenary.
2. In agreement with the chairperson and vice-chairperson of the relevant branch, the secretariat shall draft the provisional agenda of each meeting of that branch.
3. The provisional agenda and draft schedule for each meeting as well as the draft report on the previous meeting shall be circulated to members and alternate members at least four weeks before the opening of the meeting, to the extent possible under the applicable time frames.
4. The proposed agenda of each meeting of the plenary and each meeting of a branch shall include any item proposed by a member.
5. The plenary or a branch, when adopting its agenda, may decide to add urgent and important items and to delete, defer or amend items.

6. MEETINGS AND DELIBERATIONS

Rule 8

Notice of meetings shall be sent to the members and alternate members, as well as any representative, as the case may be, at least four weeks before the opening of the meeting, to the extent possible under the applicable time frames.

Rule 9

1. Subject to paragraph 2, meetings of the plenary and the branches shall be held in public, unless the plenary or branch of its own accord or at the request of the Party concerned decides, for overriding reasons, that part or all of the meeting shall be held in private.
2. Only members and alternate members of the Committee and secretariat officials may be present during the elaboration and adoption of a decision of a branch.

Rule 10

1. With respect to a notification or document sent by the secretariat to a Party, the date of receipt shall be deemed to be the date indicated in a written confirmation from the Party or the date indicated in a written confirmation of receipt by the expedited delivery courier, whichever comes first.
2. With respect to a submission, request, or other document intended for the Committee, the date of receipt by the Committee shall be deemed to be the first business day after receipt by the secretariat.

7. USE OF ELECTRONIC MEANS

Rule 11

1. The Committee may use electronic means for transmission, distribution and storage of documentation, without prejudice to normal means of circulation of the documentation, as the case may be.
2. The Committee may elaborate and take decisions in a written procedure using electronic means, where possible.
3. Any decision in accordance with paragraph 2 of this rule shall be deemed to be taken at the headquarters of the secretariat.

8. SECRETARIAT

Rule 12

1. The secretariat shall make arrangements for meetings of the Committee and provide it with services as required.
2. The secretariat shall make all documents of the plenary and the branches available to the public, subject to section VIII, paragraph 6, as well as any guidance provided by the Committee.
3. In addition, the secretariat shall perform any other functions assigned that the Committee may require or that the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol may direct with respect to the work of the Committee.

9. LANGUAGES

Rule 13

1. Without prejudice to section VIII, paragraph 9, the working language of the Committee shall be English.

2. A representative taking part in the proceedings of a branch may speak in a language other than the working language of the Committee if the Party provides for interpretation.
3. Decisions of the branches that are final shall be made available in all official languages of the United Nations, taking into account the provisions of rule 22, paragraph 1.

9 bis. CALCULATION OF TIME PERIODS

Rule 13 bis

For the purposes of calculating time periods:

- (a) The day of the act or event from which the period of time begins to run shall not be included. The last day of the period so calculated shall be included, unless it is a Saturday, Sunday or official UNFCCC holiday, or official national holiday in the case of a time limit applicable to a Party concerned, in which case the period shall be deemed to run until the end of the next working day;
- (b) Subject to subparagraph (a) above, where a period of time is expressed in weeks, months or years, the day on which the period of time expires shall be the same day of the week, month or year as the day from which the period of time begins to run, or if the month does not have such a date, the last day of that month.

Part 2: Procedures for the Branches

10. GENERAL PROCEDURES FOR THE BRANCHES

Rule 14

1. A submission by any Party raising a question of implementation with respect to itself shall set out:
 - (a) The name of the Party making the submission;
 - (b) A statement identifying the question of implementation;
 - (c) A reference to the provisions of the Kyoto Protocol and decision 27/ CMP.1 that form the basis for raising the question of implementation.
2. The submission should also set out:
 - (a) Any provisions of the decisions of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol and the reports of the subsidiary bodies that are applicable to the question of implementation;

- (b) The information that is material to the question of implementation;
- (c) The branch from which action is sought;
- (d) The action requested from the branch;
- (e) A list of all documents annexed to the submission.

Rule 15

1. A submission by any Party raising a question of implementation with respect to another Party shall set out:
 - (a) The name of the Party making the submission;
 - (b) A statement identifying the question of implementation;
 - (c) The name of the Party concerned;
 - (d) A reference to the provisions of the Kyoto Protocol and decision 27/CMP.1 that form the basis for raising the question of implementation;
 - (e) Corroborating information supporting the question of implementation.
2. The submission should also set out:
 - (a) Any provisions of the decisions of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol and the reports of the subsidiary bodies that are applicable to the question of implementation;
 - (b) The branch from which action is sought;
 - (c) A list of all documents annexed to the submission.

Rule 16

The secretariat shall make the submission and any supporting information submitted under rule 15 available to the agent of that Party.

Rule 17

Comments and written submissions by the Party concerned in accordance with the provisions of sections VII to X should include:

- (a) A statement of the position of the Party concerned on the information, decision or question of implementation under consideration, including the grounds therefor;
- (b) An identification of any information provided by the Party that it requests not to be made available to the public in accordance with section VIII, paragraph 6;
- (c) A list of all documents annexed to the submission or comment.

Rule 18

1. Any submission or comment under rules 14, 15, 17 and 25 bis shall be signed by the agent of the Party and be delivered to the secretariat in hard copy and by electronic means.
2. Any relevant documents in support of the submission or comment shall be annexed to it.

Rule 19

1. The bureau shall, within seven days from receipt of a question of implementation, decide on its allocation to the appropriate branch. The bureau may allocate questions of implementation by employing electronic means in accordance with rule 11.
2. The secretariat shall forthwith notify members and alternate members of the branch of the question of implementation and send them all available materials.
3. The secretariat shall also notify members and alternate members of the other branch of the question of implementation.

Rule 20

1. Following the preliminary examination, subject to section VIII, paragraph 4, competent intergovernmental organizations and nongovernmental organizations that wish to submit relevant factual and technical information to the relevant branch shall do so in writing.
2. The secretariat shall forthwith notify members and alternate members of the branch of the submission of such information and send it to them.
3. The secretariat shall also notify members and alternate members of the other branch of the submission of such information.

Rule 21

If a branch decides to seek expert advice, it shall:

- (a) Define the question on which expert opinion is sought;
- (b) Identify the experts to be consulted;
- (c) Lay down the procedures to be followed.

Rule 22

1. A preliminary finding or a final decision shall contain, *mutatis mutandis*:
 - (a) The name of the Party concerned;

- (b) A statement identifying the question of implementation addressed;
 - (c) The provisions of the Kyoto Protocol and decision 27/CMP.1 and other relevant decisions of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol that form the basis of the preliminary finding or final decision;
 - (d) A description of the information considered in the deliberations, including in the case of a final decision, a confirmation that the Party concerned was given an opportunity to comment in writing on all information considered;
 - (e) A summary of the proceedings, including an indication, in the case of a final decision of the enforcement branch, of whether its preliminary finding or any part of it as specified is confirmed;
 - (f) The substantive decision of the question of implementation, including the consequences applied, if any;
 - (g) Conclusions and reasons for the decision;
 - (h) The place and date of the decision;
 - (i) The names of the members who participated in the consideration of the question of implementation, as well as the elaboration and adoption of the decision.
2. Comments in writing on a final decision submitted within 45 days from the receipt of that decision by the Party concerned shall be circulated by the secretariat to the members and alternate members of the relevant branch and shall be included in the Committee's annual report to the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol.

Rule 23

1. Any referral of a question of implementation to the facilitative branch in accordance with section IX, paragraph 12, shall be made through a decision by the enforcement branch with a statement identifying the question of implementation and the information on which the question is based.
2. The secretariat shall forthwith notify the Party concerned of the decision.
3. A question of implementation referred by the enforcement branch to the facilitative branch shall not require a preliminary examination.

11. PROCEDURES FOR THE FACILITATIVE BRANCH

Rule 24

1. Subject to section VI and without prejudice to section XVI, the facilitative branch may have a dialogue with the representative of the Party concerned.
2. Subject to sections VI and VII, the representative of the Party concerned may enter into a dialogue with the facilitative branch in order to seek advice and facilitation.
3. The facilitative branch shall receive, through the secretariat, information as required under relevant decisions of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol.

12. PROCEDURES FOR THE ENFORCEMENT BRANCH

Rule 25

1. In its request for a hearing, the Party concerned may identify:
 - (a) The issues that the Party proposes to raise and any documents that it intends to discuss during the hearing;
 - (b) Any individuals whose expert testimony or opinion it will present at the hearing.
2. The Party concerned, when choosing individuals to represent it during the hearing, should refrain from nominating individuals who were members or alternate members of the Committee in the two years preceding the date of the submission.
3. The entitlement of the Party concerned to designate one or more persons to represent it during the consideration of a question of implementation pursuant to paragraph 2 of section VIII extends to any meeting convened:
 - (a) To consider reinstatement of eligibility under paragraphs 2, 3 and 4 of section X;
 - (b) To consider adjustments and corrections under paragraph 5 of section X;
 - (c) To review and assess any plan submitted to the enforcement branch under paragraph 2 or paragraph 6 of section XV;
 - (d) To consider any progress report on the implementation of this plan submitted to the enforcement branch under paragraph 3 or paragraph 7 of section XV.

Rule 25 bis

1. A plan to be submitted by the Party concerned to the enforcement branch under paragraph 2 or paragraph 6 of section XV shall explicitly:
 - (a) Address, in separate sections, each of the elements specified in paragraph 2 or paragraph 6 of section XV;
 - (b) Respond to any specific issues raised in the part of the final decision of the enforcement branch applying the consequences.
2. The enforcement branch shall endeavour to conduct the review and assessment of the plan under paragraph 2 or paragraph 6 of section XV within four weeks from the date of receipt of the plan.
3. In its review and assessment, the enforcement branch shall assess whether the plan submitted:
 - (a) Sets out and adequately addresses the elements and issues referred to in paragraph 1 above;
 - (b) If implemented, is expected to remedy the non-compliance or to meet the quantified emission limitation or reduction commitment of the Party concerned in the subsequent commitment period, as envisaged in paragraph 2 and paragraph 6 of section XV, respectively.

Part 3: General Provisions

13. AMENDMENTS

Rule 26

1. These rules of procedure may be amended by a decision of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol in terms of section III, paragraph 2 (d) after the plenary has approved the proposed amendment and reported on the matter to the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol.
2. Any amendment of these rules approved by the plenary shall be provisionally applied pending their adoption by the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol.

14. OVERRIDING AUTHORITY

Rule 27

In the event of a conflict between any provision in these rules and any provision in the Kyoto Protocol or decision 27/CMP.1, the provision of the Protocol or the decision, as the case may be, shall prevail.

5.3 Dispute Settlement

5.3.1 Convention Text - Article 14

SETTLEMENT OF DISPUTES

1. In the event of a dispute between any two or more Parties concerning the interpretation or application of the Convention, the Parties concerned shall seek a settlement of the dispute through negotiation or any other peaceful means of their own choice.
2. When ratifying, accepting, approving or acceding to the Convention, or at any time thereafter, a Party which is not a regional economic integration organization may declare in a written instrument submitted to the Depositary that, in respect of any dispute concerning the interpretation or application of the Convention, it recognizes as compulsory ipso facto and without special agreement, in relation to any Party accepting the same obligation:
 - (a) Submission of the dispute to the International Court of Justice; and/or
 - (b) Arbitration in accordance with procedures to be adopted by the Conference of the Parties as soon as practicable, in an annex on arbitration.

A Party which is a regional economic integration organization may make a declaration with like effect in relation to arbitration in accordance with the procedures referred to in subparagraph (b) above.
3. A declaration made under paragraph 2 above shall remain in force until it expires in accordance with its terms or until three months after written notice of its revocation has been deposited with the Depositary.
4. A new declaration, a notice of revocation or the expiry of a declaration shall not in any way affect proceedings pending before the International Court of Justice or the arbitral tribunal, unless the parties to the dispute otherwise agree.
5. Subject to the operation of paragraph 2 above, if after twelve months following notification by one Party to another that a dispute exists between them, the Parties concerned have not been able to settle their dispute through the means

mentioned in paragraph 1 above, the dispute shall be submitted, at the request of any of the parties to the dispute, to conciliation.

6. A conciliation commission shall be created upon the request of one of the parties to the dispute. The commission shall be composed of an equal number of members appointed by each party concerned and a chairman chosen jointly by the members appointed by each party. The commission shall render a recommendatory award, which the parties shall consider in good faith.
7. Additional procedures relating to conciliation shall be adopted by the Conference of the Parties, as soon as practicable, in an annex on conciliation.
8. The provisions of this Article shall apply to any related legal instrument which the Conference of the Parties may adopt, unless the instrument provides otherwise.

6. PROTOCOL TO THE CONVENTION ON THE PREVENTION OF MARINE POLLUTION BY DUMPING OF WASTES AND OTHER MATTER, 1996 (LONDON PROTOCOL)

6.1 Performance Review Information

6.1.1 Protocol Text - Article 9

(Issuance of permits and reporting)

- 1 Each Contracting Party shall designate an appropriate authority or authorities to:
 - .1 issue permits in accordance with this Protocol;
 - .2 keep records of the nature and quantities of all wastes or other matter for which dumping permits have been issued and where practicable the quantities actually dumped and the location, time and method of dumping; and
 - .3 monitor individually, or in collaboration with other Contracting Parties and competent international organizations, the condition of the sea for the purposes of this Protocol.
- 2 The appropriate authority or authorities of a Contracting Party shall issue permits in accordance with this Protocol in respect of wastes or other matter intended for dumping or, as provided for in article 8.2, incineration at sea:
 - .1 loaded in its territory; and
 - .2 loaded onto a vessel or aircraft registered in its territory or flying its flag, when the loading occurs in the territory of a State not a Contracting Party to this Protocol.
- 3 In issuing permits, the appropriate authority or authorities shall comply with the requirements of article 4, together with such additional criteria, measures and requirements as they may consider relevant.
- 4 Each Contracting Party, directly or through a secretariat established under a regional agreement, shall report to the Organization and where appropriate to other Contracting Parties:
 - .1 the information specified in paragraphs 1.2 and 1.3;
 - .2 the administrative and legislative measures taken to implement the provisions of this Protocol, including a summary of enforcement measures; and
 - .3 the effectiveness of the measures referred to in paragraph 4.2 and any problems encountered in their application.

The information referred to in paragraphs 1.2 and 1.3 shall be submitted on an annual basis. The information referred to in paragraphs 4.2 and 4.3 shall be submitted on a regular basis.

- 5 Reports submitted under paragraphs 4.2 and 4.3 shall be evaluated by an appropriate subsidiary body as determined by the Meeting of Contracting Parties. This body will report its conclusions to an appropriate Meeting or Special Meeting of Contracting Parties.

6.1.2 Protocol Text - Articles 10.2 and 10.3

- 2 Each Contracting Party shall take appropriate measures in accordance with international law to prevent and if necessary punish acts contrary to the provisions of this Protocol.
- 3 Contracting Parties agree to co-operate in the development of procedures for the effective application of this Protocol in areas beyond the jurisdiction of any State, including procedures for the reporting of vessels and aircraft observed dumping or incinerating at sea in contravention of this Protocol.

6.2 Multilateral Procedures to Consider Non-Compliance

6.2.1 Protocol Text - Article 11

- 1 No later than two years after the entry into force of this Protocol, the Meeting of Contracting Parties shall establish those procedures and mechanisms necessary to assess and promote compliance with this Protocol. Such procedures and mechanisms shall be developed with a view to allowing for the full and open exchange of information, in a constructive manner.
- 2 After full consideration of any information submitted pursuant to this Protocol and any recommendations made through procedures or mechanisms established under paragraph 1, the Meeting of Contracting Parties may offer advice, assistance or co-operation to Contracting Parties and non-Contracting Parties.

6.2.2 Report of the 29th consultative meeting and the second meeting of contracting parties, Annex 7 - Compliance Procedures and Mechanisms (2007)

Report of the second meeting of the Contracting Parties (2007)

Annex 7

Compliance procedures and mechanisms pursuant to Article 11 of the 1996 Protocol to the London Convention 1972

1 General guidance

- 1.1 The objective of the compliance procedures and mechanisms is to assess and promote compliance with the 1996 Protocol to the London Convention 1972 (the Protocol) with a view to allowing for the full and open exchange of information, in a constructive manner.
- 1.2 The Meeting of Contracting Parties shall retain overall responsibility for compliance matters.
- 1.3 Any work on compliance shall be in accordance with these procedures or as otherwise authorized by the Meeting of Contracting Parties.
- 1.4 A Compliance Group (CG) is hereby established by the Meeting of Contracting Parties.

2 Functions of bodies related to compliance

- 2.1 The Meeting of Contracting Parties may:
 - .1 refer, as appropriate, compliance matters (individual situations of possible non-compliance, systemic issues and other compliance matters) to the Compliance Group and/or the LP Scientific Group;
 - .2 offer advice, assistance or co-operation to Contracting Parties and non-Contracting Parties, after full consideration of any information submitted pursuant to this Protocol and any recommendations made through these procedures and mechanisms;
 - .3 periodically review the effectiveness of the compliance procedures and mechanisms, including the roles of the Compliance Group, the LP Scientific Group and itself;
 - .4 review reports under Articles 9.4.1, 9.4.2, 9.4.3, 10.3, 26.5 and 26.6 pursuant to section 6 below and consider advice on these reports from the Compliance Group and/or the LP Scientific Group, as appropriate; and
 - .5 undertake other activities, as appropriate, to promote compliance.
- 2.2 The Compliance Group may:
 - .1 consider and assess an individual situation of a Party's possible non-compliance referred to it in accordance with section 4, with a view to identifying the facts, possible causes and specific circumstances;
 - .2 make recommendations to the Meeting of Contracting Parties on systemic compliance issues referred to it or that it proposes to pursue;
 - .3 make recommendations to the Meeting of Contracting Parties on individual situations of possible non-compliance as described in section 5;

- .4 make recommendations to the Meeting of Contracting Parties on other activities to promote compliance;
 - .5 review the implementation of Meeting of Contracting Parties' recommendations and decisions on compliance;
 - .6 review and provide advice to the Meeting of Contracting Parties on reports and records submitted as described in section 6 below;
 - .7 with a view to addressing compliance issues without delay provide advice and guidance to a Party pending consideration by the Meeting of Contracting Parties;
 - .8 upon request of a non-Party, provide advice and guidance to facilitate its becoming a Party to the Protocol; and
 - .9 request advice and information from the LP Scientific Group.
- 2.3 The LP Scientific Group may, within its terms of reference, contribute to the work of the Compliance Group.

3 Characteristics and operations of the Compliance Group

- 3.1 The Compliance Group shall be limited in size to fifteen members.
- 3.2 The Compliance Group shall be composed of individuals selected on the basis of their scientific, technical or legal expertise.
- 3.3 Members shall serve objectively and in the interest of promoting compliance with the Protocol.
- 3.4 Members shall be nominated by Contracting Parties, based on equitable and balanced geographic representation of the five Regional Groups of the UN, and elected by the Meeting of Contracting Parties.
- 3.5 The Meeting of Contracting Parties shall elect five of the members for one term, five of the members for two terms, and five of the members for three terms. The Meeting of Contracting Parties shall, at each ordinary meeting thereafter, elect for three full terms new members to replace those members whose period of office has expired, or is about to expire. Members shall not serve for more than three consecutive terms. For the purpose of this decision, "term" means the period that begins at the end of one ordinary Meeting of Contracting Parties and ends at the next ordinary session of the Meeting of Contracting Parties.
- 3.6 The Compliance Group shall elect its own Chairman and Vice-Chairman.
- 3.7 The Compliance Group shall meet as necessary at least once a year and when specifically requested to do so by the Meeting of Contracting Parties. In determining the dates of the meetings, due consideration should be given to the meeting schedules of the Meeting of Contracting Parties and other relevant bodies under the Protocol.

- 3.8 Any Party or any non-Party observer may attend meetings of the Compliance Group, except that when individual situations of compliance are under consideration by the Compliance Group, the meeting shall be closed if the Party whose compliance is in question so requests.
- 3.9 The members of the Compliance Group shall make every effort to reach agreement on all matters by consensus. If all efforts to reach consensus have been exhausted and no agreement has been reached, the Compliance Group shall act, as a last resort, by a three-quarters majority vote of the members present and voting. Where consensus cannot be reached, the report shall reflect the views of all members of the Compliance Group.
- 3.10 Two-thirds of the members of the Compliance Group shall constitute a quorum.
- 3.11 In carrying out its functions, the Compliance Group may seek, or receive, and consider relevant information from any source it considers to be reliable.

4 Submissions and procedures

- 4.1 An issue regarding individual situations of possible non-compliance may be raised by:
 - .1 the Meeting of Contracting Parties;
 - .2 a Party regarding itself; and
 - .3 a Party that has reservations about another Party's compliance with the obligations under the Protocol when it has an interest that is affected or likely to be affected by the possible non-compliance. A Party intending to make a submission under this subparagraph should before so doing undertake meaningful consultations with the Party whose compliance is in question with the aim of resolving the matter.
- 4.2 The Compliance Group may recommend the rejection of any submission which it considers is *de minimis*, manifestly ill-founded, or anonymous.
- 4.3 A submission pursuant to paragraph 4.1 shall be addressed in writing to the Secretariat, and shall set out:
 - .1 the matter of concern;
 - .2 the relevant provisions of the Protocol; and
 - .3 information substantiating the submission.
- 4.4 The Secretariat shall forward all submissions within two weeks upon their receipt to the Compliance Group for consideration at its next meeting. In cases of submissions other than by a Party with respect to its own compliance, the Secretariat shall send within two weeks upon their receipt a copy to the Party whose compliance is in question. Notice of all submissions shall be sent to all

Parties for their information. A copy of any full submission would be available to any Party upon request.

- 4.5 Comments or information provided in response by the Party whose compliance is in question should be forwarded to the Secretariat within three months upon receipt of the submission by the Party in question, unless the party requests an extension. Such extension may be provided by the Chairman for a period of up to 90 days, with a reasonable justification. Such comments or information shall immediately be forwarded by the Secretariat to the Compliance Group for consideration at its next meeting.
- 4.6 The International Atomic Energy Agency (IAEA) is the competent international body for all issues involving radioactive wastes and other radioactive matter and radiation protection of humans and the marine environment. Where a submission raises compliance matters involving radioactive wastes and other radioactive matter, the Secretariat, on behalf of the Compliance Group, shall refer the matter to the IAEA for technical evaluation and review.

The Compliance Group shall take into account the IAEA's evaluation in its consideration of the matter.

5 Measures

- 5.1 Following consideration and assessment of an issue regarding a Party's possible non-compliance, and taking into account the capacity of the Party concerned, and the comments or information provided under 4.5, and such factors as the cause, type, degree and frequency of any non-compliance, the Compliance Group may recommend to the Meeting of Contracting Parties that one or more of the following measures be taken:
 - .1 the provision of advice and recommendations, with a view to assisting the Party concerned to implement the Protocol;
 - .2 the facilitation of co-operation and assistance;
 - .3 the elaboration, with the co-operation of the Party or Parties concerned, of compliance action plans, including targets and timelines; and
 - .4 the issuing of a formal statement of concern regarding a Party's compliance situation.
- 5.2 Where the Meeting of Contracting Parties has agreed to measures referred to in subparagraphs 5.1.1, 5.1.2, 5.1.3, or 5.1.4 regarding a Party's compliance situation, that Party may make a statement to the Meeting of Contracting Parties on its situation.
- 5.3 Prior to submitting recommendations to the Meeting of Contracting Parties, the Compliance Group shall share its conclusions and recommendations with the Party concerned for consideration and an opportunity to comment by the

Party concerned. The nature of the opportunity to comment and any comments provided by the Party shall be annexed to the report of the Compliance Group to the Meeting of Contracting Parties.

- 5.4 The Meeting of Contracting Parties shall make the final decision regarding any measures proposed by the Compliance Group to be taken in response to a Party's possible non compliance. The Meeting of Contracting Parties may also consider additional measures within its mandate, as appropriate, to facilitate compliance by the Party concerned.

6 Reports and Records

- 6.1 Reports and Records made pursuant to Articles 9.4.1, 9.4.2 and 9.4.3, 10.3, 26.5 and 26.6 shall be handled as described in the following paragraphs.
- 6.2 Parties shall maintain their own records under Article 9.4.1 and submit these to the Secretariat, which then transmits them to the LP Scientific Group and the Compliance Group. The LP Scientific Group will, in accordance with its terms of reference, evaluate this information and advise the Compliance Group, as appropriate, as well as the Meeting of Contracting Parties.
- 6.3 Once Parties' reports under Articles 9.4.2 and 9.4.3, (regarding administrative and legislative measures taken to implement the provisions of the Protocol, including a summary of enforcement measures, the effectiveness of such measures and any other problems encountered in their application) are submitted to the Secretariat, it shall refer them to the Compliance Group for evaluation. The Compliance Group will report its conclusions to an appropriate Meeting or Special Meeting of Contracting Parties.
- 6.4 The Secretariat shall compile the "Incident Information Forms" it receives under Article 10.3 and present a compilation of them to each Meeting of Contracting Parties for consideration, and, if appropriate, referral to the Compliance Group or the LP Scientific Group.
- 6.5 Parties that have made a notification under Article 26.1 regarding the need for a transitional period shall submit reports pursuant to Articles 26.5 and 26.6 to the Secretariat prior to each Meeting of Contracting Parties held during their transitional period. The Meeting of Contracting Parties shall take action on the reports, including, if appropriate, referral to the Compliance Group or the LP Scientific Group.
- 6.6 The Compliance Group shall submit a report to each Meeting of Contracting Parties presenting:
 - .1 the work that the Compliance Group has undertaken in fulfilling its functions concerning the compliance of individual Parties, including any recommendations to the Meeting of Contracting Parties;

- .2 the work that the Compliance Group has undertaken in fulfilling its functions concerning systemic compliance issues, including recommendations, to the Meeting of Contracting Parties; and
- .3 the Compliance Group's future work programme for the consideration and approval by the Meeting of Contracting Parties.

7 Relationship with other provisions of the Protocol

This mechanism shall be without prejudice to the provisions of Article 16 of the Protocol on settlement of disputes.

6.2.3 Work Programme of the LP Compliance Group for the period 2008 – 2009 (2008)

The following future work programme for the LP Compliance Group was adopted for the period up to and including its 2nd Meeting in 2009:

- .1 individual cases of possible non-compliance would be treated as a priority in the work programme when they arise;
- .2 to study the Final Report of the "Barriers to Compliance Project" (LC 29/ INF.2) and consider how the work of the Compliance Group can both contribute to and benefit from the Project;
- .3 to review dumping reports referred to the Compliance Group pursuant to paragraph 6.2 of the CPM, including where concerns have been raised by the LP Scientific Group;
- .4⁴⁸ to identify and review the factors contributing to the difficulties experienced by Contracting Parties in fulfilling their reporting obligations under Art. 9.4 of the Protocol;
- .5 to identify options to address those factors;
- .6 to make recommendations for improving the rate of reporting under the Protocol;
- .7 because the Contracting Parties to the London Convention recognize that this review may be useful to them as well, they request that the Group also consider the applicability of these options to the rate of reporting under Article VI(4) of the London Convention;

48 All indents with an * have been specifically added by the Meeting of Contracting Parties (see paragraph 6.27 of the main report).

- .8 to examine reports received under LP Articles 9.4.2 and 9.4.3; and
- .9 to examine how to make the Guidance on National Implementation of the Protocol a more effective tool for prospective Parties (e.g., providing links to a variety of implementing legislation).

6.3 Technical Assistance

6.3.1 Protocol Text - Article 13

- 1 Contracting Parties shall, through collaboration within the Organization and in co-ordination with other competent international organizations, promote bilateral and multilateral support for the prevention, reduction and where practicable elimination of pollution caused by dumping as provided for in this Protocol to those Contracting Parties that request it for:
 - .1 training of scientific and technical personnel for research, monitoring and enforcement, including as appropriate the supply of necessary equipment and facilities, with a view to strengthening national capabilities;
 - .2 advice on implementation of this Protocol;
 - .3 information and technical co-operation relating to waste minimization and clean production processes;
 - .4 information and technical co-operation relating to the disposal and treatment of waste and other measures to prevent, reduce and where practicable eliminate pollution caused by dumping; and
 - .5 access to and transfer of environmentally sound technologies and corresponding know-how, in particular to developing countries and countries in transition to market economies, on favourable terms, including on concessional and preferential terms, as mutually agreed, taking into account the need to protect intellectual property rights as well as the special needs of developing countries and countries in transition to market economies.
- 2 The Organization shall perform the following functions:
 - .1 forward requests from Contracting Parties for technical co-operation to other Contracting Parties, taking into account such factors as technical capabilities;
 - .2 co-ordinate requests for assistance with other competent international organizations, as appropriate; and

- .3 subject to the availability of adequate resources, assist developing countries and those in transition to market economies, which have declared their intention to become Contracting Parties to this Protocol, to examine the means necessary to achieve full implementation.

6.3.2 Protocol Text - Article 26 (Transitional Period)

- 1 Any State that was not a Contracting Party to the Convention before 31 December 1996 and that expresses its consent to be bound by this Protocol prior to its entry into force or within five years after its entry into force may, at the time it expresses its consent, notify the Secretary-General that, for reasons described in the notification, it will not be able to comply with specific provisions of this Protocol other than those provided in paragraph 2, for a transitional period that shall not exceed that described in paragraph 4.
- 2 No notification made under paragraph 1 shall affect the obligations of a Contracting Party to this Protocol with respect to incineration at sea or the dumping of radioactive wastes or other radioactive matter.
- 3 Any Contracting Party to this Protocol that has notified the Secretary-General under paragraph 1 that, for the specified transitional period, it will not be able to comply, in part or in whole, with article 4.1 or article 9 shall nonetheless during that period prohibit the dumping of wastes or other matter for which it has not issued a permit, use its best efforts to adopt administrative or legislative measures to ensure that issuance of permits and permit conditions comply with the provisions of Annex 2, and notify the Secretary-General of any permits issued.
- 4 Any transitional period specified in a notification made under paragraph 1 shall not extend beyond five years after such notification is submitted.
- 5 Contracting Parties that have made a notification under paragraph 1 shall submit to the first Meeting of Contracting Parties occurring after deposit of their instrument of ratification, acceptance, approval or accession a programme and timetable to achieve full compliance with this Protocol, together with any requests for relevant technical co-operation and assistance in accordance with article 13 of this Protocol.
- 6 Contracting Parties that have made a notification under paragraph 1 shall establish procedures and mechanisms for the transitional period to implement and monitor submitted programmes designed to achieve full compliance with this Protocol. A report on progress toward compliance shall be submitted by such Contracting Parties to each Meeting of Contracting Parties held during their transitional period for appropriate action.

6.3.3 Long-Term Strategy for Technical Co-operation and Assistance under the London Convention and Protocol (2006)

1 Background and Introduction

- 1.1 Technical co-operation and assistance among Contracting Parties to the London Convention and Protocol is crucial to the implementation of, and compliance with these instruments and their promotion. Previously, technical co-operation activities were conducted on an *ad hoc* and opportunistic basis. The Long-term Strategy for Technical Co-operation and Assistance under the London Convention and Protocol,⁴⁹ outlined in this document, aims to offer a more strategic and co-ordinated approach.
- 1.2 Requests for assistance are regularly received both from Contracting Parties and non-Contracting Parties to the London Convention and Protocol. For example, at the IMO/UNEP Workshops/Seminars on Marine Pollution Prevention and Environmental Management in Ports in the Wider Caribbean Region, Eastern and Southern Africa, and East Asia, participants representing governments in the regions requested assistance concerning:
- .1 national workshops on implementation of the London Convention and Protocol;
 - .2 enhanced management of dredged material;
 - .3 regular training and capacity-building activities;
 - .4 development of legislation, standards and guidelines supporting implementation of international agreements, including the London Convention and Protocol; and
 - .5 prevention of marine pollution and protection of marine resources through the control of land-based sources of pollution.
- 1.3 This Long-term Strategy will be aimed at meeting these and similar requests and providing assistance in a more structured manner.

2 Foundation for the Long-term Strategy

The Long-term Strategy addresses:

- .1 Article IX of the London Convention, and its equivalent Article 13 of the London Protocol, which provides that Contracting Parties shall promote, through collaboration within the Organization (IMO) and other

⁴⁹ The initial Long-term Strategy for Technical Co-operation and Assistance under the London Convention 1972 was adopted in 2001 at the Twenty-third Consultative Meeting as a "living" document (LC 23/16, annex 7).

- international bodies, scientific and technical support for those Parties, who request such support;
- .2 resolution LC.55(SM), adopted in conjunction with the 1996 Protocol, which sets out a “Framework for a Technical Co-operation and Assistance Programme under the London Convention 1972” (Framework); and
 - .3 the “Technical Co-operation and Assistance Programme under the London Convention 1972” (LC TC&AP), adopted in 1997.

3 Objectives of the Technical Co-operation and Assistance Programme

- 3.1 The “Framework” adopted in 1996 sets out the following specific objectives:
 - .1 to promote membership of the London Protocol;
 - .2 to strengthen national marine pollution prevention and management capacities to achieve compliance with the Convention or, after its entry into force, the Protocol; and
 - .3 to co-operate with other organizations and agencies to ensure a co-ordinated approach to technical co-operation and assistance, thereby avoiding duplication of effort.
- 3.2 Additional objectives should include the promotion of marine pollution management generally, and, more specifically, the promotion of alternatives to dumping, including alternative disposal mechanisms, recycling and the use of cleaner production technologies.

4 Programme activities

- 4.1 The Framework also identified a number of activities on which the Programme should be based. These included:
 - .1 networking and provision of information relevant to the Convention/Protocol;
 - .2 advice and consultation relating to legal, technical, scientific and administrative support to further the development and implementation of the Convention/Protocol;
 - .3 seminars, training and workshops;
 - .4 project management; and
 - .5 assessment of effectiveness of the Programme.

4.2 Priorities for these activities are identified in this Long-term Strategy.

5 Strategic objectives

- 5.1 The objectives, as outlined in the Framework, pave the way for technical co-operation and assistance to both Contracting and non-Contracting Parties to the Convention and Protocol – the latter with a view to expanding membership. Recent Consultative Meetings have, however, identified non-compliance amongst existing members as an issue of considerable concern. Issues also have been raised as to improving implementation of the Specific Guidelines (WAGs) adopted in 2001. Given that in many cases non-compliance and implementation issues are likely due to a lack of technical capacity in the countries concerned, this should be a priority for technical assistance.
- 5.2 A second priority should be promoting the adoption of the London Protocol by continuing efforts to encourage both existing Contracting Parties to the Convention and non-Parties to join the London Protocol.
- 5.3 “Outreach” activities should be continued and should be focused on the broader objectives of the Convention/Protocol, namely the development of capacity to improve ocean dumping management as well as prevention of marine pollution and protection of marine resources generally. Greater emphasis should, therefore, be placed on developing links with other organizations and programmes, in particular the UNEP Global Programme of Action for the Protection of the Marine Environment from Land-based Activities (UNEP-GPA), the UNEP Regional Seas Programmes, IMO/MEPC and others, pursuant to paragraphs 30(c) and 30(f) of the WSSD Plan of Implementation.⁵⁰ See further paragraph 6.7 below.

6 Addressing the priorities

Promotion of compliance and implementation

- 6.1 Promotion of compliance and implementation through technical co-operation requires a range of approaches. For example, the “Barriers to Compliance” project, aimed at building capacity to reduce key barriers for effective implementation of global and regional dumping agreements, should be continued with a strong regional focus on implementation and partnerships. This project would include the following steps:

- .1 selection of target countries;

⁵⁰ Paragraph 30(a) calls for the establishment of an effective, transparent and regular inter-agency co operation mechanism on coastal and ocean issues and paragraph 30(f) for the strengthening of regional co operation and co-ordination.

- .2 needs assessment in target countries; and
 - .3 recommendations for TC-projects to address identified needs.
- 6.2 While these initial steps can be addressed using IMO/UNEP funding or donor organization/agency funding, it is recommended that efforts would later be made to promote bilateral or multilateral co-operation between participating countries and those Contracting Parties that are in a position to provide funding and/or expertise to carry out such TC projects. This would be facilitated once specific country needs have been identified.
- 6.3 Another example of an approach to promote compliance and implementation is the Waste Assessment Guidance Training Set. A parallel priority should be the completion and promotion of this Training Set.

Promotion of membership of the London Protocol

- 6.4 Promotion of membership of the London Protocol requires identifying target countries and evaluating their needs to allow for ratification and implementation of the Protocol.
- 6.5 Identification of target countries requires an evaluation of (1) which countries have jurisdiction over ocean dumping activities but are not currently members of the Protocol; (2) political and public will to join the Protocol, and (3) potential benefits and costs to joining the Protocol. The selection of target countries for membership promotion should be based on a number of agreed conditions. One such condition should be that the country concerned commits to ratifying or acceding to the London Protocol. One aspect of the technical assistance can then be provision of legal assistance to enable the country to achieve membership, including assistance with domestic legislation and institutional arrangements for implementation.
- 6.6 Another condition for participating countries should be that they agree to promote membership in their respective regions. This could be done initially by awareness raising and could take place through existing structures, especially Regional Seas Programmes. In such cases, this could develop into expansion of existing clauses on dumping in regional instruments, which are usually fairly limited, into fully-fledged Protocols. Alternatively, provisions on dumping could be included in regional Protocols on Land-based Activities. All of these activities could lead to new countries acceding to the London Protocol.
- 6.7 New Contracting Parties (that is, those not party to the London Convention before 31 December 1996) can until 2011 apply for “transitional period” arrangements for up to five years under Article 26 of the London Protocol towards achieving full compliance. Such requests could be accompanied by requests for technical assistance under Article 13 of the Protocol and associated monitoring of its effect. Addressing this possibility is part of this Strategy.

6.8 After the identification of target countries, an evaluation should be performed of their needs to allow for ratification and implementation of the Protocol. It is expected that the “Barriers to Compliance” Project discussed above will provide valuable information in this regard. Furthermore, to assist prospective parties to join the London Protocol, development and distribution of a London Protocol manual should be considered. Such a manual could provide, among other things, the basic requirements or steps for joining, the implications of joining (e.g., costs and benefits), and a compilation of guidance on implementation (e.g., Waste Assessment Guidance Training Set, Guidance for the Development of Action Lists and Action Levels).

Development of capacity for the prevention and management of marine pollution and protection of marine resources generally

6.9 This objective could be achieved through a number of possible “Outreach” activities such as:

- .1 a continuation of the practice of holding meetings of the Scientific Group in venues outside of London, in conjunction with regional or national workshops/seminars. In addition, one-half to one full day during each meeting of the Scientific Group should be set aside to address a topical scientific issue. Such sessions have already proven to be much more informative for those countries in need of assistance and the meetings may then attract greater participation. “Science Days” held at every Scientific Group meeting since 2002 have received a positive response from participants;
- .2 continued improvement of the London Convention website, not only as a communication tool for Contracting Parties and a source of information for the general public, but also as an additional platform for technical co-operation purposes. The linkages to sites of relevant national and international programmes and initiatives should be reviewed and incorporated to support these functions;
- .3.1 guidelines or other documents, developed under the Convention and Protocol, should be posted on the website and, where appropriate, should be distributed to organizations and/or National Focal Points. Where relevant, attention should be drawn to the broader applicability of the guidelines;
- .3.2 for each product developed under the Convention and Protocol, an action plan for communication and distribution of the product should be developed and implemented;
- .4 presentations on the Protocol, the LC-TC&AP as well as this Strategy for its implementation should be made at appropriate international and national fora. This could also include outreach at relevant partnership initiatives

such as those established under the WSSD Plan of Implementation, the “New Partnerships for Africa’s Development” (NEPAD); UNEP’s Global Programme of Action and Regional Seas Programme;

- .5 use of a small brochure listing the basic requirements of the London Protocol and achievements under the London Convention; and
- .6 partnership arrangements between Contracting Parties should be encouraged, especially in cases where bilateral relations already exist.

Co-operation with other organizations

6.10 Partnerships should also be encouraged at the organizational level. Partnership options for the London Convention and Protocol, which have been identified in the past, are:

- .1 co-operation with the UNEP Regional Seas Programme, UNEP-GPA, IOI, IOC, FAO and ECPP based on collaborative agreements;
- .2 co-operation with IMO/MEPC, on issues such as proper management of vessel-generated wastes and recycling of ships and on issues to prevent marine pollution and to address wastes generated in applying the International Convention on the Control of Harmful Anti-fouling Systems on Ships;
- .3 co-operation with Regional Centres for training and technical transfer regarding the management of hazardous wastes and other wastes and the minimization of their generation under the Basel Convention;⁵¹ and
- .4 liaising with established training programmes and networks, i.e., the UN-TRAIN-X Programme and IOI.

6.11 The work of a number of non-governmental international organizations, with observership status at meetings held under the London Convention and Protocol, such as IAPH, PIANC, WODA, IUCN and Greenpeace International, contributes significantly to the overall objectives of both instruments. These organizations indicated that their in-kind support would continue in this regard and the relationships with them should be further pursued in the context of technical co-operation and assistance.

51 Regional Centres have so far been established for the following regions: Central and Eastern Europe, Africa and West Asia, Asia and the Pacific, Latin America and the Caribbean.

7 Financial matters

- 7.1 To date, the only source of funding for technical co-operation projects under the Convention has been voluntary, *ad hoc* contributions, primarily by Contracting Parties, and on a project-by-project basis. For a cohesive Technical Co-operation and Assistance Programme serving both the London Convention and Protocol, the establishment of more secure funding arrangements and the development of a proposal for core funding should be a priority.
- 7.2 In the interim, a “London Convention/Protocol TC-Trust Fund” should be set up through which the current TC-contributions could be channelled. To improve the transparency and accountability of such an arrangement, an annual report on the trust fund should be submitted to each Consultative Meeting and Meeting of Contracting Parties. As an added advantage, the financial administration, by IMO, of the fund would become much easier, and would benefit from its external auditors inspection during the first half of each year. Based on the current number of projects and level of contributions, an initial Trust Fund should be in the order of US\$100,000 to US\$150,000 per year.
- 7.3 Until a Trust Fund has been established, the current system of *ad hoc* and voluntary contributions from donors for projects developed under the LC-TC&AP should be continued.
- 7.4 A partial solution could also be that Contracting Parties “second” personnel for set time periods, to assist with co-ordination and implementation of the LC-TC&AP. With the evolution of communications technology, this need not be full-time, nor require relocation of the officer concerned to London but merely an agreed percentage of working hours on technical co-operation activities.

6.4 Dispute Settlement

6.4.1 Protocol Text - Annex 3

Arbitral Procedure

Article 1

- 1 An Arbitral Tribunal (hereinafter referred to as the „Tribunal“) shall be established upon the request of a Contracting Party addressed to another Contracting Party in application of article 16 of this Protocol. The request for arbitration shall consist of a statement of the case together with any supporting documents.
- 2 The requesting Contracting Party shall inform the Secretary-General of:
- .1 its request for arbitration; and
 - .2 the provisions of this Protocol the interpretation or application of which is, in its opinion, the subject of disagreement.

3 The Secretary-General shall transmit this information to all Contracting States.

Article 2

- 1 The Tribunal shall consist of a single arbitrator if so agreed between the parties to the dispute within 30 days from the date of receipt of the request for arbitration.
- 2 In the case of the death, disability or default of the arbitrator, the parties to a dispute may agree upon a replacement within 30 days of such death, disability or default.

Article 3

- 1 Where the parties to a dispute do not agree upon a Tribunal in accordance with article 2 of this Annex, the Tribunal shall consist of three members:
 - .1 one arbitrator nominated by each party to the dispute; and
 - .2 a third arbitrator who shall be nominated by agreement between the two first named and who shall act as its Chairman.
- 2 If the Chairman of a Tribunal is not nominated within 30 days of nomination of the second arbitrator, the parties to a dispute shall, upon the request of one party, submit to the Secretary-General within a further period of 30 days an agreed list of qualified persons. The Secretary-General shall select the Chairman from such list as soon as possible. He shall not select a Chairman who is or has been a national of one party to the dispute except with the consent of the other party to the dispute.
- 3 If one party to a dispute fails to nominate an arbitrator as provided in paragraph 1.1 within 60 days from the date of receipt of the request for arbitration, the other party may request the submission to the Secretary-General within a period of 30 days of an agreed list of qualified persons. The Secretary-General shall select the Chairman of the Tribunal from such list as soon as possible. The Chairman shall then request the party which has not nominated an arbitrator to do so. If this party does not nominate an arbitrator within 15 days of such request, the Secretary-General shall, upon request of the Chairman, nominate the arbitrator from the agreed list of qualified persons.
- 4 In the case of the death, disability or default of an arbitrator, the party to the dispute who nominated him shall nominate a replacement within 30 days of such death, disability or default. If the party does not nominate a replacement, the arbitration shall proceed with the remaining arbitrators. In the case of the death, disability or default of the Chairman, a replacement shall be nominated in accordance with the provision of paragraphs 1.2 and 2 within 90 days of such death, disability or default.
- 5 A list of arbitrators shall be maintained by the Secretary-General and composed of qualified persons nominated by the Contracting Parties. Each Contracting

Party may designate for inclusion in the list four persons who shall not necessarily be its nationals. If the parties to the dispute have failed within the specified time limits to submit to the Secretary-General an agreed list of qualified persons as provided for in paragraphs 2, 3 and 4, the Secretary-General shall select from the list maintained by him the arbitrator or arbitrators not yet nominated.

Article 4

The Tribunal may hear and determine counter-claims arising directly out of the subject matter of the dispute.

Article 5

Each party to the dispute shall be responsible for the costs entailed by the preparation of its own case. The remuneration of the members of the Tribunal and of all general expenses incurred by the arbitration shall be borne equally by the parties to the dispute. The Tribunal shall keep a record of all its expenses and shall furnish a final statement thereof to the parties.

Article 6

Any Contracting Party which has an interest of a legal nature which may be affected by the decision in the case may, after giving written notice to the parties to the dispute which have originally initiated the procedure, intervene in the arbitration procedure with the consent of the Tribunal and at its own expense. Any such intervenor shall have the right to present evidence, briefs and oral argument on the matters giving rise to its intervention, in accordance with procedures established pursuant to article 7 of this Annex, but shall have no rights with respect to the composition of the Tribunal.

Article 7

A Tribunal established under the provisions of this Annex shall decide its own rules of procedure.

Article 8

- 1 Unless a Tribunal consists of a single arbitrator, decisions of the Tribunal as to its procedure, its place of meeting, and any question related to the dispute laid before it, shall be taken by majority vote of its members. However, the absence or abstention of any member of the Tribunal who was nominated by a party to the dispute shall not constitute an impediment to the Tribunal reaching a decision. In case of equal voting, the vote of the Chairman shall be decisive.
- 2 The parties to the dispute shall facilitate the work of the Tribunal and in particular shall, in accordance with their legislation and using all means at their disposal:
 - .1 provide the Tribunal with all necessary documents and information; and
 - .2 enable the Tribunal to enter their territory, to hear witnesses or experts, and to visit the scene.

- 3 The failure of a party to the dispute to comply with the provisions of paragraph 2 shall not preclude the Tribunal from reaching a decision and rendering an award.

Article 9

The Tribunal shall render its award within five months from the time it is established unless it finds it necessary to extend that time limit for a period not to exceed five months. The award of the Tribunal shall be accompanied by a statement of reasons for the decision. It shall be final and without appeal and shall be communicated to the Secretary-General who shall inform the Contracting Parties. The parties to the dispute shall immediately comply with the award.

7. UNITED NATIONS CONVENTION ON THE LAW OF THE SEA 1982

7.1 Technical Assistance

7.1.1 Convention Text - Article 61(5)

Conservation of the living resources

5. Available scientific information, catch and fishing effort statistics, and other data relevant to the conservation of fish stocks shall be contributed and exchanged on a regular basis through competent international organizations, whether subregional, regional or global, where appropriate and with participation by all States concerned, including States whose nationals are allowed to fish in the exclusive economic zone.

7.1.2 Convention Text - Article 119(2)

Conservation of the living resources of the high seas

2. Available scientific information, catch and fishing effort statistics, and other data relevant to the conservation of fish stocks shall be contributed and exchanged on a regular basis through competent international organizations, whether subregional, regional or global, where appropriate and with participation by all States concerned.

7.1.3 Convention Text - Article 144

Transfer of technology

1. The Authority shall take measures in accordance with this Convention:
 - (a) to acquire technology and scientific knowledge relating to activities in the Area; and
 - (b) to promote and encourage the transfer to developing States of such technology and scientific knowledge so that all States Parties benefit therefrom.
2. To this end the Authority and States Parties shall cooperate in promoting the transfer of technology and scientific knowledge relating to activities in the Area so that the Enterprise and all States Parties may benefit therefrom. In particular they shall initiate and promote:
 - (a) programmes for the transfer of technology to the Enterprise and to developing States with regard to activities in the Area, including, inter alia, facilitating the access of the Enterprise and of developing States to the relevant technology, under fair and reasonable terms and conditions;

- (b) measures directed towards the advancement of the technology of the Enterprise and the domestic technology of developing States, particularly by providing opportunities to personnel from the Enterprise and from developing States for training in marine science and technology and for their full participation in activities in the Area.

7.1.4 Convention Text - Article 202

Scientific and technical assistance to developing States

States shall, directly or through competent international organizations:

- (a) promote programmes of scientific, educational, technical and other assistance to developing States for the protection and preservation of the marine environment and the prevention, reduction and control of marine pollution. Such assistance shall include, inter alia:
 - (i) training of their scientific and technical personnel;
 - (ii) facilitating their participation in relevant international programmes;
 - (iii) supplying them with necessary equipment and facilities;
 - (iv) enhancing their capacity to manufacture such equipment;
 - (v) advice on and developing facilities for research, monitoring, educational and other programmes;
- (b) provide appropriate assistance, especially to developing States, for the minimization of the effects of major incidents which may cause serious pollution of the marine environment;
- (c) provide appropriate assistance, especially to developing States, concerning the preparation of environmental assessments.

7.1.5 Convention Text - Article 203

Preferential treatment for developing States

Developing States shall, for the purposes of prevention, reduction and control of pollution of the marine environment or minimization of its effects, be granted preference by international organizations in:

- (a) the allocation of appropriate funds and technical assistance; and
- (b) the utilization of their specialized services.

7.1.6 Convention Text - Article 266

Promotion of the development and transfer of marine technology

1. States, directly or through competent international organizations, shall cooperate in accordance with their capabilities to promote actively the development and transfer of marine science and marine technology on fair and reasonable terms and conditions.
2. States shall promote the development of the marine scientific and technological capacity of States which may need and request technical assistance in this field, particularly developing States, including land-locked and geographically disadvantaged States, with regard to the exploration, exploitation, conservation and management of marine resources, the protection and preservation of the marine environment, marine scientific research and other activities in the marine environment compatible with this Convention, with a view to accelerating the social and economic development of the developing States.
3. States shall endeavour to foster favourable economic and legal conditions for the transfer of marine technology for the benefit of all parties concerned on an equitable basis.

7.1.7 Convention Text - Article 267

Protection of legitimate interests

States, in promoting cooperation pursuant to article 266, shall have due regard for all legitimate interests including, inter alia, the rights and duties of holders, suppliers and recipients of marine technology.

7.1.8 Convention Text - Article 268

Basic objectives

States, directly or through competent international organizations, shall promote:

- (a) the acquisition, evaluation and dissemination of marine technological knowledge and facilitate access to such information and data;
- (b) the development of appropriate marine technology;
- (c) the development of the necessary technological infrastructure to facilitate the transfer of marine technology;
- (d) the development of human resources through training and education of nationals of developing States and countries and especially the nationals of the least developed among them;
- (e) international cooperation at all levels, particularly at the regional, subregional and bilateral levels.

7.1.9 Convention Text - Article 269

Measures to achieve the basic objectives

In order to achieve the objectives referred to in article 268, States, directly or through competent international organizations, shall endeavour, inter alia, to:

- (a) establish programmes of technical cooperation for the effective transfer of all kinds of marine technology to States which may need and request technical assistance in this field, particularly the developing land-locked and geographically disadvantaged States, as well as other developing States which have not been able either to establish or develop their own technological capacity in marine science and in the exploration and exploitation of marine resources or to develop the infrastructure of such technology;
- (b) promote favourable conditions for the conclusion of agreements, contracts and other similar arrangements, under equitable and reasonable conditions;
- (c) hold conferences, seminars and symposia on scientific and technological subjects, in particular on policies and methods for the transfer of marine technology;
- (d) promote the exchange of scientists and of technological and other experts;
- (e) undertake projects and promote joint ventures and other forms of bilateral and multilateral cooperation.

7.1.10 Convention Text - Article 270

Ways and means of international cooperation

International cooperation for the development and transfer of marine technology shall be carried out, where feasible and appropriate, through existing bilateral, regional or multilateral programmes, and also through expanded and new programmes in order to facilitate marine scientific research, the transfer of marine technology, particularly in new fields, and appropriate international funding for ocean research and development.

7.1.11 Convention Text - Article 271

Guidelines, criteria and standards

States, directly or through competent international organizations, shall promote the establishment of generally accepted guidelines, criteria and standards for the transfer of marine technology on a bilateral basis or within the framework of international organizations and other fora, taking into account, in particular, the interests and needs of developing States.

7.1.12 Convention Text - Article 272

Coordination of international programmes

In the field of transfer of marine technology, States shall endeavour to ensure that competent international organizations coordinate their activities, including any regional or global programmes, taking into account the interests and needs of developing States, particularly land-locked and geographically disadvantaged States.

7.1.13 Convention Text - Article 273

Cooperation with international organizations and the Authority

States shall cooperate actively with competent international organizations and the Authority to encourage and facilitate the transfer to developing States, their nationals and the Enterprise of skills and marine technology with regard to activities in the Area.

7.1.14 Convention Text - Article 274

Objectives of the Authority

Subject to all legitimate interests including, inter alia, the rights and duties of holders, suppliers and recipients of technology, the Authority, with regard to activities in the Area, shall ensure that:

- (a) on the basis of the principle of equitable geographical distribution, nationals of developing States, whether coastal, land-locked or geographically disadvantaged, shall be taken on for the purposes of training as members of the managerial, research and technical staff constituted for its undertakings;
- (b) the technical documentation on the relevant equipment, machinery, devices and processes is made available to all States, in particular developing States which may need and request technical assistance in this field;
- (c) adequate provision is made by the Authority to facilitate the acquisition of technical assistance in the field of marine technology by States which may need and request it, in particular developing States, and the acquisition by their nationals of the necessary skills and know-how, including professional training;
- (d) States which may need and request technical assistance in this field, in particular developing States, are assisted in the acquisition of necessary equipment, processes, plant and other technical know-how through any financial arrangements provided for in this Convention.

7.1.15 Convention Text - Article 275

Establishment of national centres

1. States, directly or through competent international organizations and the Authority, shall promote the establishment, particularly in developing coastal States, of national marine scientific and technological research centres and the strengthening of existing national centres, in order to stimulate and advance the conduct of marine scientific research by developing coastal States and to enhance their national capabilities to utilize and preserve their marine resources for their economic benefit.
2. States, through competent international organizations and the Authority, shall give adequate support to facilitate the establishment and strengthening of such national centres so as to provide for advanced training facilities and necessary equipment, skills and know-how as well as technical experts to such States which may need and request such assistance.

7.1.16 Convention Text - Article 276

1. States, in coordination with the competent international organizations, the Authority and national marine scientific and technological research institutions, shall promote the establishment of regional marine scientific and technological research centres, particularly in developing States, in order to stimulate and advance the conduct of marine scientific research by developing States and foster the transfer of marine technology.
2. All States of a region shall cooperate with the regional centres therein to ensure the more effective achievement of their objectives.

7.1.17 Convention Text - Article 277

Functions of regional centres

The functions of such regional centres shall include, inter alia:

- (a) training and educational programmes at all levels on various aspects of marine scientific and technological research, particularly marine biology, including conservation and management of living resources, oceanography, hydrography, engineering, geological exploration of the seabed, mining and desalination technologies;
- (b) management studies;
- (c) study programmes related to the protection and preservation of the marine environment and the prevention, reduction and control of pollution;
- (d) organization of regional conferences, seminars and symposia;

- (e) acquisition and processing of marine scientific and technological data and information;
- (f) prompt dissemination of results of marine scientific and technological research in readily available publications;
- (g) publicizing national policies with regard to the transfer of marine technology and systematic comparative study of those policies;
- (h) compilation and systematization of information on the marketing of technology and on contracts and other arrangements concerning patents;
- (i) technical cooperation with other States of the region.

7.1.18 Convention Text - Article 278

Cooperation among international organizations

The competent international organizations referred to in this Part and in Part XIII shall take all appropriate measures to ensure, either directly or in close cooperation among themselves, the effective discharge of their functions and responsibilities under this Part.

7.1.19 Agreement relating to the implementation of Part XI of the Convention – Section 5, Article 1(c) (1999)

1. In addition to the provisions of article 144 of the Convention, transfer of technology for the purposes of Part XI shall be governed by the following principles:
 - (c) As a general rule, States Parties shall promote international technical and scientific cooperation with regard to activities in the Area either between the parties concerned or by developing training, technical assistance and scientific cooperation programmes in marine science and technology and the protection and preservation of the marine environment.

7.1.20 UN General Assembly Resolution 55/7 (2001)

Oceans and the law of the sea

The General Assembly,

9. Requests the Secretary-General to establish a voluntary trust fund to assist States in the settlement of disputes through the Tribunal, and to report annually to the Meeting of States Parties to the Convention on the status of the fund;

International Tribunal for the Law of the Sea Trust Fund

Terms of reference

Reasons for establishing the Trust Fund

1. Part XV of the United Nations Convention on the Law of the Sea (“the Convention”) provides for the settlement of disputes. In particular, article 287 specifies that States are free to choose one or more of the following means:
 - (a) The International Tribunal for the Law of the Sea;
 - (b) The International Court of Justice;
 - (c) An arbitral tribunal;
 - (d) A special arbitral tribunal.
2. The Secretary-General already operates a Trust Fund for the International Court of Justice (see A/47/444). The Permanent Court of Arbitration has established a Financial Assistance Fund. The burden of costs should not be a factor for States, in making the choices under article 287, in deciding whether a dispute should be submitted to the Tribunal or in deciding upon the response to an application made to the Tribunal by others. For these reasons, it was decided to create a Trust Fund for the International Tribunal for the Law of the Sea (“the Tribunal”).

Object and purpose of the Trust Fund

3. This Trust Fund (“the Fund”) is established by the Secretary-General in accordance with General Assembly resolution 55/7 and pursuant to the Agreement on Cooperation and Relationship between the United Nations and the Tribunal of 18 December 1997 (resolution 52/251, annex).
4. The purpose of the Fund is to provide financial assistance to States parties to the Convention for expenses incurred in connection with cases submitted, or to be submitted, to the Tribunal, including its Seabed Disputes Chamber and any other Chamber.
5. Assistance, which will be provided in accordance with the following terms and conditions, should only be provided in appropriate cases, principally those proceeding to the merits where jurisdiction is not an issue, but in exceptional circumstances may be provided for any phase of the proceedings. Contributions to the Fund
6. The Secretary-General invites States, intergovernmental organizations, national institutions, non-governmental organizations, as well as natural and juridical persons, to make voluntary financial contributions to the Fund.

Application for assistance

7. An application for assistance from the Fund may be submitted by any State party to the Convention. The application should describe the nature of the case which is to be, or has been, brought by or against the State concerned and should provide an estimate of the costs for which financial assistance is requested. The application should contain a commitment to supply a final statement of account of the expenditures made from approved amounts, to be certified by an auditor acceptable to the United Nations.

Panel of experts

8. The Secretary-General will establish a panel of experts, normally three persons of the highest professional standing, to make recommendations on each request. The task of each panel is to examine the application and to recommend to the Secretary-General the amount of the financial assistance to be given, the phase or phases of the proceedings in respect of which assistance is to be given and the types of expenses for which the assistance may be used.

Granting of assistance

9. The Secretary-General will provide financial assistance from the Fund on the basis of the recommendations of the panel of experts. Payments will be made against receipts showing expenditures made in respect of approved costs. The latter may include:
 - (a) Preparing the application and the written pleadings;
 - (b) Professional fees of counsel and advocates for written and oral pleadings;
 - (c) Travel and expenses of legal representation in Hamburg during the various phases of a case;
 - (d) Execution of an Order of Judgment of the Tribunal, such as marking a boundary in the territorial sea.

Application of the Financial Regulations and Rules of the United Nations

10. The Financial Regulations and Rules of the United Nations will apply to the administration of the Fund, including the procedures for audit.

Reporting

11. An annual report on the activities of the Fund, including details of the contributions to and disbursements from the Fund, will be made to the Meeting of States Parties to the Convention.

Implementing office

12. The Division for Ocean Affairs and the Law of the Sea of the Office of Legal Affairs is the implementing office for this Fund and provides the services for the operation of the Fund.

Offers of professional assistance

13. The implementing office also maintains a list of offers of professional assistance which may be made on a reduced fee basis by suitably qualified persons or bodies. If an applicant for assistance so requests, the implementing office will make the list of offers available to it for its consideration and decision; both financial and other assistance may be extended in respect of the same case or phase thereof.

Revision

14. The General Assembly may revise the above if circumstances so require.

7.2 Enforcement and Liability

7.2.1 Convention Text - Article 25

Rights of protection of the coastal State

1. The coastal State may take the necessary steps in its territorial sea to prevent passage which is not innocent.
2. In the case of ships proceeding to internal waters or a call at a port facility outside internal waters, the coastal State also has the right to take the necessary steps to prevent any breach of the conditions to which admission of those ships to internal waters or such a call is subject.
3. The coastal State may, without discrimination in form or in fact among foreign ships, suspend temporarily in specified areas of its territorial sea the innocent passage of foreign ships if such suspension is essential for the protection of its security, including weapons exercises. Such suspension shall take effect only after having been duly published.

7.2.2 Convention Text - Article 27

Criminal jurisdiction on board a foreign ship

1. The criminal jurisdiction of the coastal State should not be exercised on board a foreign ship passing through the territorial sea to arrest any person or to conduct

any investigation in connection with any crime committed on board the ship during its passage, save only in the following cases:

- (a) if the consequences of the crime extend to the coastal State;
 - (b) if the crime is of a kind to disturb the peace of the country or the good order of the territorial sea;
 - (c) if the assistance of the local authorities has been requested by the master of the ship or by a diplomatic agent or consular officer of the flag State; or
 - (d) if such measures are necessary for the suppression of illicit traffic in narcotic drugs or psychotropic substances.
2. The above provisions do not affect the right of the coastal State to take any steps authorized by its laws for the purpose of an arrest or investigation on board a foreign ship passing through the territorial sea after leaving internal waters.
 3. In the cases provided for in paragraphs 1 and 2, the coastal State shall, if the master so requests, notify a diplomatic agent or consular officer of the flag State before taking any steps, and shall facilitate contact between such agent or officer and the ship's crew. In cases of emergency this notification may be communicated while the measures are being taken.
 4. In considering whether or in what manner an arrest should be made, the local authorities shall have due regard to the interests of navigation.
 5. Except as provided in Part XII or with respect to violations of laws and regulations adopted in accordance with Part V, the coastal State may not take any steps on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connection with any crime committed before the ship entered the territorial sea, if the ship, proceeding from a foreign port, is only passing through the territorial sea without entering internal waters.

7.2.3 Convention Text - Article 30

Non-compliance by warships with the laws and regulations of the coastal State

If any warship does not comply with the laws and regulations of the coastal State concerning passage through the territorial sea and disregards any request for compliance therewith which is made to it, the coastal State may require it to leave the territorial sea immediately.

7.2.4 Convention Text - Article 31

Responsibility of the flag State for damage caused by a warship or other government ship operated for non-commercial purposes

The flag State shall bear international responsibility for any loss or damage to the coastal State resulting from the non-compliance by a warship or other government ship operated for non-commercial purposes with the laws and regulations of the coastal State concerning passage through the territorial sea or with the provisions of this Convention or other rules of international law.

7.2.5 Convention Text - Article 42(5)

Laws and regulations of States bordering straits relating to transit passage

5. The flag State of a ship or the State of registry of an aircraft entitled to sovereign immunity which acts in a manner contrary to such laws and regulations or other provisions of this Part shall bear international responsibility for any loss or damage which results to States bordering straits.

7.2.6 Convention Text - Article 54

Duties of ships and aircraft during their passage, research and survey activities, duties of the archipelagic State and laws and regulations of the archipelagic State relating to archipelagic sea lanes passage

Articles 39, 40, 42 and 44 apply mutatis mutandis to archipelagic sea lanes passage.

7.2.7 Convention Text - Article 73

Enforcement of laws and regulations of the coastal State

1. The coastal State may, in the exercise of its sovereign rights to explore, exploit, conserve and manage the living resources in the exclusive economic zone, take such measures, including boarding, inspection, arrest and judicial proceedings, as may be necessary to ensure compliance with the laws and regulations adopted by it in conformity with this Convention.
2. Arrested vessels and their crews shall be promptly released upon the posting of reasonable bond or other security.
3. Coastal State penalties for violations of fisheries laws and regulations in the exclusive economic zone may not include imprisonment, in the absence of agreements to the contrary by the States concerned, or any other form of corporal punishment.
4. In cases of arrest or detention of foreign vessels the coastal State shall promptly notify the flag State, through appropriate channels, of the action taken and of any penalties subsequently imposed.

7.2.8 Convention Text - Article 111

Right of hot pursuit

1. The hot pursuit of a foreign ship may be undertaken when the competent authorities of the coastal State have good reason to believe that the ship has violated the laws and regulations of that State. Such pursuit must be commenced when the foreign ship or one of its boats is within the internal waters, the archipelagic waters, the territorial sea or the contiguous zone of the pursuing State, and may only be continued outside the territorial sea or the contiguous zone if the pursuit has not been interrupted. It is not necessary that, at the time when the foreign ship within the territorial sea or the contiguous zone receives the order to stop, the ship giving the order should likewise be within the territorial sea or the contiguous zone. If the foreign ship is within a contiguous zone, as defined in article 33, the pursuit may only be undertaken if there has been a violation of the rights for the protection of which the zone was established.
2. The right of hot pursuit shall apply *mutatis mutandis* to violations in the exclusive economic zone or on the continental shelf, including safety zones around continental shelf installations, of the laws and regulations of the coastal State applicable in accordance with this Convention to the exclusive economic zone or the continental shelf, including such safety zones.
3. The right of hot pursuit ceases as soon as the ship pursued enters the territorial sea of its own State or of a third State.
4. Hot pursuit is not deemed to have begun unless the pursuing ship has satisfied itself by such practicable means as may be available that the ship pursued or one of its boats or other craft working as a team and using the ship pursued as a mother ship is within the limits of the territorial sea, or, as the case may be, within the contiguous zone or the exclusive economic zone or above the continental shelf. The pursuit may only be commenced after a visual or auditory signal to stop has been given at a distance which enables it to be seen or heard by the foreign ship.
5. The right of hot pursuit may be exercised only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.
6. Where hot pursuit is effected by an aircraft:
 - (a) the provisions of paragraphs 1 to 4 shall apply *mutatis mutandis*;
 - (b) the aircraft giving the order to stop must itself actively pursue the ship until a ship or another aircraft of the coastal State, summoned by the aircraft, arrives to take over the pursuit, unless the aircraft is itself able to arrest the ship. It does not suffice to justify an arrest outside the territorial sea that the ship was merely sighted by the aircraft as an offender or suspected offender, if it was not both

ordered to stop and pursued by the aircraft itself or other aircraft or ships which continue the pursuit without interruption.

7. The release of a ship arrested within the jurisdiction of a State and escorted to a port of that State for the purposes of an inquiry before the competent authorities may not be claimed solely on the ground that the ship, in the course of its voyage, was escorted across a portion of the exclusive economic zone or the high seas, if the circumstances rendered this necessary.
8. Where a ship has been stopped or arrested outside the territorial sea in circumstances which do not justify the exercise of the right of hot pursuit, it shall be compensated for any loss or damage that may have been thereby sustained.

7.2.9 Convention Text - Article 139

Responsibility to ensure compliance and liability for damage

1. States Parties shall have the responsibility to ensure that activities in the Area, whether carried out by States Parties, or state enterprises or natural or juridical persons which possess the nationality of States Parties or are effectively controlled by them or their nationals, shall be carried out in conformity with this Part. The same responsibility applies to international organizations for activities in the Area carried out by such organizations.
2. Without prejudice to the rules of international law and Annex III, article 22, damage caused by the failure of a State Party or international organization to carry out its responsibilities under this Part shall entail liability; States Parties or international organizations acting together shall bear joint and several liability. A State Party shall not however be liable for damage caused by any failure to comply with this Part by a person whom it has sponsored under article 153, paragraph 2(b), if the State Party has taken all necessary and appropriate measures to secure effective compliance under article 153, paragraph 4, and Annex III, article 4, paragraph 4.
3. States Parties that are members of international organizations shall take appropriate measures to ensure the implementation of this article with respect to such organizations.

7.2.10 Convention Text – Article 213

Enforcement with respect to pollution from land-based sources

States shall enforce their laws and regulations adopted in accordance with article 207 and shall adopt laws and regulations and take other measures necessary to implement applicable international rules and standards established through competent international organizations or diplomatic conference to prevent, reduce and control pollution of the marine environment from land-based sources.

7.2.11 Convention Text – Article 214

Enforcement with respect to pollution from seabed activities

States shall enforce their laws and regulations adopted in accordance with article 208 and shall adopt laws and regulations and take other measures necessary to implement applicable international rules and standards established through competent international organizations or diplomatic conference to prevent, reduce and control pollution of the marine environment arising from or in connection with seabed activities subject to their jurisdiction and from artificial islands, installations and structures under their jurisdiction, pursuant to articles 60 and 80.

7.2.12 Convention Text – Article 215

Enforcement with respect to pollution from activities in the Area

Enforcement of international rules, regulations and procedures established in accordance with Part XI to prevent, reduce and control pollution of the marine environment from activities in the Area shall be governed by that Part.

7.2.13 Convention Text – Article 216

Enforcement with respect to pollution by dumping

1. Laws and regulations adopted in accordance with this Convention and applicable international rules and standards established through competent international organizations or diplomatic conference for the prevention, reduction and control of pollution of the marine environment by dumping shall be enforced:
 - (a) by the coastal State with regard to dumping within its territorial sea or its exclusive economic zone or onto its continental shelf;
 - (b) by the flag State with regard to vessels flying its flag or vessels or aircraft of its registry;
 - (c) by any State with regard to acts of loading of wastes or other matter occurring within its territory or at its off-shore terminals.
2. No State shall be obliged by virtue of this article to institute proceedings when another State has already instituted proceedings in accordance with this article.

7.2.14 Convention Text – Article 217

Enforcement by flag States

1. States shall ensure compliance by vessels flying their flag or of their registry with applicable international rules and standards, established through the competent international organization or general diplomatic conference, and with their laws

and regulations adopted in accordance with this Convention for the prevention, reduction and control of pollution of the marine environment from vessels and shall accordingly adopt laws and regulations and take other measures necessary for their implementation. Flag States shall provide for the effective enforcement of such rules, standards, laws and regulations, irrespective of where a violation occurs.

2. States shall, in particular, take appropriate measures in order to ensure that vessels flying their flag or of their registry are prohibited from sailing, until they can proceed to sea in compliance with the requirements of the international rules and standards referred to in paragraph 1, including requirements in respect of design, construction, equipment and manning of vessels.
3. States shall ensure that vessels flying their flag or of their registry carry on board certificates required by and issued pursuant to international rules and standards referred to in paragraph 1. States shall ensure that vessels flying their flag are periodically inspected in order to verify that such certificates are in conformity with the actual condition of the vessels. These certificates shall be accepted by other States as evidence of the condition of the vessels and shall be regarded as having the same force as certificates issued by them, unless there are clear grounds for believing that the condition of the vessel does not correspond substantially with the particulars of the certificates.
4. If a vessel commits a violation of rules and standards established through the competent international organization or general diplomatic conference, the flag State, without prejudice to articles 218, 220 and 228, shall provide for immediate investigation and where appropriate institute proceedings in respect of the alleged violation irrespective of where the violation occurred or where the pollution caused by such violation has occurred or has been spotted.
5. Flag States conducting an investigation of the violation may request the assistance of any other State whose cooperation could be useful in clarifying the circumstances of the case. States shall endeavour to meet appropriate requests of flag States.
6. States shall, at the written request of any State, investigate any violation alleged to have been committed by vessels flying their flag. If satisfied that sufficient evidence is available to enable proceedings to be brought in respect of the alleged violation, flag States shall without delay institute such proceedings in accordance with their laws.
7. Flag States shall promptly inform the requesting State and the competent international organization of the action taken and its outcome. Such information shall be available to all States.
8. Penalties provided for by the laws and regulations of States for vessels flying their flag shall be adequate in severity to discourage violations wherever they occur.

7.2.15 Convention Text - Article 218

Enforcement by port States

1. When a vessel is voluntarily within a port or at an off-shore terminal of a State, that State may undertake investigations and, where the evidence so warrants, institute proceedings in respect of any discharge from that vessel outside the internal waters, territorial sea or exclusive economic zone of that State in violation of applicable international rules and standards established through the competent international organization or general diplomatic conference.
2. No proceedings pursuant to paragraph 1 shall be instituted in respect of a discharge violation in the internal waters, territorial sea or exclusive economic zone of another State unless requested by that State, the flag State, or a State damaged or threatened by the discharge violation, or unless the violation has caused or is likely to cause pollution in the internal waters, territorial sea or exclusive economic zone of the State instituting the proceedings.
3. When a vessel is voluntarily within a port or at an off-shore terminal of a State, that State shall, as far as practicable, comply with requests from any State for investigation of a discharge violation referred to in paragraph 1, believed to have occurred in, caused, or threatened damage to the internal waters, territorial sea or exclusive economic zone of the requesting State. It shall likewise, as far as practicable, comply with requests from the flag State for investigation of such a violation, irrespective of where the violation occurred.
4. The records of the investigation carried out by a port State pursuant to this article shall be transmitted upon request to the flag State or to the coastal State. Any proceedings instituted by the port State on the basis of such an investigation may, subject to section 7, be suspended at the request of the coastal State when the violation has occurred within its internal waters, territorial sea or exclusive economic zone. The evidence and records of the case, together with any bond or other financial security posted with the authorities of the port State, shall in that event be transmitted to the coastal State. Such transmittal shall preclude the continuation of proceedings in the port State.

7.2.16 Convention Text – Article 219

Measures relating to seaworthiness of vessels to avoid pollution

Subject to section 7, States which, upon request or on their own initiative, have ascertained that a vessel within one of their ports or at one of their off-shore terminals is in violation of applicable international rules and standards relating to seaworthiness of vessels and thereby threatens damage to the marine environment shall, as far as practicable, take administrative measures to prevent the vessel from sailing. Such States may permit the vessel to proceed only to the nearest appropriate repair yard and, upon removal of the causes of the violation, shall permit the vessel to continue immediately.

7.2.17 Convention Text – Article 220

Enforcement by coastal States

1. When a vessel is voluntarily within a port or at an off-shore terminal of a State, that State may, subject to section 7, institute proceedings in respect of any violation of its laws and regulations adopted in accordance with this Convention or applicable international rules and standards for the prevention, reduction and control of pollution from vessels when the violation has occurred within the territorial sea or the exclusive economic zone of that State.
2. Where there are clear grounds for believing that a vessel navigating in the territorial sea of a State has, during its passage therein, violated laws and regulations of that State adopted in accordance with this Convention or applicable international rules and standards for the prevention, reduction and control of pollution from vessels, that State, without prejudice to the application of the relevant provisions of Part II, section 3, may undertake physical inspection of the vessel relating to the violation and may, where the evidence so warrants, institute proceedings, including detention of the vessel, in accordance with its laws, subject to the provisions of section 7.
3. Where there are clear grounds for believing that a vessel navigating in the exclusive economic zone or the territorial sea of a State has, in the exclusive economic zone, committed a violation of applicable international rules and standards for the prevention, reduction and control of pollution from vessels or laws and regulations of that State conforming and giving effect to such rules and standards, that State may require the vessel to give information regarding its identity and port of registry, its last and its next port of call and other relevant information required to establish whether a violation has occurred.
4. States shall adopt laws and regulations and take other measures so that vessels flying their flag comply with requests for information pursuant to paragraph 3.
5. Where there are clear grounds for believing that a vessel navigating in the exclusive economic zone or the territorial sea of a State has, in the exclusive economic zone, committed a violation referred to in paragraph 3 resulting in a substantial discharge causing or threatening significant pollution of the marine environment, that State may undertake physical inspection of the vessel for matters relating to the violation if the vessel has refused to give information or if the information supplied by the vessel is manifestly at variance with the evident factual situation and if the circumstances of the case justify such inspection.
6. Where there is clear objective evidence that a vessel navigating in the exclusive economic zone or the territorial sea of a State has, in the exclusive economic zone, committed a violation referred to in paragraph 3 resulting in a discharge causing major damage or threat of major damage to the coastline or related interests of the coastal State, or to any resources of its territorial sea or exclusive

economic zone, that State may, subject to section 7, provided that the evidence so warrants, institute proceedings, including detention of the vessel, in accordance with its laws.

7. Notwithstanding the provisions of paragraph 6, whenever appropriate procedures have been established, either through the competent international organization or as otherwise agreed, whereby compliance with requirements for bonding or other appropriate financial security has been assured, the coastal State if bound by such procedures shall allow the vessel to proceed.
8. The provisions of paragraphs 3, 4, 5, 6 and 7 also apply in respect of national laws and regulations adopted pursuant to article 211, paragraph 6.

7.2.18 Convention Text – Article 221

Measures to avoid pollution arising from maritime casualties

1. Nothing in this Part shall prejudice the right of States, pursuant to international law, both customary and conventional, to take and enforce measures beyond the territorial sea proportionate to the actual or threatened damage to protect their coastline or related interests, including fishing, from pollution or threat of pollution following upon a maritime casualty or acts relating to such a casualty, which may reasonably be expected to result in major harmful consequences.
2. For the purposes of this article, „maritime casualty“ means a collision of vessels, stranding or other incident of navigation, or other occurrence on board a vessel or external to it resulting in material damage or imminent threat of material damage to a vessel or cargo.

7.2.19 Convention Text – Article 222

Enforcement with respect to pollution from or through the atmosphere

States shall enforce, within the air space under their sovereignty or with regard to vessels flying their flag or vessels or aircraft of their registry, their laws and regulations adopted in accordance with article 212, paragraph 1, and with other provisions of this Convention and shall adopt laws and regulations and take other measures necessary to implement applicable international rules and standards established through competent international organizations or diplomatic conference to prevent, reduce and control pollution of the marine environment from or through the atmosphere, in conformity with all relevant international rules and standards concerning the safety of air navigation.

7.2.20 Convention Text - Article 223

Measures to facilitate proceedings

In proceedings instituted pursuant to this Part, States shall take measures to facilitate the hearing of witnesses and the admission of evidence submitted by authorities of another State, or by the competent international organization, and shall facilitate the attendance at such proceedings of official representatives of the competent international organization, the flag State and any State affected by pollution arising out of any violation. The official representatives attending such proceedings shall have such rights and duties as may be provided under national laws and regulations or international law.

7.2.21 Convention Text – Article 224

Exercise of powers of enforcement

The powers of enforcement against foreign vessels under this Part may only be exercised by officials or by warships, military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.

7.2.22 Convention Text – Article 225

Duty to avoid adverse consequences in the exercise of the powers of enforcement

In the exercise under this Convention of their powers of enforcement against foreign vessels, States shall not endanger the safety of navigation or otherwise create any hazard to a vessel, or bring it to an unsafe port or anchorage, or expose the marine environment to an unreasonable risk.

7.2.23 Convention Text – Article 226

Investigation of foreign vessels

1. (a) States shall not delay a foreign vessel longer than is essential for purposes of the investigations provided for in articles 216, 218 and 220. Any physical inspection of a foreign vessel shall be limited to an examination of such certificates, records or other documents as the vessel is required to carry by generally accepted international rules and standards or of any similar documents which it is carrying; further physical inspection of the vessel may be undertaken only after such an examination and only when:
 - (i) there are clear grounds for believing that the condition of the vessel or its equipment does not correspond substantially with the particulars of those documents;

- (ii) the contents of such documents are not sufficient to confirm or verify a suspected violation; or
 - (iii) the vessel is not carrying valid certificates and records.
 - (b) If the investigation indicates a violation of applicable laws and regulations or international rules and standards for the protection and preservation of the marine environment, release shall be made promptly subject to reasonable procedures such as bonding or other appropriate financial security.
 - (c) Without prejudice to applicable international rules and standards relating to the seaworthiness of vessels, the release of a vessel may, whenever it would present an unreasonable threat of damage to the marine environment, be refused or made conditional upon proceeding to the nearest appropriate repair yard. Where release has been refused or made conditional, the flag State of the vessel must be promptly notified, and may seek release of the vessel in accordance with Part XV.
2. States shall cooperate to develop procedures for the avoidance of unnecessary physical inspection of vessels at sea.

7.2.24 Convention Text – Article 227

Non-discrimination with respect to foreign vessels

In exercising their rights and performing their duties under this Part, States shall not discriminate in form or in fact against vessels of any other State.

7.2.25 Convention Text – Article 228

Suspension and restrictions on institution of proceedings

1. Proceedings to impose penalties in respect of any violation of applicable laws and regulations or international rules and standards relating to the prevention, reduction and control of pollution from vessels committed by a foreign vessel beyond the territorial sea of the State instituting proceedings shall be suspended upon the taking of proceedings to impose penalties in respect of corresponding charges by the flag State within six months of the date on which proceedings were first instituted, unless those proceedings relate to a case of major damage to the coastal State or the flag State in question has repeatedly disregarded its obligation to enforce effectively the applicable international rules and standards in respect of violations committed by its vessels. The flag State shall in due course make available to the State previously instituting proceedings a full dossier of the case and the records of the proceedings, whenever the flag State has requested the suspension of proceedings in accordance with this article. When proceedings instituted by the flag State have been brought to a

conclusion, the suspended proceedings shall be terminated. Upon payment of costs incurred in respect of such proceedings, any bond posted or other financial security provided in connection with the suspended proceedings shall be released by the coastal State.

2. Proceedings to impose penalties on foreign vessels shall not be instituted after the expiry of three years from the date on which the violation was committed, and shall not be taken by any State in the event of proceedings having been instituted by another State subject to the provisions set out in paragraph 1.
3. The provisions of this article are without prejudice to the right of the flag State to take any measures, including proceedings to impose penalties, according to its laws irrespective of prior proceedings by another State.

7.2.26 Convention Text – Article 229

Institution of civil proceedings

Nothing in this Convention affects the institution of civil proceedings in respect of any claim for loss or damage resulting from pollution of the marine environment.

7.2.27 Convention Text - Article 230

Monetary penalties and the observance of recognized rights of the accused

1. Monetary penalties only may be imposed with respect to violations of national laws and regulations or applicable international rules and standards for the prevention, reduction and control of pollution of the marine environment, committed by foreign vessels beyond the territorial sea.
2. Monetary penalties only may be imposed with respect to violations of national laws and regulations or applicable international rules and standards for the prevention, reduction and control of pollution of the marine environment, committed by foreign vessels in the territorial sea, except in the case of a wilful and serious act of pollution in the territorial sea.
3. In the conduct of proceedings in respect of such violations committed by a foreign vessel which may result in the imposition of penalties, recognized rights of the accused shall be observed.

7.2.28 Convention Text – Article 231

Notification to the flag State and other States concerned

States shall promptly notify the flag State and any other State concerned of any measures taken pursuant to section 6 against foreign vessels, and shall submit to the flag State all official reports concerning such measures. However, with respect to violations committed in the territorial sea, the foregoing obligations of the coastal

States apply only to such measures as are taken in proceedings. The diplomatic agents or consular officers and where possible the maritime authority of the flag State, shall be immediately informed of any such measures taken pursuant to section 6 against foreign vessels.

7.2.29 Convention Text – Article 232

Liability of States arising from enforcement measures

States shall be liable for damage or loss attributable to them arising from measures taken pursuant to section 6 when such measures are unlawful or exceed those reasonably required in the light of available information. States shall provide for recourse in their courts for actions in respect of such damage or loss.

7.2.30 Convention Text – Article 233

Safeguards with respect to straits used for international navigation

Nothing in sections 5, 6 and 7 affects the legal regime of straits used for international navigation. However, if a foreign ship other than those referred to in section 10 has committed a violation of the laws and regulations referred to in article 42, paragraph 1(a) and (b), causing or threatening major damage to the marine environment of the straits, the States bordering the straits may take appropriate enforcement measures and if so shall respect *mutatis mutandis* the provisions of this section.

7.2.31 Convention Text – Article 234

Ice-covered areas

Coastal States have the right to adopt and enforce non-discriminatory laws and regulations for the prevention, reduction and control of marine pollution from vessels in ice-covered areas within the limits of the exclusive economic zone, where particularly severe climatic conditions and the presence of ice covering such areas for most of the year create obstructions or exceptional hazards to navigation, and pollution of the marine environment could cause major harm to or irreversible disturbance of the ecological balance. Such laws and regulations shall have due regard to navigation and the protection and preservation of the marine environment based on the best available scientific evidence.

7.2.32 Convention Text - Article 235

Responsibility and liability

1. States are responsible for the fulfilment of their international obligations concerning the protection and preservation of the marine environment. They shall be liable in accordance with international law.

2. States shall ensure that recourse is available in accordance with their legal systems for prompt and adequate compensation or other relief in respect of damage caused by pollution of the marine environment by natural or juridical persons under their jurisdiction.
3. With the objective of assuring prompt and adequate compensation in respect of all damage caused by pollution of the marine environment, States shall cooperate in the implementation of existing international law and the further development of international law relating to responsibility and liability for the assessment of and compensation for damage and the settlement of related disputes, as well as, where appropriate, development of criteria and procedures for payment of adequate compensation, such as compulsory insurance or compensation funds.

7.2.33 Convention Text - Article 263

Responsibility and liability

1. States and competent international organizations shall be responsible for ensuring that marine scientific research, whether undertaken by them or on their behalf, is conducted in accordance with this Convention.
2. States and competent international organizations shall be responsible and liable for the measures they take in contravention of this Convention in respect of marine scientific research conducted by other States, their natural or juridical persons or by competent international organizations, and shall provide compensation for damage resulting from such measures.
3. States and competent international organizations shall be responsible and liable pursuant to article 235 for damage caused by pollution of the marine environment arising out of marine scientific research undertaken by them or on their behalf.

7.2.34 Convention Text - Article 304

Responsibility and liability for damage

The provisions of this Convention regarding responsibility and liability for damage are without prejudice to the application of existing rules and the development of further rules regarding responsibility and liability under international law.

7.3 Dispute Settlement

7.3.1 Convention Text - Article 279

Obligation to settle disputes by peaceful means

States Parties shall settle any dispute between them concerning the interpretation or application of this Convention by peaceful means in accordance with Article 2, paragraph 3, of the Charter of the United Nations and, to this end, shall seek a solution by the means indicated in Article 33, paragraph 1, of the Charter.

7.3.2 Convention Text - Article 280

Settlement of disputes by any peaceful means chosen by the parties

Nothing in this Part impairs the right of any States Parties to agree at any time to settle a dispute between them concerning the interpretation or application of this Convention by any peaceful means of their own choice.

7.3.3 Convention Text - Article 281

Procedure where no settlement has been reached by the parties

1. If the States Parties which are parties to a dispute concerning the interpretation or application of this Convention have agreed to seek settlement of the dispute by a peaceful means of their own choice, the procedures provided for in this Part apply only where no settlement has been reached by recourse to such means and the agreement between the parties does not exclude any further procedure.
2. If the parties have also agreed on a time-limit, paragraph 1 applies only upon the expiration of that time-limit.

7.3.4 Convention Text - Article 282

Obligations under general, regional or bilateral agreements

If the States Parties which are parties to a dispute concerning the interpretation or application of this Convention have agreed, through a general, regional or bilateral agreement or otherwise, that such dispute shall, at the request of any party to the dispute, be submitted to a procedure that entails a binding decision, that procedure shall apply in lieu of the procedures provided for in this Part, unless the parties to the dispute otherwise agree.

7.3.5 Convention Text - Article 283

Obligation to exchange views

1. When a dispute arises between States Parties concerning the interpretation or application of this Convention, the parties to the dispute shall proceed expeditiously to an exchange of views regarding its settlement by negotiation or other peaceful means.
2. The parties shall also proceed expeditiously to an exchange of views where a procedure for the settlement of such a dispute has been terminated without a settlement or where a settlement has been reached and the circumstances require consultation regarding the manner of implementing the settlement.

7.3.6 Convention Text - Article 284

Conciliation

1. A State Party which is a party to a dispute concerning the interpretation or application of this Convention may invite the other party or parties to submit the dispute to conciliation in accordance with the procedure under Annex V, section 1, or another conciliation procedure.
2. If the invitation is accepted and if the parties agree upon the conciliation procedure to be applied, any party may submit the dispute to that procedure.
3. If the invitation is not accepted or the parties do not agree upon the procedure, the conciliation proceedings shall be deemed to be terminated.
4. Unless the parties otherwise agree, when a dispute has been submitted to conciliation, the proceedings may be terminated only in accordance with the agreed conciliation procedure.

7.3.7 Convention Text - Article 285

Application of this section to disputes submitted pursuant to Part XI

This section applies to any dispute which pursuant to Part XI, section 5, is to be settled in accordance with procedures provided for in this Part. If an entity other than a State Party is a party to such a dispute, this section applies *mutatis mutandis*.

7.3.8 Convention Text - Article 286

Application of procedures under this section

Subject to section 3, any dispute concerning the interpretation or application of this Convention shall, where no settlement has been reached by recourse to section 1, be submitted at the request of any party to the dispute to the court or tribunal having jurisdiction under this section.

7.3.9 Convention Text - Article 287

Choice of procedure

1. When signing, ratifying or acceding to this Convention or at any time thereafter, a State shall be free to choose, by means of a written declaration, one or more of the following means for the settlement of disputes concerning the interpretation or application of this Convention:
 - (a) the International Tribunal for the Law of the Sea established in accordance with Annex VI;
 - (b) the International Court of Justice;
 - (c) an arbitral tribunal constituted in accordance with Annex VII;
 - (d) a special arbitral tribunal constituted in accordance with Annex VIII for one or more of the categories of disputes specified therein.
2. A declaration made under paragraph 1 shall not affect or be affected by the obligation of a State Party to accept the jurisdiction of the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea to the extent and in the manner provided for in Part XI, section 5.
3. A State Party, which is a party to a dispute not covered by a declaration in force, shall be deemed to have accepted arbitration in accordance with Annex VII.
4. If the parties to a dispute have accepted the same procedure for the settlement of the dispute, it may be submitted only to that procedure, unless the parties otherwise agree.
5. If the parties to a dispute have not accepted the same procedure for the settlement of the dispute, it may be submitted only to arbitration in accordance with Annex VII, unless the parties otherwise agree.
6. A declaration made under paragraph 1 shall remain in force until three months after notice of revocation has been deposited with the Secretary-General of the United Nations.
7. A new declaration, a notice of revocation or the expiry of a declaration does not in any way affect proceedings pending before a court or tribunal having jurisdiction under this article, unless the parties otherwise agree.
8. Declarations and notices referred to in this article shall be deposited with the Secretary-General of the United Nations, who shall transmit copies thereof to the States Parties.

7.3.10 Convention Text - Article 288

Jurisdiction

1. A court or tribunal referred to in article 287 shall have jurisdiction over any dispute concerning the interpretation or application of this Convention which is submitted to it in accordance with this Part.
2. A court or tribunal referred to in article 287 shall also have jurisdiction over any dispute concerning the interpretation or application of an international agreement related to the purposes of this Convention, which is submitted to it in accordance with the agreement.
3. The Seabed Disputes Chamber of the International Tribunal for the Law of the Sea established in accordance with Annex VI, and any other chamber or arbitral tribunal referred to in Part XI, section 5, shall have jurisdiction in any matter which is submitted to it in accordance therewith.
4. In the event of a dispute as to whether a court or tribunal has jurisdiction, the matter shall be settled by decision of that court or tribunal.

7.3.11 Convention Text - Article 289

Experts

In any dispute involving scientific or technical matters, a court or tribunal exercising jurisdiction under this section may, at the request of a party or proprio motu, select in consultation with the parties no fewer than two scientific or technical experts chosen preferably from the relevant list prepared in accordance with Annex VIII, article 2, to sit with the court or tribunal but without the right to vote.

7.3.12 Convention Text - Article 290

Provisional measures

1. If a dispute has been duly submitted to a court or tribunal which considers that prima facie it has jurisdiction under this Part or Part XI, section 5, the court or tribunal may prescribe any provisional measures which it considers appropriate under the circumstances to preserve the respective rights of the parties to the dispute or to prevent serious harm to the marine environment, pending the final decision.
2. Provisional measures may be modified or revoked as soon as the circumstances justifying them have changed or ceased to exist.
3. Provisional measures may be prescribed, modified or revoked under this article only at the request of a party to the dispute and after the parties have been given an opportunity to be heard.

4. The court or tribunal shall forthwith give notice to the parties to the dispute, and to such other States Parties as it considers appropriate, of the prescription, modification or revocation of provisional measures.
5. Pending the constitution of an arbitral tribunal to which a dispute is being submitted under this section, any court or tribunal agreed upon by the parties or, failing such agreement within two weeks from the date of the request for provisional measures, the International Tribunal for the Law of the Sea or, with respect to activities in the Area, the Seabed Disputes Chamber, may prescribe, modify or revoke provisional measures in accordance with this article if it considers that prima facie the tribunal which is to be constituted would have jurisdiction and that the urgency of the situation so requires. Once constituted, the tribunal to which the dispute has been submitted may modify, revoke or affirm those provisional measures, acting in conformity with paragraphs 1 to 4.
6. The parties to the dispute shall comply promptly with any provisional measures prescribed under this article.

7.3.13 Convention Text - Article 291

Access

1. All the dispute settlement procedures specified in this Part shall be open to States Parties.
2. The dispute settlement procedures specified in this Part shall be open to entities other than States Parties only as specifically provided for in this Convention.

7.3.14 Convention Text - Article 292

Prompt release of vessels and crews

1. Where the authorities of a State Party have detained a vessel flying the flag of another State Party and it is alleged that the detaining State has not complied with the provisions of this Convention for the prompt release of the vessel or its crew upon the posting of a reasonable bond or other financial security, the question of release from detention may be submitted to any court or tribunal agreed upon by the parties or, failing such agreement within 10 days from the time of detention, to a court or tribunal accepted by the detaining State under article 287 or to the International Tribunal for the Law of the Sea, unless the parties otherwise agree.
2. The application for release may be made only by or on behalf of the flag State of the vessel.
3. The court or tribunal shall deal without delay with the application for release and shall deal only with the question of release, without prejudice to the merits

of any case before the appropriate domestic forum against the vessel, its owner or its crew. The authorities of the detaining State remain competent to release the vessel or its crew at any time.

4. Upon the posting of the bond or other financial security determined by the court or tribunal, the authorities of the detaining State shall comply promptly with the decision of the court or tribunal concerning the release of the vessel or its crew.

7.3.15 Convention Text - Article 293

Applicable law

1. A court or tribunal having jurisdiction under this section shall apply this Convention and other rules of international law not incompatible with this Convention.
2. Paragraph 1 does not prejudice the power of the court or tribunal having jurisdiction under this section to decide a case *ex aequo et bono*, if the parties so agree.

7.3.16 Convention Text - Article 294

Preliminary proceedings

1. A court or tribunal provided for in article 287 to which an application is made in respect of a dispute referred to in article 297 shall determine at the request of a party, or may determine *proprio motu*, whether the claim constitutes an abuse of legal process or whether *prima facie* it is well founded. If the court or tribunal determines that the claim constitutes an abuse of legal process or is *prima facie* unfounded, it shall take no further action in the case.
2. Upon receipt of the application, the court or tribunal shall immediately notify the other party or parties of the application, and shall fix a reasonable time-limit within which they may request it to make a determination in accordance with paragraph 1.
3. Nothing in this article affects the right of any party to a dispute to make preliminary objections in accordance with the applicable rules of procedure.

7.3.17 Convention Text - Article 295

Exhaustion of local remedies

Any dispute between States Parties concerning the interpretation or application of this Convention may be submitted to the procedures provided for in this section only after local remedies have been exhausted where this is required by international law.

7.3.18 Convention Text - Article 296

Finality and binding force of decisions

1. Any decision rendered by a court or tribunal having jurisdiction under this section shall be final and shall be complied with by all the parties to the dispute.
2. Any such decision shall have no binding force except between the parties and in respect of that particular dispute.

7.3.19 Convention Text - Article 297

Limitations on applicability of section 2

1. Disputes concerning the interpretation or application of this Convention with regard to the exercise by a coastal State of its sovereign rights or jurisdiction provided for in this Convention shall be subject to the procedures provided for in section 2 in the following cases:
 - (a) when it is alleged that a coastal State has acted in contravention of the provisions of this Convention in regard to the freedoms and rights of navigation, overflight or the laying of submarine cables and pipelines, or in regard to other internationally lawful uses of the sea specified in article 58;
 - (b) when it is alleged that a State in exercising the aforementioned freedoms, rights or uses has acted in contravention of this Convention or of laws or regulations adopted by the coastal State in conformity with this Convention and other rules of international law not incompatible with this Convention; or
 - (c) when it is alleged that a coastal State has acted in contravention of specified international rules and standards for the protection and preservation of the marine environment which are applicable to the coastal State and which have been established by this Convention or through a competent international organization or diplomatic conference in accordance with this Convention.
2. (a) Disputes concerning the interpretation or application of the provisions of this Convention with regard to marine scientific research shall be settled in accordance with section 2, except that the coastal State shall not be obliged to accept the submission to such settlement of any dispute arising out of:
 - (i) the exercise by the coastal State of a right or discretion in accordance with article 246; or
 - (ii) a decision by the coastal State to order suspension or cessation of a research project in accordance with article 253.

- (b) A dispute arising from an allegation by the researching State that with respect to a specific project the coastal State is not exercising its rights under articles 246 and 253 in a manner compatible with this Convention shall be submitted, at the request of either party, to conciliation under Annex V, section 2, provided that the conciliation commission shall not call in question the exercise by the coastal State of its discretion to designate specific areas as referred to in article 246, paragraph 6, or of its discretion to withhold consent in accordance with article 246, paragraph 5.
- 3.
- (a) Disputes concerning the interpretation or application of the provisions of this Convention with regard to fisheries shall be settled in accordance with section 2, except that the coastal State shall not be obliged to accept the submission to such settlement of any dispute relating to its sovereign rights with respect to the living resources in the exclusive economic zone or their exercise, including its discretionary powers for determining the allowable catch, its harvesting capacity, the allocation of surpluses to other States and the terms and conditions established in its conservation and management laws and regulations.
 - (b) Where no settlement has been reached by recourse to section 1 of this Part, a dispute shall be submitted to conciliation under Annex V, section 2, at the request of any party to the dispute, when it is alleged that:
 - (i) a coastal State has manifestly failed to comply with its obligations to ensure through proper conservation and management measures that the maintenance of the living resources in the exclusive economic zone is not seriously endangered;
 - (ii) a coastal State has arbitrarily refused to determine, at the request of another State, the allowable catch and its capacity to harvest living resources with respect to stocks which that other State is interested in fishing; or
 - (iii) a coastal State has arbitrarily refused to allocate to any State, under articles 62, 69 and 70 and under the terms and conditions established by the coastal State consistent with this Convention, the whole or part of the surplus it has declared to exist.
 - (c) In no case shall the conciliation commission substitute its discretion for that of the coastal State.
 - (d) The report of the conciliation commission shall be communicated to the appropriate international organizations.
 - (e) In negotiating agreements pursuant to articles 69 and 70, States Parties, unless they otherwise agree, shall include a clause on measures which they shall take in order to minimize the possibility of a disagreement

concerning the interpretation or application of the agreement, and on how they should proceed if a disagreement nevertheless arises.

7.3.20 Convention Text - Article 298

Optional exceptions to applicability of section 2

1. When signing, ratifying or acceding to this Convention or at any time thereafter, a State may, without prejudice to the obligations arising under section 1, declare in writing that it does not accept any one or more of the procedures provided for in section 2 with respect to one or more of the following categories of disputes:
 - (a)
 - (i) disputes concerning the interpretation or application of articles 15, 74 and 83 relating to sea boundary delimitations, or those involving historic bays or titles, provided that a State having made such a declaration shall, when such a dispute arises subsequent to the entry into force of this Convention and where no agreement within a reasonable period of time is reached in negotiations between the parties, at the request of any party to the dispute, accept submission of the matter to conciliation under Annex V, section 2; and provided further that any dispute that necessarily involves the concurrent consideration of any unsettled dispute concerning sovereignty or other rights over continental or insular land territory shall be excluded from such submission;
 - (ii) after the conciliation commission has presented its report, which shall state the reasons on which it is based, the parties shall negotiate an agreement on the basis of that report; if these negotiations do not result in an agreement, the parties shall, by mutual consent, submit the question to one of the procedures provided for in section 2, unless the parties otherwise agree;
 - (iii) this subparagraph does not apply to any sea boundary dispute finally settled by an arrangement between the parties, or to any such dispute which is to be settled in accordance with a bilateral or multilateral agreement binding upon those parties;
 - (b) disputes concerning military activities, including military activities by government vessels and aircraft engaged in non-commercial service, and disputes concerning law enforcement activities in regard to the exercise of sovereign rights or jurisdiction excluded from the jurisdiction of a court or tribunal under article 297, paragraph 2 or 3;
 - (c) disputes in respect of which the Security Council of the United Nations is exercising the functions assigned to it by the Charter of the United Nations, unless the Security Council decides to remove the matter from

its agenda or calls upon the parties to settle it by the means provided for in this Convention.

2. A State Party which has made a declaration under paragraph 1 may at any time withdraw it, or agree to submit a dispute excluded by such declaration to any procedure specified in this Convention.
3. A State Party which has made a declaration under paragraph 1 shall not be entitled to submit any dispute falling within the excepted category of disputes to any procedure in this Convention as against another State Party, without the consent of that party.
4. If one of the States Parties has made a declaration under paragraph 1(a), any other State Party may submit any dispute falling within an excepted category against the declarant party to the procedure specified in such declaration.
5. A new declaration, or the withdrawal of a declaration, does not in any way affect proceedings pending before a court or tribunal in accordance with this article, unless the parties otherwise agree.
6. Declarations and notices of withdrawal of declarations under this article shall be deposited with the Secretary-General of the United Nations, who shall transmit copies thereof to the States Parties.

7.3.21 Convention Text - Article 299

Right of the parties to agree upon a procedure

1. A dispute excluded under article 297 or excepted by a declaration made under article 298 from the dispute settlement procedures provided for in section 2 may be submitted to such procedures only by agreement of the parties to the dispute.
2. Nothing in this section impairs the right of the parties to the dispute to agree to some other procedure for the settlement of such dispute or to reach an amicable settlement.

7.3.22 Convention Text – Annex VII

Arbitration

Article 1

Institution of proceedings

Subject to the provisions of Part XV, any party to a dispute may submit the dispute to the arbitral procedure provided for in this Annex by written notification addressed to the other party or parties to the dispute. The notification shall be accompanied by a statement of the claim and the grounds on which it is based.

Article 2

List of arbitrators

1. A list of arbitrators shall be drawn up and maintained by the Secretary-General of the United Nations. Every State Party shall be entitled to nominate four arbitrators, each of whom shall be a person experienced in maritime affairs and enjoying the highest reputation for fairness, competence and integrity. The names of the persons so nominated shall constitute the list.
2. If at any time the arbitrators nominated by a State Party in the list so constituted shall be fewer than four, that State Party shall be entitled to make further nominations as necessary.
3. The name of an arbitrator shall remain on the list until withdrawn by the State Party which made the nomination, provided that such arbitrator shall continue to serve on any arbitral tribunal to which that arbitrator has been appointed until the completion of the proceedings before that arbitral tribunal.

Article 3

Constitution of arbitral tribunal

For the purpose of proceedings under this Annex, the arbitral tribunal shall, unless the parties otherwise agree, be constituted as follows:

- (a) Subject to subparagraph (g), the arbitral tribunal shall consist of five members.
- (b) The party instituting the proceedings shall appoint one member to be chosen preferably from the list referred to in article 2 of this Annex, who may be its national. The appointment shall be included in the notification referred to in article 1 of this Annex.
- (c) The other party to the dispute shall, within 30 days of receipt of the notification referred to in article 1 of this Annex, appoint one member to be chosen preferably from the list, who may be its national. If the appointment is not made within that period, the party instituting the proceedings may, within two weeks of the expiration of that period, request that the appointment be made in accordance with subparagraph (e).
- (d) The other three members shall be appointed by agreement between the parties. They shall be chosen preferably from the list and shall be nationals of third States unless the parties otherwise agree. The parties to the dispute shall appoint the President of the arbitral tribunal from among those three members. If, within 60 days of receipt of the notification referred to in article 1 of this Annex, the parties are unable to reach agreement on the appointment of one or more of the members of the tribunal to be appointed by agreement, or on the appointment

of the President, the remaining appointment or appointments shall be made in accordance with subparagraph (e), at the request of a party to the dispute. Such request shall be made within two weeks of the expiration of the aforementioned 60-day period.

- (e) Unless the parties agree that any appointment under subparagraphs (c) and (d) be made by a person or a third State chosen by the parties, the President of the International Tribunal for the Law of the Sea shall make the necessary appointments. If the President is unable to act under this subparagraph or is a national of one of the parties to the dispute, the appointment shall be made by the next senior member of the International Tribunal for the Law of the Sea who is available and is not a national of one of the parties. The appointments referred to in this subparagraph shall be made from the list referred to in article 2 of this Annex within a period of 30 days of the receipt of the request and in consultation with the parties. The members so appointed shall be of different nationalities and may not be in the service of, ordinarily resident in the territory of, or nationals of, any of the parties to the dispute.
- (f) Any vacancy shall be filled in the manner prescribed for the initial appointment.
- (g) Parties in the same interest shall appoint one member of the tribunal jointly by agreement. Where there are several parties having separate interests or where there is disagreement as to whether they are of the same interest, each of them shall appoint one member of the tribunal. The number of members of the tribunal appointed separately by the parties shall always be smaller by one than the number of members of the tribunal to be appointed jointly by the parties.
- (h) In disputes involving more than two parties, the provisions of subparagraphs (a) to (f) shall apply to the maximum extent possible.

Article 4

Functions of arbitral tribunal

An arbitral tribunal constituted under article 3 of this Annex shall function in accordance with this Annex and the other provisions of this Convention.

Article 5

Procedure

Unless the parties to the dispute otherwise agree, the arbitral tribunal shall determine its own procedure, assuring to each party a full opportunity to be heard and to present its case.

Article 6

Duties of parties to a dispute

The parties to the dispute shall facilitate the work of the arbitral tribunal and, in particular, in accordance with their law and using all means at their disposal, shall:

- (a) provide it with all relevant documents, facilities and information; and
- (b) enable it when necessary to call witnesses or experts and receive their evidence and to visit the localities to which the case relates.

Article 7

Expenses

Unless the arbitral tribunal decides otherwise because of the particular circumstances of the case, the expenses of the tribunal, including the remuneration of its members, shall be borne by the parties to the dispute in equal shares.

Article 8

Required majority for decisions

Decisions of the arbitral tribunal shall be taken by a majority vote of its members. The absence or abstention of less than half of the members shall not constitute a bar to the tribunal reaching a decision. In the event of an equality of votes, the President shall have a casting vote.

Article 9

Default of appearance

If one of the parties to the dispute does not appear before the arbitral tribunal or fails to defend its case, the other party may request the tribunal to continue the proceedings and to make its award. Absence of a party or failure of a party to defend its case shall not constitute a bar to the proceedings. Before making its award, the arbitral tribunal must satisfy itself not only that it has jurisdiction over the dispute but also that the claim is well founded in fact and law.

Article 10

Award

The award of the arbitral tribunal shall be confined to the subject-matter of the dispute and state the reasons on which it is based. It shall contain the names of the members who have participated and the date of the award. Any member of the tribunal may attach a separate or dissenting opinion to the award.

Article 11

Finality of award

The award shall be final and without appeal, unless the parties to the dispute have agreed in advance to an appellate procedure. It shall be complied with by the parties to the dispute.

Article 12

Interpretation or implementation of award

1. Any controversy which may arise between the parties to the dispute as regards the interpretation or manner of implementation of the award may be submitted by either party for decision to the arbitral tribunal which made the award. For this purpose, any vacancy in the tribunal shall be filled in the manner provided for in the original appointments of the members of the tribunal.
2. Any such controversy may be submitted to another court or tribunal under article 287 by agreement of all the parties to the dispute.

Article 13

Application to entities other than States Parties

The provisions of this Annex shall apply *mutatis mutandis* to any dispute involving entities other than States Parties.

7.3.1 Convention Text – Annex VIII

Special Arbitration

Article 1

Institution of proceedings

Subject to Part XV, any party to a dispute concerning the interpretation or application of the articles of this Convention relating to (1) fisheries, (2) protection and preservation of the marine environment, (3) marine scientific research, or (4) navigation, including pollution from vessels and by dumping, may submit the dispute to the special arbitral procedure provided for in this Annex by written notification addressed to the other party or parties to the dispute. The notification shall be accompanied by a statement of the claim and the grounds on which it is based.

Article 2

Lists of experts

1. A list of experts shall be established and maintained in respect of each of the fields of (1) fisheries, (2) protection and preservation of the marine environment,

- (3) marine scientific research, and (4) navigation, including pollution from vessels and by dumping.
2. The lists of experts shall be drawn up and maintained, in the field of fisheries by the Food and Agriculture Organization of the United Nations, in the field of protection and preservation of the marine environment by the United Nations Environment Programme, in the field of marine scientific research by the Intergovernmental Oceanographic Commission, in the field of navigation, including pollution from vessels and by dumping, by the International Maritime Organization, or in each case by the appropriate subsidiary body concerned to which such organization, programme or commission has delegated this function.
 3. Every State Party shall be entitled to nominate two experts in each field whose competence in the legal, scientific or technical aspects of such field is established and generally recognized and who enjoy the highest reputation for fairness and integrity. The names of the persons so nominated in each field shall constitute the appropriate list.
 4. If at any time the experts nominated by a State Party in the list so constituted shall be fewer than two, that State Party shall be entitled to make further nominations as necessary.
 5. The name of an expert shall remain on the list until withdrawn by the State Party which made the nomination, provided that such expert shall continue to serve on any special arbitral tribunal to which that expert has been appointed until the completion of the proceedings before that special arbitral tribunal.

Article 3

Constitution of special arbitral tribunal

For the purpose of proceedings under this Annex, the special arbitral tribunal shall, unless the parties otherwise agree, be constituted as follows:

- (a) Subject to subparagraph (g), the special arbitral tribunal shall consist of five members.
- (b) The party instituting the proceedings shall appoint two members to be chosen preferably from the appropriate list or lists referred to in article 2 of this Annex relating to the matters in dispute, one of whom may be its national. The appointments shall be included in the notification referred to in article 1 of this Annex.
- (c) The other party to the dispute shall, within 30 days of receipt of the notification referred to in article 1 of this Annex, appoint two members to be chosen preferably from the appropriate list or lists relating to the matters in dispute, one of whom may be its national. If the appointments are not made within

that period, the party instituting the proceedings may, within two weeks of the expiration of that period, request that the appointments be made in accordance with subparagraph (e).

- (d) The parties to the dispute shall by agreement appoint the President of the special arbitral tribunal, chosen preferably from the appropriate list, who shall be a national of a third State, unless the parties otherwise agree. If, within 30 days of receipt of the notification referred to in article I of this Annex, the parties are unable to reach agreement on the appointment of the President, the appointment shall be made in accordance with subparagraph (e), at the request of a party to the dispute. Such request shall be made within two weeks of the expiration of the aforementioned 30-day period.
- (e) Unless the parties agree that the appointment be made by a person or a third State chosen by the parties, the Secretary-General of the United Nations shall make the necessary appointments within 30 days of receipt of a request under subparagraphs (c) and (d). The appointments referred to in this subparagraph shall be made from the appropriate list or lists of experts referred to in article 2 of this Annex and in consultation with the parties to the dispute and the appropriate international organization. The members so appointed shall be of different nationalities and may not be in the service of, ordinarily resident in the territory of, or nationals of, any of the parties to the dispute.
- (f) Any vacancy shall be filled in the manner prescribed for the initial appointment.
- (g) Parties in the same interest shall appoint two members of the tribunal jointly by agreement. Where there are several parties having separate interests or where there is disagreement as to whether they are of the same interest, each of them shall appoint one member of the tribunal.
- (h) In disputes involving more than two parties, the provisions of subparagraphs (a) to (f) shall apply to the maximum extent possible.

Article 4

General provisions

Annex VII, articles 4 to 13, apply *mutatis mutandis* to the special arbitration proceedings in accordance with this Annex.

Article 5

Fact finding

1. The parties to a dispute concerning the interpretation or application of the provisions of this Convention relating to (1) fisheries, (2) protection and preservation of the marine environment, (3) marine scientific research, or (4) navigation, including pollution from vessels and by dumping, may at any time agree to request a special arbitral tribunal constituted in accordance with article

3 of this Annex to carry out an inquiry and establish the facts giving rise to the dispute.

2. Unless the parties otherwise agree, the findings of fact of the special arbitral tribunal acting in accordance with paragraph 1, shall be considered as conclusive as between the parties.
3. If all the parties to the dispute so request, the special arbitral tribunal may formulate recommendations which, without having the force of a decision, shall only constitute the basis for a review by the parties of the questions giving rise to the dispute.
4. Subject to paragraph 2, the special arbitral tribunal shall act in Accordance with the provisions of this Annex, unless the parties otherwise agree.

8. AARHUS CONVENTION ON ACCESS TO INFORMATION, PUBLIC PARTICIPATION IN DECISION-MAKING AND ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS 1998

8.1 Multilateral Procedures to Consider Non-Compliance and Non-Compliance Response Measures

8.1.1 Convention Text – Article 15

Review of compliance

The Meeting of the Parties shall establish, on a consensus basis, optional arrangements of a non-confrontational, non-judicial and consultative nature for reviewing compliance with the provisions of this Convention. These arrangements shall allow for appropriate public involvement and may include the option of considering communications from members of the public on matters related to this Convention.

8.1.2 MOP Decision I/7 – Review of Compliance (2002)

The Meeting,

Determined to promote and improve compliance with the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters and recalling its article 15,

Recognizing the necessity for rigorous reporting by the Parties on their compliance with the Convention,

1. Establishes the Compliance Committee for the review of compliance by the Parties with their obligations under the Convention.
2. Decides that the structure and functions of the Compliance Committee and the procedures for the review of compliance shall be those set out in the annex to this decision.

Annex

Structure and functions of the compliance committee and procedures for the review of compliance

I. Structure

1. The Committee shall consist of eight members, who shall serve in their personal capacity.
2. The Committee shall be composed of nationals of the Parties and Signatories to the Convention who shall be persons of high moral character and recognized

competence in the fields to which the Convention relates, including persons having legal experience.

3. The Committee may not include more than one national of the same State.
4. Candidates meeting the requirements of paragraph 2 shall be nominated by Parties, Signatories and non-governmental organizations falling within the scope of article 10, paragraph 5, of the Convention and promoting environmental protection, for election pursuant to paragraph 7.
5. Unless the Meeting of the Parties, in a particular instance, decides otherwise, the procedure for the nomination of candidates for the Committee shall be the following:
 - (a) Nominations shall be sent to the secretariat in at least one of the official languages of the Convention not later than 12 weeks before the opening of the meeting of the Parties during which the election is to take place;
 - (b) Each nomination shall be accompanied by a curriculum vitae (CV) of the candidate not exceeding 600 words and may include supporting material;
 - (c) The secretariat shall distribute the nominations and the CVs, together with any supporting material, in accordance with rule 10 of the Rules of Procedure.
6. Committee members shall be elected on the basis of nominations in accordance with paragraphs 4 and 5. The Meeting of the Parties shall give due consideration to all nominations.
7. The Meeting of the Parties shall elect the members of the Committee by consensus or, failing consensus, by secret ballot.
8. In the election of the Committee, consideration should be given to the geographical distribution of membership and diversity of experience.
9. The Meeting of the Parties shall, as soon as practicable, elect four members to the Committee to serve until the end of the next ordinary meeting and four members to serve a full term of office. At each ordinary meeting thereafter, the Meeting of the Parties shall elect four members for a full term of office. Outgoing members may be re-elected once for a further full term of office, unless in a given case the Meeting of the Parties decides otherwise. A full term of office commences at the end of an ordinary meeting of the Parties and runs until the second ordinary meeting of the Parties thereafter. The Committee shall elect its own Chairperson and Vice-Chairperson.
10. If a member of the Committee can no longer perform his or her duties as member of the Committee for any reason, the Bureau of the Meeting of the Parties shall appoint another member fulfilling the criteria in this chapter to serve the remainder of the term, subject to the approval of the Committee.

11. Every member serving on the Committee shall, before taking up his or her duties, make a solemn declaration in a meeting of the Committee that he or she will perform his or her functions impartially and conscientiously.

II. Meetings

12. The Committee shall, unless it decides otherwise, meet at least once a year. The secretariat shall arrange for and service the meetings of the Committee.

III. Functions of the Committee

13. The Committee shall:
 - (a) Consider any submission, referral or communication made in accordance with paragraphs 15 to 24 below;
 - (b) Prepare, at the request of the Meeting of the Parties, a report on compliance with or implementation of the provisions of the Convention; and
 - (c) Monitor, assess and facilitate the implementation of and compliance with the reporting requirements under article 10, paragraph 2, of the Convention;

and act pursuant to paragraphs 36 and 37.
14. The Committee may examine compliance issues and make recommendations if and as appropriate.

IV. Submission by Parties

15. A submission may be brought before the Committee by one or more Parties that have reservations about another Party's compliance with its obligations under the Convention. Such a submission shall be addressed in writing to the secretariat and supported by corroborating information. The secretariat shall, within two weeks of receiving a submission, send a copy of it to the Party whose compliance is at issue. Any reply and supporting information shall be submitted to the secretariat and to the Parties involved within three months or such longer period as the circumstances of a particular case may require but in no case later than six months. The secretariat shall transmit the submission and the reply, as well as all corroborating and supporting information, to the Committee, which shall consider the matter as soon as practicable.
16. A submission may be brought before the Committee by a Party that concludes that, despite its best endeavours, it is or will be unable to comply fully with its obligations under the Convention. Such a submission shall be addressed in writing to the secretariat and explain, in particular, the specific circumstances that the Party considers to be the cause of its non-compliance. The secretariat

shall transmit the submission to the Committee, which shall consider the matter as soon as practicable.

V. Referrals by the secretariat

17. Where the secretariat, in particular upon considering the reports submitted in accordance with the Convention's reporting requirements, becomes aware of possible non-compliance by a Party with its obligations under the Convention, it may request the Party concerned to furnish necessary information about the matter. If there is no response or the matter is not resolved within three months, or such longer period as the circumstances of the matter may require but in no case later than six months, the secretariat shall bring the matter to the attention of the Committee, which shall consider the matter as soon as practicable.

VI. Communications from the public

18. On the expiry of twelve months from either the date of adoption of this decision or from the date of the entry into force of the Convention with respect to a Party, whichever is the later, communications may be brought before the Committee by one or more members of the public concerning that Party's compliance with the Convention, unless that Party has notified the Depositary in writing by the end of the applicable period that it is unable to accept, for a period of not more than four years, the consideration of such communications by the Committee. The Depositary shall without delay notify all Parties of any such notification received. During the four-year period mentioned above, the Party may revoke its notification thereby accepting that, from that date, communications may be brought before the Committee by one or more members of the public concerning that Party's compliance with the Convention.
19. The communications referred to in paragraph 18 shall be addressed to the Committee through the secretariat in writing and may be in electronic form. The communications shall be supported by corroborating information.
20. The Committee shall consider any such communication unless it determines that the communication is:
 - (a) Anonymous;
 - (b) An abuse of the right to make such communications;
 - (c) Manifestly unreasonable;
 - (d) Incompatible with the provisions of this decision or with the Convention.
21. The Committee should at all relevant stages take into account any available domestic remedy unless the application of the remedy is unreasonably prolonged or obviously does not provide an effective and sufficient means of redress.

22. Subject to the provisions of paragraph 20, the Committee shall as soon as possible bring any communications submitted to it under paragraph 18 to the attention of the Party alleged to be in non-compliance.
23. A Party shall, as soon as possible but not later than five months after any communication is brought to its attention by the Committee, submit to the Committee written explanations or statements clarifying the matter and describing any response that it may have made.
24. The Committee shall, as soon as practicable, further consider communications submitted to it pursuant to this chapter and take into account all relevant written information made available to it, and may hold hearings.

VII. Information gathering

25. To assist the performance of its functions, the Committee may:
 - (a) Request further information on matters under its consideration;
 - (b) Undertake, with the consent of any Party concerned, information gathering in the territory of that Party;
 - (c) Consider any relevant information submitted to it; and
 - (d) Seek the services of experts and advisers as appropriate.

VIII. Confidentiality

26. Save as otherwise provided for in this chapter, no information held by the Committee shall be kept confidential.
27. The Committee and any person involved in its work shall ensure the confidentiality of any information that falls within the scope of the exceptions provided for in article 4, paragraphs 3 (c) and 4, of the Convention and that has been provided in confidence.
28. The Committee and any person involved in its work shall ensure the confidentiality of information that has been provided to it in confidence by a Party when making a submission in respect of its own compliance in accordance with paragraph 16 above.
29. Information submitted to the Committee, including all information relating to the identity of the member of the public submitting the information, shall be kept confidential if submitted by a person who asks that it be kept confidential because of a concern that he or she may be penalized, persecuted or harassed.
30. If necessary to ensure the confidentiality of information in any of the above cases, the Committee shall hold closed meetings.

31. Committee reports shall not contain any information that the Committee must keep confidential under paragraphs 27 to 29 above. Information that the Committee must keep confidential under paragraph 29 shall not be made available to any Party. All other information that the Committee receives in confidence and that is related to any recommendations by the Committee to the Meeting of the Parties shall be made available to any Party upon its request; that Party shall ensure the confidentiality of the information that it has received in confidence.

IX. Entitlement to participate

32. A Party in respect of which a submission, referral or communication is made or which makes a submission, as well as the member of the public making a communication, shall be entitled to participate in the discussions of the Committee with respect to that submission, referral or communication.
33. The Party and the member of the public shall not take part in the preparation and adoption of any findings, any measures or any recommendations of the Committee.
34. The Committee shall send a copy of its draft findings, draft measures and any draft recommendations to the Parties concerned and the member of the public who submitted the communication if applicable, and shall take into account any comments made by them in the finalization of those findings, measures and recommendations.

X. Committee reports to the meeting of the Parties

35. The Committee shall report on its activities at each ordinary meeting of the Parties and make such recommendations as it considers appropriate. Each report shall be finalized by the Committee not later than twelve weeks in advance of the meeting of the Parties at which it is to be considered. Every effort shall be made to adopt the report by consensus. Where this is not possible, the report shall reflect the views of all the Committee members. Committee reports shall be available to the public.

XI. Consideration by the Compliance Committee

36. Pending consideration by the Meeting of the Parties, with a view to addressing compliance issues without delay, the Compliance Committee may:
 - (a) In consultation with the Party concerned, take the measures listed in paragraph 37 (a);
 - (b) Subject to agreement with the Party concerned, take the measures listed in paragraph 37 (b), (c) and (d).

XII. Consideration by the meeting of the Parties

37. The Meeting of the Parties may, upon consideration of a report and any recommendations of the Committee, decide upon appropriate measures to bring about full compliance with the Convention. The Meeting of the Parties may, depending on the particular question before it and taking into account the cause, degree and frequency of the non-compliance, decide upon one or more of the following measures:
- (a) Provide advice and facilitate assistance to individual Parties regarding the implementation of the Convention;
 - (b) Make recommendations to the Party concerned;
 - (c) Request the Party concerned to submit a strategy, including a time schedule, to the Compliance Committee regarding the achievement of compliance with the Convention and to report on the implementation of this strategy;
 - (d) In cases of communications from the public, make recommendations to the Party concerned on specific measures to address the matter raised by the member of the public;
 - (e) Issue declarations of non-compliance;
 - (f) Issue cautions;
 - (g) Suspend, in accordance with the applicable rules of international law concerning the suspension of the operation of a treaty, the special rights and privileges accorded to the Party concerned under the Convention;
 - (h) Take such other non-confrontational, non-judicial and consultative measures as may be appropriate.

XIII. Relationship between settlement of disputes and the compliance procedure

38. The present compliance procedure shall be without prejudice to article 16 of the Convention on the settlement of disputes.

XIV. Enhancement of synergies

39. In order to enhance synergies between this compliance procedure and compliance procedures under other agreements, the Meeting of the Parties may request the Compliance Committee to communicate as appropriate with the relevant bodies of those agreements and report back to it, including with recommendations as appropriate. The Compliance Committee may also submit a report to the Meeting of the Parties on relevant developments between the sessions of the Meeting of the Parties.

8.1.3 MOP Decision II/5 – General Issues of Compliance (2005)

The Meeting,

Having regard to decision I/7 on the review of compliance and in particular to paragraph 37 of the annex thereto,

Welcoming the progress made by the Compliance Committee in establishing its procedures as well as in addressing specific issues of compliance,

Taking note with appreciation of the report of the Committee (ECE/MP.PP/2005/13) and the addenda thereof,

Noting that findings concerning specific Parties found to be in non-compliance are dealt with in decisions II/5a, b and c;

1. Undertakes to review the implementation of the measures with respect to specific Parties referred to in decisions II/5a, b and c at its third ordinary meeting, as well as the more general recommendations contained in the following paragraphs, and with this in mind, requests the Committee to examine these matters in advance of that meeting and to describe the progress made in its report;
2. Requests the secretariat or, as appropriate, the Compliance Committee, and invites relevant international and regional organizations and financial institutions, to provide advice and assistance to the Parties concerned as necessary in the implementation of the measures referred to in decisions II/5a, b and c;
3. Takes note of the conclusions by the Committee concerning compliance by Hungary with its obligations under the Convention (ECE/MP.PP/2005/13/Add.4) and, in particular, that Hungary was in compliance with its obligations under articles 6 and 9 of the Convention;
4. Recommends, on the basis of the information derived from the reporting by Parties on their implementation of the Convention and the findings and recommendations of the Committee (ECE/MP.PP/2005/13, paras. 36-38), that Parties should keep under review their legal and institutional frameworks as well as their practical experience with implementing various provisions of the Convention, taking into account their obligations under article 3, paragraph 1;

Working methods of the Committee

5. Welcomes the way in which the Committee has been working and the procedures that it has developed, as reflected in the reports of its meetings;
6. Recognizes the need for clear information for the public on the compliance mechanism and therefore welcomes the Committee's intention to prepare a publication on its *modus operandi*;

Cooperation of Parties

7. Notes with regret that none of the Parties whose compliance was the subject of a communication or a submission provided comments or feedback to the Committee within the deadlines set out in the relevant provisions of decision I/7 and that some even failed to enter into any substantive engagement with the process at all;
8. Urges consequently all Parties to respect the agreed process and observe these deadlines in the future;

Awareness-raising

9. Takes note of the Committee's observations with regard to the need to raise awareness among the judiciary and public authorities other than environment ministries of the relevant obligations under the Convention and encourages Parties to take the necessary measures to that effect;

Resources

10. Also takes note of the information contained in the national implementation reports and the conclusions of the Compliance Committee (ECE/MP.PP/2005/13, para. 42) indicating that a lack of resources sometimes affects the implementation of and compliance with the Convention's requirements, and invites all Parties and other interested States and organizations in a position to do so to provide countries with economies in transition with financial and technical assistance in the form of capacity-building aimed at improving implementation and compliance in such cases;
11. Notes the significant workload for both the secretariat and the Committee associated with servicing the compliance mechanism and in particular the processing of communications from the public, and urges that sufficient resources should be made available to enable the mechanism to function effectively; and
12. Agrees that, in the light of the steady increase in the number of Parties, the number of members of the Committee shall be increased to nine, with effect from the third ordinary meeting of the Parties, where five members shall be elected for a full term.

8.1.4 MOP Decision III/6 – General Issues of Compliance (2008)

The Meeting of the Parties,

Having regard to decision I/7 on the review of compliance and in particular to paragraph 37 of the annex thereto,

Having regard also to decision II/5 on general issues of compliance and decisions II/5a, II/5b and II/5c on compliance by individual Parties,

Noting with appreciation the report of the Compliance Committee and the addenda thereto (ECE/MP.PP/2008/5 and Add.1–10),

Recalling decisions III/6a, III/6b, III/6c, III/6d, III/6e and III/6f concerning compliance by Albania, Armenia, Kazakhstan, Lithuania, Turkmenistan and Ukraine, adopted in parallel with this decision and containing the findings and recommendations of the Meeting concerning specific Parties found to be in non-compliance, as well as, where applicable, the outcome of the review of implementation of decisions II/5a, II/5b and II/5c,

1. Endorses the findings of the Committee that are specified in the addenda to this decision and welcomes its recommendations with regard to compliance by individual Parties in the intersessional period 2005–2008;
2. Welcomes the consideration and evaluation by the Committee with respect to specific cases of alleged non-compliance set out in the reports and addenda to the reports of the Committee's meetings;
3. Notes with appreciation the work of the Committee and its conclusions concerning compliance by Belgium, Denmark, Hungary, Romania and the European Community with their obligations under the Convention (ECE/MP.PP/2008/5) and, in particular, that the Committee did not find that these Parties were not in compliance with their obligations under the Convention;
4. Undertakes to review the implementation of the proposed measures with respect to specific Parties referred to in decisions III/6a, III/6b, III/6c, III/6d, III/6e and III/6f at its fourth ordinary meeting, as well as the more general recommendations contained in the following paragraphs, and with this in mind, requests the Committee to examine these matters in advance of that meeting and to describe the progress made in its report;
5. Requests the Committee, with the support of the secretariat, to provide advice and assistance and, where appropriate, make recommendations to the Parties concerned in support of the implementation of the measures referred to in decisions III/6a, III/6b, III/6c, III/6d, III/6e and III/6f;
6. Invites relevant international and regional organizations and financial institutions, to provide support to the Parties concerned to assist them in implementing the measures referred to in decisions III/6a, III/6b, III/6c, III/6d, III/6e and III/6f;

Working methods of the Committee

7. Welcomes the way in which the Committee has been working and the further clarification of its procedures developed in the period 2005–2008, as reflected in the reports of its meetings;

Implementation of earlier decisions on compliance by individual Parties

8. Welcomes Kazakhstan's sustained commitment to bringing its legislation and practice into compliance with the Convention, in particular in connection with the implementation of decision II/5a, and its collaboration with the Compliance Committee throughout this process, while recognizing that further work is needed in particular with respect to access to justice;
9. Notes with concern the failure of Turkmenistan and Ukraine to sufficiently engage with the process of implementation of decisions II/5c and II/5b respectively;
10. Urges Turkmenistan and Ukraine therefore to implement the relevant recommendations contained in decisions III/6e and III/6f respectively, and to engage in a constructive dialogue with the Committee with a view to drawing on the expertise of its members where necessary;

Cooperation of Parties in the process of review of compliance

11. Welcomes the constructive approach and cooperation demonstrated by Albania, Armenia, Belgium, Denmark, Hungary, Kazakhstan, Lithuania, Romania and the European Community whose compliance was the subject of review;
12. Also welcomes the acceptance by most of the Parties concerned, including all those found not to be in compliance, of the Committee's recommendations made in accordance with paragraph 36 (b) of the annex to decision I/7, and the progress made by the Parties concerned in the intersessional period;
13. Urges each Party to cooperate constructively with the Committee in connection with any future review of its compliance;

Intersessional measures to promote compliance

14. Considers that the implementation of measures to bring legislation or practice of a Party into compliance with the Convention should commence as soon as possible once specific problems with compliance have been established, with a view to already bringing about full compliance with the relevant provisions in the intersessional period, where possible;
15. Also considers that recommendations, advice and expert assistance from the Committee to the Parties concerned in the intersessional period would contribute to the effectiveness of facilitating their compliance;

Resources

16. Invites all Parties and other interested States and organizations in a position to do so to provide countries with economies in transition with financial and technical assistance aimed at improving implementation and compliance in such cases;
17. Notes that the workload of both the secretariat and the Committee related to the functioning of the compliance mechanism remains significant, and requests the Working Group of the Parties, the Bureau and the secretariat, in their respective roles, to ensure that sufficient resources are made available for this purpose.

8.2 Dispute Settlement

8.2.1 Convention Text – Article 16

Settlement of disputes

1. If a dispute arises between two or more Parties about the interpretation or application of this Convention, they shall seek a solution by negotiation or by any other means of dispute settlement acceptable to the parties to the dispute.
2. When signing, ratifying, accepting, approving or acceding to this Convention, or at any time thereafter, a Party may declare in writing to the Depositary that, for a dispute not resolved in accordance with paragraph 1 above, it accepts one or both of the following means of dispute settlement as compulsory in relation to any Party accepting the same obligation:
 - (a) Submission of the dispute to the International Court of Justice;
 - (b) Arbitration in accordance with the procedure set out in annex II.
3. If the parties to the dispute have accepted both means of dispute settlement referred to in paragraph 2 above, the dispute may be submitted only to the International Court of Justice, unless the parties agree otherwise.

8.3 Annex: Guidance Document on Aarhus Convention Compliance Mechanism⁵²

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52 The Guidance Document should be considered a living document and may be subject to further development.

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INTRODUCTION

In recent years, there has been a growing trend in international treaty law-making to develop mechanisms that facilitate, promote and enforce compliance with the commitments undertaken by the Parties. Article 15 of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (hereinafter Aarhus Convention or Convention) requires the Parties to set up arrangements of a non-confrontational, non-judicial and consultative nature to review compliance with the Convention; such arrangements are required to allow for public involvement and may include the option of considering communications from members of the public on matters related to the Convention.

On the basis of this provision, the Meeting of the Parties (or MoP) adopted decision I/7 on review of compliance at its first session (Lucca, October 2002). Decision I/7 establishes a compliance mechanism for the Convention: it creates the Compliance Committee (or Committee for the purposes of the present document) as the main body for the review of compliance and sets out the structure and functions of this body as well as the procedures to review compliance.

A review of a specific Party's compliance may be triggered in four ways:

- a) a Party may make a submission about compliance by another Party;
- b) a Party may make a submission concerning its own compliance;
- c) the secretariat may make a referral to the Committee;
- d) members of the public may make communications concerning a Party's compliance with the Convention.

The compliance mechanism of the Aarhus Convention is unique in international environmental law, as it allows members of the public to communicate their concerns about a Party's compliance directly to a board of independent experts, the Compliance Committee, who have the mandate to examine the merits of the case. However, the Committee cannot issue binding decisions, but rather makes recommendations either to the MoP, or, in certain circumstances, directly to individual Parties.

In addition, the Committee may examine compliance issues on its own initiative and make recommendations; prepare reports on compliance with or implementation of the provisions of the Convention at the request of the MoP; and monitor, assess and facilitate the implementation of and compliance with the reporting requirements under article 10, paragraph 2, of the Convention.

This guidance document is divided in four sections. The first section provides some general information on the composition of the Committee and its competences. The second session constitutes the *modus operandi*, in other words the body of the procedures followed by the Committee. Then, the third section includes some basic principles concerning the relationship between the Committee and civil society.

Finally, the fourth session intends to highlight some critical information concerning communications from the public.

The information contained in this guidance document is primarily based on the following sources:

- the Convention, notably article 15;
- decisions I/7, II/5 and III/6 of the Meeting of the Parties;
- the reports of the Committee's meetings.

Further information concerning the Compliance Committee and all relevant documentation is available at <http://www.unece.org/env/pp/compliance.htm>. Further information concerning the Convention is available on the Convention's web site: <http://www.unece.org/env/pp>.

COMPOSITION, ELECTION AND FUNCTIONS

Composition

The Compliance Committee consists of nine individuals serving in their personal capacity. The members are nationals of the Parties or Signatories to the Convention. They are required to be persons of high moral character and recognized competence in the areas to which the Convention relates, including persons with legal experience.

Election Process

Nomination

Parties, Signatories and non-governmental organizations falling within the scope of article 10, paragraph 5, of the Convention may nominate candidates for election as follows:

- a) Nominations are to be sent to the secretariat in at least one of the official languages of the Convention at least twelve weeks before the opening of the session of the MoP at which the election is to take place.
- b) Each nomination will be accompanied by a curriculum vitae (CV) of the candidate not exceeding 600 words and may include supporting material.
- c) The secretariat then distributes the nominations, including the CVs, together with any supporting material.

Election

The MoP elects the members of the Committee by consensus or, failing consensus, by secret ballot.

Geographic representation

The Committee may not include more than one national of the same State. In the election of the Committee, consideration will be given to the geographical distribution of membership and diversity of experience.

Rotation

A full term of office starts at the end of the ordinary session of the MoP at which the member is elected (or re-elected) and runs until the second ordinary session of the MoP thereafter.

At its first session, the MoP elected four members to the Committee to serve until the end of its next ordinary session and four members to serve a full term of office. At its second session, the MoP agreed that the number of members of the Committee should be increased to nine; this change took effect at the third ordinary session of the MoP, at which five members were elected for a full term. At each ordinary session thereafter, the MoP elects four or five members, as appropriate, for a full term of office.

Outgoing members may be re-elected once for a further full term of office, unless the MoP decides otherwise. The Committee elects its own Chair and Vice-Chair.⁵³

If a member of the Committee for some reason can no longer perform his or her duties, the Bureau of the MoP appoints another member who fulfils the criteria described above to serve the rest of the term, subject to the approval of the Committee.

Impartiality and conscientiousness

Every member serving on the Committee shall, before taking up his or her duties, make a solemn declaration in a meeting of the Committee that he or she will perform his or her functions impartially and conscientiously. For the sake of clarity, the Committee requires incoming members to sign such a declaration.

Functions of the Committee

The Committee:

- a) Considers any submission, referral or communication made in accordance with paragraphs 15 to 24 of decision I/7;
- b) Prepares, at the request of the MoP, a report on compliance with or implementation of the provisions of the Convention;

53 At its eighth meeting, the Committee agreed that in order to be able to ensure its smooth operation, the procedure of taking decisions by email, as described below in this Guidance Document, could be used for the election of the Chairperson and the Vice-Chairperson. This facilitates preparation of the first meeting of the Committee that takes place after the session of the Meeting of the Parties. In this case, the functions of the Chairperson involving the initiation and coordination of the electronic decision-making process would be performed by the secretariat (ECE/MP.PP/C.1/2005/4, para. 29).

- c) Monitors, assesses and facilitates the implementation of and compliance with the reporting requirements under article 10, paragraph 2, of the Convention.

The Committee may examine compliance issues and make recommendations if and as appropriate.

Powers of the Committee

Report to the Meeting of the Parties

The Committee submits a report on its activities at each ordinary session of the MoP, which are planned to regularly take place every two or three years, and makes such recommendations as it considers appropriate. The Committee finalizes the report at least twelve weeks before the session of the MoP at which it is to be considered. Every effort is made to adopt the report by consensus, and if this is not possible, the report reflects the views of all the Committee members. The reports of the Committee are available to the public.

Measures by the Meeting of the Parties

The MoP may, upon consideration of a report and any recommendations of the Committee, decide upon appropriate measures to bring about full compliance with the Convention. To this end, depending on the particular question before it and considering the cause, degree and frequency of non-compliance, the MoP may decide to take one or more of the following measures:

- a) Provide advice and facilitate assistance to individual Parties regarding the implementation of the Convention;
- b) Make recommendations to the Party concerned;
- c) Request the Party concerned to submit a strategy, including a time schedule, to the Compliance Committee regarding the achievement of compliance with the Convention and to report on the implementation of this strategy;
- d) In cases of communications from the public, make recommendations to the Party concerned on specific measures to address the matter raised by the member of the public;
- e) Issue declarations of non-compliance;
- f) Issue cautions;
- g) Suspend, in accordance with the applicable rules of international law concerning the suspension of the operation of a treaty, the special rights and privileges accorded to the Party concerned under the Convention;
- h) Take other non-confrontational, non-judicial and consultative measures as may be appropriate.

Inter-sessional measures by the Committee

Pending consideration by the MoP and with a view to addressing compliance issues without delay, the Compliance Committee may, in consultation with the Party concerned, provide advice and facilitate assistance regarding the implementation of the Convention (measure (a) above). Also the Committee may with the agreement of the Party concerned take the measures under (b)-(d) above.

MODUS OPERANDI

General principles on the Committee's operation

As a general rule, the rules of procedure of the MoP⁵⁴ shall be applied *mutatis mutandis*. Rules 19, 20, 24 to 27, 29 to 42, 44, 46 and 48 are considered to be the most relevant to the Committee (MP.PP/C.1/2003/2 para. 11).⁵⁵

Decision-making

The presence of five members of the Committee is required for any decisions to be taken. The Committee makes every effort to reach its decisions by consensus. Decisions of a procedural nature can be taken by a simple majority of the members present and voting. Decisions on substantive matters can be taken only with the support of seven out of nine members present and voting; six out of eight members present and voting; six out of seven members present and voting; five out of six members present and voting; and four out of five members present and voting. Notwithstanding this, the Committee is generally sympathetic to the view that at least five members should be in support of any substantive decision being taken. Since Committee members are elected strictly in their personal capacity, an absent Committee member cannot designate substitute (MP.PP/C.1/2003/2, para. 12; ECE/MP.PP/C.1/2008/6, para. 41).⁵⁶

Procedures for taking decisions by e-mail

In order to expedite the processing of communications from the public,⁵⁷ some of the Committee's decisions, relating for instance to preliminary decisions⁵⁸ on the admissibility of communications or on the points to be raised with the parties, may be taken by electronic mail (e-mail) (MP.PP/C.1/2004/4, para. 41).⁵⁹ In this regard, depending on the nature of the decision to be made, the Committee will apply either a comprehensive or a streamlined procedure as set out in the following paragraphs.

54 See the annex to decision I/1 of the MoP (ECE/MP.PP/2/Add.2).

55 The document MP.PP/C.1/2003/2 of 16 June 2003 refers to the report of the first meeting of the Compliance Committee.

56 The document EE/MP.PP/C.1/2008/6 OF 8 October 2008 refers to the report of the twenty-first meeting of the Compliance Committee.

57 The procedure applies *mutatis mutandi* to submissions and referrals.

58 In this context, the term 'decisions' encompasses 'determinations'.

59 The document MP.PP/C.1/2004/4 of 19 July 2004 refers to the report of the fourth meeting of the Compliance Committee.

The Committee may decide to use the electronic procedure for any inter-sessional decision-making that has significant substantive implications, such as preliminary decisions on the admissibility of communications and finalization of draft findings, conclusions and recommendations, in particular when the next meeting of the Committee will not take place for a long period of time. In this case, the following procedure applies (comprehensive):

- a) The Chair will prepare, with the assistance of the secretariat, a draft decision or decisions on the issue(s) to be decided inter-sessionally. The secretariat will circulate the draft(s) to the Committee members by e-mail, specifying the deadline for response. The Chair may ask any other Committee member to assist him/her with the preparation of the draft decisions and more generally to take responsibility for engaging in the detail of the communication on behalf of the Committee. Such a person is referred to as the 'curator' for the communication in question. Any interested Committee member may also contact the Chair to volunteer his or her services as curator in this regard. However, only the secretariat may circulate any draft decisions on behalf of the Chair to the other members of the Committee.
- b) Having carefully considered the communication, any supporting documentation and the proposed decision(s), and within the set deadline, each Committee member may indicate that he or she is satisfied with the text of the decision(s) proposed, or propose amendments (which may be in the form of an alternative text). Committee members may also comment on the earlier comments of other Committee members. All comments will be sent by e-mail to all other Committee members and copied to the secretariat.
- c) If one or more Committee members request an amendment to the Chair's text, the Chair will put forward an amended proposal with a view to reaching consensus. This may be in the form of an indication of support for an amendment, or a combination of amendments, put forward by other Committee members. The amended proposal will be circulated by the secretariat to the Committee members with a new deadline for comment.
- d) If a deadline for commenting (first or subsequent) expires and all those who have responded have indicated their satisfaction with the Chair's (latest) proposal but some Committee members have failed to respond, the secretariat will make an effort to contact those Committee members.
- e) Once all Committee members have indicated their satisfaction with the Chair's (latest) proposal, the proposal is deemed adopted by the Committee as a preliminary decision.

- f) No preliminary decision may be adopted by e-mail without all Committee members having affirmed their support for it. The procedure outlined in subparagraph (c) may be repeated until full support is achieved.
- g) When the conditions in subparagraph (e) are met, the secretariat will circulate a note to the Committee confirming that the preliminary decision has been adopted, and, if necessary, attaching the text of the preliminary decision.

The Committee may use a streamlined electronic procedure on an ad-hoc basis for decisions that do not have significant substantive implications, such as the identification of points to raise with a Party concerned when forwarding a communication or when dealing with resolution of editorial changes:

- a) The Chair will prepare, with the assistance of the secretariat, a draft decision or decisions on the issue(s) to be decided inter-sessionally. The secretariat will circulate the draft(s) to the Committee members by e-mail, specifying a deadline for response by Committee members. The Chair may ask any other Committee member to assist him/her with the preparation of such draft decisions and more generally to take responsibility for engaging in the detail of the communication on behalf of the Committee. Any interested Committee member may also contact the Chair to volunteer his or her services in this regard. However, only the secretariat would circulate any draft decisions on behalf of the Chair to the other members of the Committee.
- b) The proposal circulated by the secretariat on behalf of the Chair will be considered adopted by default if no member of the Committee objects to it within a specified period following its circulation.
- c) The time period may be two weeks, unless otherwise decided for the decision at issue.

When applying the electronic decision-making procedure, the Chair may at any stage decide that differences of opinion can be resolved only through discussion at a meeting of the Committee, and abandon the attempt to make a decision through e-mail, in which case he or she will inform the Committee members accordingly.

The rules specified above are not binding. The Committee may decide on how to use this tool to its best convenience, including to decide to extend the e-mail procedure to other types of decisions. It may decide to do so electronically, using the procedure itself.

At the instigation of the Chair, the Committee may use other forms of communication, such as regular post or conference telephone calls, possibly in combination with e-mail.

Conflict of interest

'Normal principles' of conflict of interest apply for the Committee. This implies that in a case where a Committee member finds himself or herself faced with a possible or apparent conflict of interest, that member is expected to bring the issue to the Committee's attention and decision before the Committee's consideration of the case at issue. Being a citizen of the Party whose compliance was to be discussed will not in itself be considered as a conflict of interest (MP.PP/C.1/2003/2, para. 22).

Any member considered to have a possible conflict of interest will be treated from the outset and throughout the procedure related to that particular matter in the same manner as an observer. Consequently, any such member will not take part in formal discussions or attend meetings where the Committee is preparing or adopting findings, measures or recommendations (MP.PP/C.1/2004/6, para. 53).⁶⁰

Where the electronic decision-making procedure is being used, any member considered to have a possible conflict of interest with respect to a particular case, should declare this at the outset of the discussions by e-mail on the case at issue. Declaration of a conflict of interest by a member should not prevent that member from participating in the discussion and contributing information to it. However, the member in question should take the possible conflict of interest into account when participating in the discussion.

Committee members are not excluded from providing advice in response to requests from non-governmental organizations (NGOs) or others who consider submitting a communication to the Committee. However, it is recommended that the Committee member refer the person/NGO to the information available on the web site or to the secretariat. This is to avoid Committee members specifically advising such individuals and/or organizations, which could, in some cases, lead to a conflict of interest for that member of the Committee. Correspondence is preferably to be sent to the secretariat rather than to individual members of the Committee (MP.PP/C.1/2003/4, para 8).⁶¹

Committee members are at liberty to deal with requests for information about submissions, referrals and communications under consideration where such information is already in the public domain and subject to provisions of decision I/7 related to confidentiality. However channelling such requests via the secretariat will ensure more up-to-date and complete information and is therefore recommended (MP.PP/C.1/2004/6, para 49).

60 The document MP.PP/C.1/2004/6 of 26 November 2004 refers to the report of the fifth meeting of the Compliance Committee.

61 The document MP.PP/C.1/2003/4 of 15 October 2003 refers to the report of the second meeting of the Compliance Committee.

Members of the Committee may accept invitations to present the compliance mechanism at appropriate events, including conferences and workshops (MP.PP/C.1/2003/4, para 30), or to participate in capacity-building activities and projects related to the Convention, e.g. as expert consultants. The participation of Committee members in their individual capacity in such events and activities does not in itself create a conflict of interest, but it is possible that in some cases such involvement may lead to a conflict of interest at a later stage; such a case may for instance be created if a Committee member has provided expert assistance in the development of relevant legislation and a case relating to this legislation is later subject to review before the Committee). Should such situations arise, the standard procedures apply and the member concerned is expected to notify the Committee of any potential conflict of interest (ECE/MP.PP/C.1/2007/4 para. 28).⁶²

Presence of the public and participation of observers

In principle, meetings of the Committee are open to the public as observers but, having regard to paragraphs 26, 27, 29, 30 and 33 of the annex to decision I/7, some sessions of meetings may be closed (MP.PP/C.1/2003/2, para. 15).

Specifically, hearings and discussions on particular cases are in general open to the public, who may participate as observers, as well as to the parties concerned (paragraph 32 of the annex to decision I/7). Participation is broadly understood in the sense in which the concept is enshrined in the Convention, comprising in particular the right to comment, the right to be heard and the right to have comments taken into account by the Committee, within the framework of the procedures of the meeting (MP.PP/C.1/2003/2, para. 16).

The deliberations on the preparation of any decision are generally closed (MP.PP/C.1/2003/2, para. 17 and paragraph 33 of the annex to decision I/7).

The participation of representatives of any of the parties involved in a case is governed by the *modus operandi* of the Committee, irrespective of whether the case arose through a submission, referral or communication (MP.PP/C.1/2003/4, para.19).

Publication of meetings and documentation

Meetings of the Committee are publicized through the web site, with the provisional agenda, meeting reports and other official documents (other than confidential items) also being posted there (MP.PP/C.1/2003/2, para. 18).

62 The document ECE/MP.PP/C.1/2007/4 of 31 July 2007 refers to the report of the sixteenth meeting of the Compliance Committee.

The essential information for each case, other than that which is required to be kept confidential pursuant Chapter VIII of the annex to decision I/7, will be available through the web site. The secretariat makes a short summary of each case for this purpose (MP.PP/C.1/2003/4, para. 20). Communications are put on the web site and, without prejudice to the confidentiality of certain documentation, all documentation relating to the positions of the Committee, the Parties concerned and the communicant are made available on the web site. This includes preliminary determinations on admissibility, after their transmission to the Party concerned (MP.PP/C.1/2004/8, para. 33).⁶³

Draft findings and recommendations drawn up by the Committee will be publicly available upon request once they had been transmitted to the Party concerned and the submitting Party and/or the communicant (of secretariat, in the case of a referral) (hereinafter also “the parties concerned with a small “p”). Similarly, any comments provided by the parties concerned or third parties will be publicly available upon request, unless the body submitting the comments requests that they remain embargoed up to the end of the commenting period, in which case they would only be forwarded to the Committee members and would not be made available to the other parties or put in the public domain during that period. At the end of the commenting period, subject to chapter VIII of the annex to decision I/7, the draft findings and any recommendations and also any comments thereon will be published on the web site (MP.PP/C.1/2004/8, report of the sixth meeting, para. 35, as subsequently modified ECE/MP.PP/C.1/2005/8, para. 25).⁶⁴

Discussion papers prepared by the secretariat for a meeting of the Committee are not posted on the web site in advance of the meeting, but are available upon request and in the meeting room for observers (MP.PP/C.1/2003/4, para. 10).

Working language

English is the internal working language of the Committee (MP.PP/C.1/2003/2, para. 21).⁶⁵

Processing submissions and referrals⁶⁶

Submissions by Parties concerning other Parties

The secretariat informs the Committee of any submissions that it receives and circulates any such submissions to the Committee at the same time as they are forwarded to the Party concerned.

63 The document MP.PP/C.1/2004/8 of 25 January 2005 refers to the report of the sixth meeting of the Compliance Committee.

64 The document ECE/MP.PP/C.1/2005/8 of 22 December 2005 refers to the report of the tenth meeting of the Compliance Committee.

65 See also further down on the language of the communications.

66 This section is based on discussions carried out of the second meeting of the Compliance Committee (18-19 September 2003) on the basis of draft informatl documents (see MP.PP/C.1/2003/4, para. 15).

As a general rule, the secretariat forwards a copy of the submission to the Party concerned within the two-week time limit even if it considers that the submission is not complete and essential information is lacking. When forwarding such submission, the secretariat will send the copies of the submission and the covering letter to the members of the Committee. For the purposes of paragraph 26 of the annex to decision I/7, such information will be considered as held by the Committee once it had been forwarded to it.

When forwarding the submission, the secretariat will in a cover letter request the Party concerned to acknowledge receipt of the submission and remind it of its obligation under decision I/7 to reply within three months or such longer period as the circumstances of the particular case may require, but no later than six months from the date the submission was forwarded. The deadline is calculated from the date at which the documentation was sent from the secretariat; and the response from the Party concerned should reach the secretariat by the end of the relevant period at least by fax or e-mail, though it would be acceptable for the posted original to arrive after the deadline provided that it had been posted before the deadline. The cover letter from the secretariat invites the Party concerned to indicate whether, due to the circumstances of the particular case, it envisages any difficulty in providing the reply within three months, and if so, to indicate when a reply would be sent. In the first instance, it is for the Party concerned to determine whether more than three months is necessary to provide a reply.

When a substantive reply is received by the secretariat, this is forwarded without delay to the Committee.

If no substantive reply is received from the Party concerned after three months or such longer period as may have been specified by the Party concerned, the secretariat sends a reminder to the Party concerned. The reminder will point out that following the expiry of the six-month period, the Committee will in any case be required to deal with the case on the basis of the information available to it, even in the absence of any response from the Party concerned. If necessary, a further and final reminder may also be sent to the Party concerned towards the end of the six-month period.

If no response has been received within six months, the secretariat informs the Committee accordingly, and notifies the Party concerned that it has done so.

In some cases, the Committee may be content to base its deliberations solely upon the information included in the submission and the reply; in other cases, it may decide to use its discretion to gather information from other sources in accordance with paragraph 25 of the annex to decision I/7.

The Parties involved in a matter are notified of any meeting of the Committee at which it will be discussed and of their right to be represented in such meetings in accordance with paragraph 32 of the annex to decision I/7. Where the Committee considers it important that representatives of the Parties involved in a matter participate in one of its meetings, it will explicitly invite them, stressing the importance of their participation. Subject to financial resources, financial support will be provided where

needed to assist eligible government representatives from the Parties concerned to participate.

Submissions by Parties concerning own compliance

With regard to submissions by a Party concerning its own compliance (paragraph 16 of the annex to decision I/7), the following procedures apply:

The secretariat informs the Committee of any such submissions that it receives and circulates them to the Committee without delay.

As a general rule, the secretariat circulates the submission to the Committee without delay even if it considers that the submission is not complete and essential information is lacking.

In some cases, the Committee may be content to base its deliberations solely upon the information included in the submission; in others, it may decide to use its discretion to gather information from other sources in accordance with paragraph 25 of the annex to decision I/7.

The Party which has made the submission is notified of any meeting of the Committee at which the matter will be discussed and of its right to be represented at such meetings in accordance with paragraph 32 of the annex to decision I/7. Where the Committee considers it important that a representative of the Party which has made the submission participate in one of its meetings, it will explicitly invite it, stressing the importance of its representative's participation. Subject to financial resources, financial support will be provided where needed to assist eligible government representatives from the Parties concerned to participate.

Referrals by the secretariat

With regard to referrals by the secretariat (paragraph 17 of the annex to decision I/7), the following procedures are recommended:

When in doubt about the situation in a country, the secretariat may request information from the Party concerned as part of its general work or in preparing the synthesis report according to decision I/8 on reporting.

The secretariat may consult the Committee before requesting information from a Party in the context of the compliance mechanism, if it considers this to be useful. In some cases, this may result in the Committee requesting the secretariat to seek the information from the Party.

While the secretariat may become aware of possible non-compliance in various ways other than through consideration of the reports (e.g. correspondence, conversations, newspapers, etc.), formal referrals by the secretariat are based only upon information which is published or transmitted to it in written form.

If letters from the public concerning possible non-compliance are addressed to the secretariat rather than to the Committee and it is unclear whether or not the letter is intended as a communication in the sense of paragraph 18 of the annex to decision I/7, the secretariat clarifies the matter with the correspondent, and, if it transpires that the letter is intended to be a communication in that sense, it deals with it in the normal manner for such communications. If it is immediately clear, or is subsequently made clear, that such a letter is not intended as a communication in that sense, the secretariat informs the correspondent of the availability of the procedure for consideration of communications from the public, where he or she does not appear to be aware of it, and invites him or her to consider the possibility of using that procedure.

If such correspondents indicate that they do not wish to submit a communication in the sense of paragraph 18, the secretariat has various options available to it, including consulting the Committee, seeking corroborating information from other sources or taking no action (e.g. on the grounds that its resources should be allocated to other matters having higher priority, that the information is insufficiently solid, that the alleged non-compliance is not of sufficient gravity, etc.). The secretariat uses its discretion in choosing among these options, taking into account the nature of the particular case.

The secretariat may, instead of making a referral in accordance with paragraph 17 of the annex to decision I/7, invite a Party to consider making a submission in accordance with paragraph 16 of that annex.

The secretariat informs the Committee when it has requested information about possible non-compliance from a Party in the context of a referral under the compliance mechanism.

Any Party which is the subject of a referral by the secretariat is notified of any meeting of the Committee at which the matter will be discussed and of its right to be represented at such meetings in accordance with paragraph 32 of the annex to decision I/7. Where the Committee considers it important that a representative of the Party which is the subject of the referral participate in one of its meetings, it explicitly invites it, stressing the importance of the participation of the representative. Subject to financial resources, financial support will be provided where needed to assist eligible government representatives from the Parties concerned to participate.

Processing communications from the public⁶⁷

Upon receiving a communication addressed to the Committee, the secretariat will register it. It will then send an acknowledgement of the receipt.

The secretariat will verify that all necessary information is provided in the communication, and will circulate the communication and supporting documents

67 This section is based on discussions carried out at the second meeting of the Compliance Committee (18-19 September 2003) on the basis of draft informal documents (see MP.PP/C.1/2003/4, para. 11).

to the members of the Committee. If the communication lacks certain mandatory or essential information, the secretariat will resolve any problems by contacting and discussing them with the communicant before forwarding the communication to the Committee. If a communication, or an essential part of the supporting documentation, is not in English, the secretariat may delay forwarding it to the Committee until an English version is available.

When forwarding the communication to the Committee, the secretariat will add a data sheet providing basic information about the communication. The data sheet, including a 150-word summary of the communication, will be posted on the web site. The communicant may provide comments to the information presented in the datasheet. The data sheet will be regularly updated and the Committee may make changes to it. The Committee will, in accordance with paragraph 22 of the annex to decision I/7, ensure that communications are brought to the attention of the Party concerned 'as soon as possible'. A communication received before any given meeting of the Committee should at the latest be forwarded before the following meeting of the Committee. Electronic decision-making will be used to expedite the processing of communications.

Upon receipt of a communication, the Chair may request individual members of the Committee to provide assistance. Any member may also offer to assist the Chair with the communication in question.

The Committee will consequently: a) make a preliminary determination as to whether the communication fulfils the admissibility criteria; and b) decide the points, if any, that should be raised (i) with the Party concerned, when forwarding the communication, or (ii) with the communicant to clarify the facts and/or allegations of the communication. If the communicant has requested that part of the communication be kept confidential, the Committee will need to decide whether the information that has not been designated confidential is sufficient for it to be able to process the communication. It may decide to enter into a dialogue with the communicant concerning the request for confidentiality if it considers that this will facilitate the processing of the communication.

If translation of the supporting material is required, the Committee will need to decide on the extent to which more material, other than that which is already available in English, should be translated, taking into account both the costs of translation and the delay involved. The Committee may also request the communicant to provide an English translation of some documents.

When the secretariat is relaying questions or requests from the Committee to the communicant, it may at its discretion clarify unclear responses or pose further clarifying questions with a view to gathering more complete information for the Committee. This also applies at a later stage when corresponding with the Party concerned.

Determination of admissibility

Upon receiving a new communication, the Committee will consider its admissibility. If one or more of the formal criteria for admissibility are not fulfilled (e.g. the

communication is anonymous or manifestly unreasonable), the Committee will either dismiss the communication or decide that a further opportunity be given to the communicant to fulfil these criteria (e.g. if it is not clear whether the communication concerns matters falling within the scope of the Convention). If the Committee decides that the communication does not fulfil the formal criteria and that it does not want to pursue the matter further, it will inform the communicant accordingly.

If the Committee determines a communication to be inadmissible, the communication will not in principle be brought to the attention of the Party concerned. In some cases, the Committee may decide that there are good reasons to forward the inadmissible communication to the Party concerned; in such a case, it will first seek the views of the communicant.

If the Committee determines that all formal criteria for admissibility are fulfilled, it will provisionally decide that the communication is admissible and open a 'file'. The communication will then be brought to the attention of the Party alleged to be in non-compliance. The Committee may at this stage, on the basis of a preliminary consideration of the matters covered by the communication, make such points or raise such questions as it sees fit in the covering letter to the Party.

The secretariat will send all the documents related to the communication, together with the cover letter, to the Aarhus Convention's national focal point of the Party concerned with a copy to that Party's Permanent Mission to the United Nations in Geneva and to the communicant.

The secretariat should not wait for the signed copy of the communication to arrive by post before forwarding it to the Committee in electronic form. The Committee will, however, normally wait for the signed copy of the communication to arrive before forwarding it to the Party concerned.

Once the communication and the supporting documentation have been forwarded to the Party concerned, they will be posted on the web site, without any amendments or editorial intervention. Publication on the web site is intended to facilitate access of the public to information relating to Parties' compliance with the Convention and does not imply endorsement of the content by the Committee or by the UNECE.

The secretariat will routinely notify anyone wishing to receive notifications of new communications, after these have been deemed admissible and forwarded to the Party concerned, either by sending the communication itself or by providing a web link to it (ECE/MP.PP/C.1/2008/8 para. 40).⁶⁸

Communications determined to be inadmissible are not posted on the web site but are available from the secretariat upon request.

68 The document ECE/MP.PP/C.1/2008/8 of 6 January 2009 refers to the report of the twenty-second meeting of the Compliance.

Response by the Party

When the Party receives a letter from the secretariat forwarding a communication, it should as soon as possible, but in any case no later than five months from the date of the secretariat's letter, submit written explanations or statements clarifying the matter and responding to the allegations (paragraph 23 of the annex to decision I/7). In its response the Party concerned should explicitly comment on the allegations of the communication and also address any questions and other points raised by the Committee at the time the communication was forwarded.

The Party concerned may also submit comments with respect to the admissibility of the communication. If a Party contests the admissibility of the communication, it should inform the Committee as soon as possible, but no later than five months from the date the communication was forwarded.

The five-month deadline for response is calculated from the date the communication and any relevant documentation were forwarded from the secretariat (date of the cover letter). The response from the Party concerned should reach the secretariat by the end of the five-month period by fax or e-mail. The posted original may arrive after the lapse of the five-month period, as long as it was posted before the lapse of the deadline.

Upon receipt of the response from the Party concerned, the Committee will consider any comments with respect to the admissibility of the communication. If the Committee is not convinced by the arguments of the Party, it will confirm the admissibility of the communication and consider its substance. If it is convinced by any arguments of the Party that the communication is inadmissible or that there are serious doubts concerning its admissibility, the Committee may reverse or suspend its preliminary decision. It will then inform the communicant accordingly and provide it the opportunity to comment, and, where necessary seek further information to enable it to reach a decision on the admissibility. If the Party concerned does not respond within the five-month deadline, the Committee will confirm the admissibility of the communication and consider the substance of the file.

Discussion and preparation of findings⁶⁹

Discussion of submissions, referrals and communications

When the Committee has received the response to a submission,⁷⁰ communication or referral from the Party concerned, or, if no response is received, when the final deadline for receiving such a response has passed, it will:

69 This section is based on discussions carried out at the first and second meetings of the Compliance Committee (17-18 March 2003 and 18-19 September 2003) on the basis of draft informal documents (see MP.PP/C.1/2003/2, paras. 23-24 and 31; MP.PP/C.1/2003/4).

70 References to submissions in this section should generally be understood to refer to submissions made by a Party about another Party's compliance, in accordance with paragraph 15 of the annex to decision I/7, rather than submissions by a Party about its own compliance.

- a) Consider whether sufficient information is available for it to be able to consider the substance of the case, and if not, identify what further information is needed;
- b) If sufficient information is available, start the formal discussion on the substance of the case in open session (paragraph 32 of the annex to decision I/7);
- c) If the discussion is completed, prepare draft findings, measures and recommendations in closed session (paragraph 33 of the annex to decision I/7); and
- d) Finalize and adopt the findings, measures and recommendations taking account of any comments received from the Parties concerned and/or the communicant.

If the Committee determines that the information submitted by the parties does not provide sufficient information for the Committee to consider all aspects of the matter, the Committee may take one or more of the following steps:

- a) Request additional information from the communicant/submitting Party/secretariat, the Party concerned or other sources;
- b) With the agreement of the Party concerned, proceed to on-the-spot information gathering;
- c) Seek the services of experts and other advisers; and
- d) Where appropriate, decide to hold a hearing/discussion.

The Committee may determine at any stage in the process that further information should be gathered, including in the period before the Party concerned has responded. In order to avoid last minute provision of information, the Committee may impose a deadline by which information to be considered at a particular meeting must be supplied. Its procedures regarding information-gathering are discussed in more detail further down in this section.

As a general rule, the Committee aims to start the formal discussion on a particular submission, referral or communication at the first meeting that takes place more than two weeks following either the receipt of a response to the submission, referral or communication from the Party concerned or the applicable deadline (the six-month deadline in the case of submissions and referrals) if no response has been received by then.

The Committee does not begin the formal discussion on a particular submission, referral or communication at any meeting that takes place before a response has been received from the Party concerned or the applicable deadline for responding has passed.

When it is known that the Committee will discuss the substance of any submission, referral or communication at a particular meeting, the secretariat notifies the Party concerned, and, as appropriate, the submitting Party and/or the communicant, that the matter will be discussed and of their right to participate in the discussion in accordance with paragraph 32 of the annex to decision I/7. The secretariat, having consulted with the Committee, may also indicate to the Party concerned and, as appropriate, the submitting Party and/or the communicant, the likelihood that the Committee will enter into an in-depth discussion on the case in question.

In general, any substantial new information should be presented to the Committee by any party at least two weeks in advance of the meeting at which it will be discussed. The Committee is not required to take account of information submitted after that deadline. Nevertheless, it is free to do so, if it considers its work would otherwise be hampered.

The discussion will involve a formal hearing, meaning that the Party concerned and, as appropriate, the submitting Party and/or the communicant will be invited to come and present information and opinions on the matters under consideration. Subject to financial resources, financial support will be provided where needed to assist a representative of the communicant and eligible government representatives from the Party concerned to participate.

The discussion of any submission, referral or communication generally takes the following form:

- a) Introduction by the Chair and opening of the discussion (by the Chair or the rapporteur for the case if one has been appointed);⁷¹
- b) Presentations by the submitting Party, secretariat (if a referral) or communicant, and by the Party concerned, including possible joint proposals;
- c) Questions from the Committee, responses from the Party concerned and, as appropriate, the submitting Party, the secretariat and/or the communicant;
- d) Comments from observers at the invitation of the Chair;
- e) Final comments by the submitting Party, secretariat (if a referral) or communicant;
- f) Final comments by the Party concerned.

71 General content of the Chair's introduction is included in Annex II to this Guidance Document.

The discussion phase may be concluded in a single meeting, or may continue over two or more meetings, e.g. if further information needs to be gathered.

Preparation and adoption of findings

When the Committee considers that it has a sufficiently complete picture of the situation, it will move to the preparation of draft findings, measures or recommendations without delay. The conclusion of the discussion and the preparation of draft findings, measures or recommendations should generally happen at the same meeting.

Having regard to paragraph 33 of the annex to decision I/7 and earlier decisions of the Committee (MP.PP.C.1/2003/2, para. 17), the Committee prepares its draft findings, measures or recommendations in closed session. It should start by considering and drawing appropriate conclusions as to whether or not the Party concerned is in compliance. It may distinguish at this point between failure to establish the necessary implementing measures and failure to apply such measures.

If the Committee provisionally finds that the Party in question is not in compliance, it may then consider and agree upon possible measures or recommendations. 'Measures' in the sense of paragraphs 33 and 34 of the annex to decision I/7 are understood to refer to measures that the Committee is entitled to take in accordance with paragraph 36 of the annex to decision I/7, pending consideration by the MoP (which may include recommendations to the Party concerned). 'Recommendations' are understood to refer to recommendations to the MoP (which may include recommendations to take one or more of the measures listed in paragraph 37 of the annex to decision I/7). In this regard, paragraphs 36 and 37 should not be interpreted as requiring a specific sequence in which these measures could be recommended or undertaken. The Committee will take into account all elements of the case, including the cause and frequency of the non-compliance as well as the capacity of the Party concerned to implement the Convention and its socio-economic conditions.

If the Committee wishes to take inter-sessional measures pending consideration by the MoP, it consults with or, as appropriate, seeks the agreement of the Party concerned. If a significant amount of time remains before the next session of the MoP (e.g. one or two years), the Committee may be expected, in consultation with or, as appropriate, with the agreement of the Party concerned, to take inter-sessional measures with a view to providing an opportunity for the Party concerned to address the problems identified. If only a few months remain before the next session of the MoP, the Committee may decide to prepare recommendations for the MoP than to take such measures.

Once prepared, the draft findings, draft measures and/or draft recommendations are transmitted to the Party concerned and the submitting Party and/or the communicant (or secretariat, in the case of a referral) with an invitation for them to comment within a reasonable deadline. If necessary, to assist the Party concerned, the submitting Party or the communicant, the secretariat may arrange for the draft to be translated into another UNECE language.

Draft findings and recommendations drawn up by the Committee and comments by the parties concerned will be publicly available upon request once they had been transmitted to the parties concerned (on this matter see the section on publication of meetings and documentation above). All comments should be submitted through the secretariat. Parties are strongly encouraged to copy the other party, when submitting comments to the secretariat for the attention of the Committee. Any comments to the draft findings and recommendations should not include information that could have been provided at an earlier stage of the process.

At its next meeting after the deadline for comments, the Committee will consider any comments received and review and finalize the draft findings, draft measures and/or draft recommendations. The final version will be prepared as an official document available in the three UNECE languages and transmitted to the parties concerned.

If, at the time of preparing its report to the MoP, an issue which prompted the Committee to adopt findings and take measures under paragraph 36 of the annex to decision I/7 remains unresolved, the Committee will reformulate its earlier findings and measures as findings and recommendations to the MoP, which will be included as an addendum to its report to the MoP.

Consideration by the MoP

The MoP will make the final decision on specific measures aimed at bringing about full compliance with the Convention. The MoP may broadly address issues of non-compliance as long as the proposed measures are non-confrontational, non-judicial and consultative, and in accordance with international law. The MoP decisions are communicated directly to the parties and made public. In its decision, the MoP may mandate the Committee to monitor the implementation. The Committee will report on the monitoring of the follow-up measures to the MoP.

Information gathering⁷²

Paragraph 25 of the annex to decision I/7 provides that “[t]o assist the performance of its functions, the Committee may:

- a) Request further information on matters under its consideration;
- b) Undertake, with the consent of any Party concerned, information gathering in the territory of that Party;
- c) Consider any relevant information submitted to it; and
- d) Seek the services of experts and advisers as appropriate.”

⁷² This section is based on discussions carried out at the first and second meetings of the Compliance Committee (17-18 March 2003 and 18-19 September 2003) on the basis of draft informal documents (see MP.PP/C.1/2003/2, paras. 32-33 and MP.PP/C.1/2003/4, paras. 23-26).

The provisions apply to all functions of the Committee, as stated in paragraph 13 of the annex to decision I/7, including the consideration of submissions, referrals and communications. In practice, the Committee may apply the provisions on gathering information in different ways depending on the general or specific character of the compliance issue and on its trigger (communication, submission or referral).

Considerations in information gathering

In considering information gathering, the Committee may consider the following elements:

a) *How essential is this information for the consideration of the specific issue*

Before planning how to obtain the necessary information, the Committee will endeavour to define as precisely as possible the elements required to reach a decision on the alleged non-compliance issue.

b) *What is the presumed gravity of the alleged non-compliance*

The Committee may consider the presumed gravity of a case before launching any information gathering efforts. However, such a consideration may be difficult, if there is not sufficient information available. This consideration may have particular weight where obtaining information may be logistically difficult or very costly.

c) *Type of information needed*

The missing information may be:

- Objective information, such as background and contextual information, including texts of legislation/regulations in general of the Party concerned and legislation transposing the Convention, facts related to the particular case, such as dates, exact text of a decision, etc.
- Views and opinions, e.g. on how national legislation works in practice, what are the underlying reasons for specific problems, etc; and
- Advice, for instance on how to solve a continuous problem with the application of existing legislation, how to influence the practices of members of the public or public administration, etc.

d) *Possible sources of the required information*

Depending on the type of the missing information, the sources may vary and may include:

- Requests to the government of the Party concerned, usually through the national focal point and the relevant public authorities, or to the communicant;
- Requests to the NGO and scientific communities, and academia;
- Literature and other research and analytical material.

The secretariat and the public in the Party concerned (if not represented by the NGO) may contribute as well.

e) *What are the interest and the motivation of the information provider*

The Committee is mindful of the fact that the interest and the motivation of the person/body supplying the information may affect the accuracy and/or completeness of the information.

f) *Time and cost implications of information gathering*

The Committee will consider which means would be the fastest and most cost-effective to serve the objective of information gathering. Obtaining some types of information may imply increased cost and/or logistical difficulties, without any guarantee that the effort to obtain the information will be successful. In such cases, the Committee may rely on assumptions. For instance, while the view of the public in general with regard to compliance by a Party of the general provisions of the Convention may be a significant source of information, this would require the launch of a large survey, with major cost and organizational implications. In principle, the Committee's approach to information gathering is pragmatic and cost-effective, and aims to facilitate the smooth carrying out of its tasks. A pragmatic approach to information gathering also means that the Committee may avoid being overloaded with too much information, and may only seek additional information when it deems necessary for the consideration of a specific matter. If the required information can be made easily available by the Committee members or the secretariat, there may be no need to request such information from the Party concerned or the communicant.

Means of information gathering

On the basis of the elements above (source, costs, etc) the means for information may be organized in, but not limited to, the following three groups:

First group: Easily accessible and no-cost or low-cost means of obtaining information, including, but not limited to: Committee members; literature; Internet, including information made available through the Aarhus Clearinghouse; international organizations active on the field in the Party concerned; reports from the Parties submitted in accordance with decision I/8; a request to a communicant at the stage of submission of the communication.

Second group: Obtaining information by contacting external sources, which depending on the circumstances may require a decision by the Committee to do so, such as requests to the Party concerned (under paragraph 17 of the annex to decision I/7 or otherwise); requests to the communicant(s); information/opinions/advice from national and international experts from governments, academia, private sector and non-

governmental organizations. A list of experts who have agreed to provide information to the Committee might be established on the basis of experience of the Committee and input from the Committee members.

Third group: Costly and more complicated means, which require a specific decision by the Committee to do so, for instance invitations to experts to meetings of the Committee and visits by Committee members and/or the secretariat to carry out on-the-spot information gathering and appraisals.

These means of information apply in particular in relation to communications from the public. They may apply differently in the context of submissions by Parties and referrals by the secretariat (paragraphs 15-17 to the annex to decision I/7). For example, the secretariat has a mandate (paragraph 17 of the annex to decision I/7) to request Parties to furnish necessary information about a matter, without instructions by the Committee. In other words, when requesting information from the Party concerned through paragraph 17, the Committee already has a mandate to use the second group of sources in that context.

Unless specifically mandated by the Committee to collect information, meetings of the secretariat or of the members of the Committee with any of the parties concerned, for example, in the context of other unrelated events, do not constitute information gathering for the purpose of paragraph 25 of the annex to decision I/7. The appropriate way for the parties concerned to submit any information for consideration is to address it formally to the Committee through the secretariat (MP.PP/C.1/2004/6, para. 50).

On-the-spot information gathering

According to paragraph 25 of the annex to decision I/7, the Committee may “undertake, with the consent of any Party concerned, information gathering in the territory of that Party” to assist the performance of its functions. On-the-spot information gathering (also called on-the-spot appraisal, inspection, fact-finding mission, etc.) is a method of collecting information whereby experts travel to the territory of a State to establish facts and assess the situation of alleged non-compliance. This process may sometimes be politically sensitive.

On-the-spot information gathering may be undertaken by the Committee or the secretariat and may be facilitated by international/sub-regional organizations (such as OSCE and UNDP) that are present in the territory of the Party concerned and familiar with the Convention. The Committee will ensure that persons mandated to undertake on-the-spot information gathering understand that they act on behalf and under the instruction of the Committee and that the mission is governed by the principles laid down in article 15 of the Convention (“non-confrontational, non-judicial and consultative nature”).

A mission for on-the-spot information gathering is undertaken only if the Committee has consulted with and received the consent of the Party concerned. The Commission may decide to undertake such a mission if it deems it necessary for the consideration

of the matter and the information required cannot be obtained through other means. In this regard, the following elements should be present:

- a) The Committee has enough information already to open a file and the situation of alleged non-compliance is and continues to be serious;
- b) The Committee lacks essential information or the case presents serious uncertainties or difficulties as to the appropriate measures that should be recommended; and
- c) It is not possible to obtain the missing elements by other less costly means.

For each information gathering mission, the Committee will prepare terms of reference which may contain a description of the case under consideration. To prepare these terms of reference, the Committee will consider:

- a) The objective and expected outcome of the mission.
- b) The timing of the mission, i.e. what is the most suitable timing for the Party concerned or of relevant entities in the Party concerned.
- c) The duration of the mission.
- d) The appropriate representation by the Committee and/or by the secretariat. Other individuals, such as experts or representatives of international organizations with field presence in the Party concerned, may be mandated to gather the information. Availability and language skills will be considered when selecting the appropriate persons to undertake the mission.
- e) The budget for the mission. In principle, the costs of an information-gathering mission are covered by the Convention's trust fund and/or a contribution from the Party concerned. The Committee and/or secretariat may wish to liaise with the Party concerned on this issue.

Once drafted, the draft terms of reference will be circulated to the communicant and the Party concerned for comments.

Role of the secretariat

According to decision I/7, the 'secretariat shall arrange for and service the meetings of the Committee' (para. 12). Hence, the secretariat has the task of ensuring that meetings are well prepared and documented, including that the Committee has access to the information related to the issues on its agenda. During the preparation of Committee meetings, the secretariat may identify missing information and may make efforts to obtain such information in order to facilitate the Committee's work. In carrying out this task, the secretariat will take account of the elements identified above.

After the receipt of a communication, submission or referral, the secretariat will endeavour to gather information to facilitate the Committee's work as required. The secretariat does not need a mandate by the Committee to seek information by using the first group of means (see above), but would need a decision or other instruction by the Committee to seek information using the second and third group of means.

THE NGOS AND THE COMPLIANCE COMMITTEE⁷³

The fundamental role played by NGOs in the drafting of the Convention, as well as the role they play now in implementing it, is acknowledged, *inter alia*, in article 2, paragraphs 4 and 5, of the Convention. NGOs can trigger the Aarhus compliance mechanism under paragraph 18 of the annex to decision I/7 like any other member of the public.

The Committee has a particular interest to cooperating with the NGO community. Beyond the submission of communications on individual cases, civil society can significantly contribute to the Committee's efforts to collect information. Under paragraph 25 of the annex to decision I/7, the Committee does not make any distinction between information received by individuals and States. NGOs may also contribute as 'experts and advisers' whose services the Committee may seek. A number of other ways in which NGOs may cooperate with the Committee are discussed below.

The practice of other bodies in the field of international human rights law⁷⁴ in cooperating with the NGO community may be observed, but there is a distinction to make: the primary mandate of most bodies established by human rights treaties is to review the periodic reports of the Parties, pursue constructive dialogue and make recommendations; the examination of individual communications, like in the case of the Aarhus Committee, may be a secondary mandate.

The Committee is cognisant of that the NGO community does not have fixed governance and that NGOs represent diverse views and that this may impede their smooth cooperation with the Committee. The European ECO Forum⁷⁵ is a good starting point for NGO cooperation, in terms of representativeness and expertise on the Convention, but there may be others with whom cooperation should be explored.

Further to the request of the Committee at its first meeting, some aspects of NGO cooperation are examined in a non-exhaustive manner in this section.

73 This section is based on discussions carried out at the second meetings of the Compliance Committee (18-19 September 2003) on the basis of draft informal documents (see MP.PP/C.1/2003/4, paras. 27 and 33).

74 For instance, the Human Rights Committee, the Committee on the Elimination of Racial Discrimination, or the Committee on the Elimination of Discrimination against Women.

75 See the web site at <http://www.eco-forum.org/> 26 November 2009).

a) *Public Sessions*

In principle the Committee's sessions are open to the public. This is a fundamental feature to promote transparency, access to information and participation, as called for by the Convention. NGOs can benefit by understanding better the function of the Committee and its jurisprudence.

b) *Special sessions for NGOs*

The Committee may decide to invite representatives of NGOs that are present at a meeting to raise, at the beginning of a session, compliance issues to be considered by the Committee. The Committee may consider to dedicate time at its meetings to open discussions with NGOs on issues of non-compliance not specifically linked to communication under process.

Notably, the Human Rights Committee reserves part of its session to listen to, and discuss with, NGOs, since the latter cannot intervene during the sessions of this body. Also, the Committee on Economic, Social and Cultural Rights devotes the first afternoon of its sessions to NGO contributions.

NGO participation to the Committee meetings is encouraged and financial support may be provided to facilitate NGO presence.

c) *Consultations on drafts*

The Committee's draft findings, measures and recommendations are published on the Internet. NGOs and members of the public in general can consult the documents and comment (annex to decision I/7 paragraph 34).

d) *Implementation of measures*

The Committee may invite intergovernmental organizations, regional environmental centres, NGOs and other organizations with knowledge and experience to assist a country to implement measures recommended by the Committee.

e) *Official registration of contributions*

Apart from communications, the Committee may receive a variety of information, including positions and requests. It is observed that human rights bodies do not provide for registration of similar information they receive and deal with it on an informal basis; for instance, questions to the Party of the treaty may be based on information privately received by one of the members of the treaty monitoring body. In conformity with the principles of the Convention and for the sake of transparency, such information received by the Aarhus Committee should be published and, if possible, registered.

f) *Review of a country situation*

The number of communications received concerning non-compliance by a Party and the nature of non-compliance may indicate that the Committee review the general compliance in the country. Such a review may be requested by the MoP as well. Such an exercise should be publicised broadly and early enough to allow the Committee to benefit from various sources, such as human rights treaties monitoring bodies that review the Parties' periodic reports and NGOs, and may include formal or informal "hearings" with different stakeholders.

g) *Interpretation of the Convention*

The jurisprudence of the human rights treaty bodies has increasingly evolved over the last years and provides useful insights for the definition of the rights and obligations deriving from the treaties. As the practice of the Committee accumulates, its jurisprudence also develops. The jurisprudence relating to the interpretation of the Convention provisions are the outcome of a rich discussion, where the participation of the public can be crucial.

COMMUNICATIONS – USEFUL INFORMATION FOR THE PUBLIC AND THE PARTY CONCERNED

KEY POINTS

- The compliance mechanism entered into force with regard to communications from the public on 23 October 2003. Communications may concern facts that occurred before this date, although they should not address problems that have been solved or have otherwise become obsolete.
- Only Parties to the Convention have legal obligations under it, and therefore issues of compliance arise only with respect to Parties. Signatories and other States which are not Parties to the Convention do not have legal obligations under it and any communication addressing the extent to which they apply the Convention or their failure to do so falls outside the competence of the Compliance Committee.
- Except by way of background information, communications should address only actions, omissions, events or situations which occurred when the State in question was under a legal obligation under the Convention, i.e. after it became a Party.
- In considering any communication from the public, the Compliance Committee will take into account the extent to which any domestic remedy (i.e. review or appeals process) was available to the person making the communication, except where such a remedy would have been unreasonably prolonged or inadequate. Before making a communication to the Committee, the member of the public should consider whether the problem could be resolved by using such domestic remedies.

- Communications to the Committee may concern either a general failure by a Party to introduce the necessary legislative, regulatory and other measures to implement the Convention in conformity with its objectives and provisions; specific deficiencies in the measures taken; or (bearing in mind the point about domestic remedies) specific instances of a person's rights under the Convention being violated; or a combination of these. For communications concerning a person's rights under the Convention, it must be stressed that the compliance procedure is designed to improve compliance with the Convention and is not a redress procedure for violations of individual rights.
- The compliance mechanism aims to facilitate compliance by Parties with their obligations under the treaty. The mechanism itself and any measures undertaken in the course of or as a result of Compliance Committee's operation are by their nature non-confrontational, non-judicial and consultative.

Who can submit a communication

Any member of the public, i.e. any natural or legal person, may submit a communication to the Committee. The person filing a communication (hereinafter referred to as the communicant) is not required to be a citizen of the State Party concerned, or, in the case of an organization, to be based in the Party concerned.⁷⁶

The communication should provide basic information – name and contact details – on the identity of the communicant, whether this is an individual or an organization. If the communicant is a registered organization, the communication should be signed by a person legally authorized to sign for the organization. If the communication is made by a group of persons, a contact person should be designated to correspond on behalf of the group and the personal information provided for that person. The Committee will not consider anonymous communications.

It is not necessary that the communicant be represented by a lawyer or have the communication prepared with legal assistance. However if some legal knowledge is available to the communicant, this may improve the quality of the communication and thus facilitate the work of the Committee. In cases where a communicant is represented by someone else (lawyer or other representative), the communicant is required to confirm in writing to the Committee that it had authorized this person to represent it in connection with the communication in question (report of the twenty-fourth meeting of the Committee, 30 June-3 July 2009, para. 58).⁷⁷

What is the State concerned by the communication

The communication should clearly identify the State Party to the Convention (the "Party concerned") whose compliance is the subject of the communication. Where a

⁷⁶ Unless the context indicates otherwise, the term 'State' is understood to also cover any regional economic integrations organization that is entitled to become a Party to the Convention under its article 19, such as the European community.

⁷⁷ The text of the report had not been produced as an official UN document at the time of the preparation of this guidance document.

person wishes to draw the attention of the Committee to what he or she considers to constitute non-compliance by more than one State, a separate communication should be submitted for each State involved.

A communication may be made concerning a State, provided that:

- a) The Convention is in force for that State, meaning that it must be a Party to the Convention. The Convention enters into force for a State only on the ninetieth day after the date on which it has deposited its instrument of ratification, acceptance, approval or accession.⁷⁸
- b) The Party has not 'opted out' of the compliance mechanism with respect to communications from members of the public.⁷⁹ To date, no States Parties have opted out.

Timing of a communication and of the related facts

Communications may be made concerning States which were Parties on 23 October 2002 and provided that they have not opted out. Concerning other States, communications may be made one year or more after the date of the entry into force of the Convention for that Party, due to the one-year grace period. In other words, during the first year after the entry into force of the Convention for a Party, the Committee may not consider communications from members of the public with respect to that Party ("one year grace period").

Example: State X deposits its instrument of ratification on 1 July 2009. The Convention enters into force for that State 90 days later, i.e. on 28 September 2009. Communications may be made with respect to that Party from 28 September 2010.

This does not imply that the Convention is not binding for the Party during the one-year grace period; the Committee may decide to consider communication that were submitted after the one-year grace period, but the significant events occurred during the first year after the entry into force of the Convention in the Party concerned.

If a communication concerns a specific case of alleged non-compliance (for example a specific decision rejecting a request for access to environmental information), and the significant events related to the case occurred before the entry into force of the

78 The list of States that have ratified, accepted, approved or acceded to the Convention can be found at <http://www.unep.org/env/pp/ctreaty.htm> (26 November 2009).

79 When a Party has 'opted out', it means that it has notified the Secretary-General of the United Nations that it does not accept the consideration of communications from the public for a period of up to four years, as allowed for in decision 1/7 (annex, para. 18). Such a notification should be made before 23 October 2003 for States that were parties at the time when the decision was opted; for other States, the notification should be made no later than one year after the entry into force of the Convention for that State. If a Party has made such a notification, it is not possible to make a communication concerning that Party for a period of five years after the entry into force of the Convention for that State or such shorter period as may be specified in the notification to the Depositary.

Convention for that Party, the Committee is likely to determine that it will not consider the communication, as the State had no legal obligations under the Convention at the time of the events.

It should be noted that if a communication is submitted less than two weeks before a scheduled meeting of the Committee, its admissibility may not be considered by the Committee at that meeting. The dates of all upcoming meetings are listed on the Committee's web site.

The Committee considers all admissible communications, but it may decide to consider communications in a different order than the order they have been received, on the basis of the need for balanced review of compliance by the Parties and the Committee's workload.

Formal criteria of the communication

In accordance with paragraph 20 of the annex to decision I/7, the Committee will not consider any communication that it determines to be:

- a) Anonymous.
- b) An abuse of the right to make such a communication.
- c) Manifestly unreasonable.
- d) Incompatible with the decision on review of compliance (decision I/7) or with the Convention.
- e) Concerning a State which is not a Party to the Convention.
- f) Concerning a Party which has opted out.

There are no formal criteria for the assessment of the conditions under b) – d) above. The Committee evaluates their fulfilment on a case-by-case basis.

Form of the communication

A communication should be in writing. There is no particular form, but it is strongly recommended that the communicant follow the example provided in annex II to this guidance document, indicating the checklist of items of information to be included.

Communications should be as concise as possible. The communicant should avoid including information that is not necessary to establish the existence and nature of the alleged non-compliance. If the communication is inevitably lengthy due to the complexity of the matter and the volume of the related information, it is recommended that the communicant include a three-page (maximum) summary with the main facts of the case.

If the secretariat receives information from a member of the public which purports to be a communication to the Committee, but which does not refer to and clearly does not concern compliance with the Convention, the secretariat, in consultation with the

Chair, will inform the member of the public that the information cannot be treated as a communication and explain the requirements for communications to the Committee. The secretariat will inform the Committee of any such cases, at the latest by the forthcoming scheduled meeting of the Committee, and make available to it copies of any such correspondence received (ECE/MP.PP/C.1/2006/8, para. 27).⁸⁰

Presentation of the facts of alleged non-compliance

The communication should set out, in chronological order, the facts on which the communication is based. It should indicate whether it refers to a general situation of non-compliance in the Party concerned (e.g. a problem related to the legislation in place to transpose the Convention into the national legal system, or lack of any such national legislation); or to a specific situation of alleged non-compliance (e.g. a denial of access to environmental information in a particular case, which is considered to contravene the Convention); or both.

The nature of alleged non-compliance

A communication may concern:

- a) A general failure by a Party to take the necessary legislative, regulatory or other (e.g. institutional, budgetary) measures necessary to implement the Convention as required under its article 3, paragraph 1;
- b) A failure of specific legislation, regulations or other measures implementing the Convention to meet specific requirements of its provisions;
- c) Specific events, acts, omissions or situations that demonstrate a failure of the public authorities to comply with or enforce the Convention.

Provisions of the Convention relating to the alleged non-compliance

The communication should contain all information which is considered essential to establish the alleged non-compliance, and should clearly state how the facts presented constitute a case of non-compliance with the Convention. The communication should mention the specific provisions of the Convention, which it alleges that the Party concerned failed to comply with, and make the necessary link between the facts presented and the provisions of the Convention.

Exhaustion of domestic remedies

The communication should specify whether steps have been taken to use the remedies available in the country in question to obtain redress in the case which is the subject

80 The document ECE/MP.PP/C.1/2006/8 of 1 February 2007 refers to the report of the fourteenth meeting of the Compliance Committee.

of the communication (e.g. administrative or judicial review or appeals procedures operated by public authorities, courts, tribunals, ombudsperson, etc.) and if so, which steps were taken, when they were taken and what the results were. If no steps have been taken, it should be explained why not (e.g. because no remedies were available or because they were too expensive). If remedies were sought in connection with the matter which is the subject of the communication, or in a closely related case, by a person other than the communicant, this should also be mentioned in the communication. Similarly, the communication should include information on whether the matter has been submitted to other international procedures (the steps taken, when they were taken and what were the results were).

The exhaustion of domestic remedies does not constitute a strict requirement: the Committee will consider whether the available domestic remedies have been exhausted, unless the application of the remedy is unreasonably prolonged or obviously does not provide an effective or sufficient means of redress. It is at the discretion of the Committee to decide not to examine the substance of a communication if in its view the communicant has not sufficiently explored the domestic administrative or judicial procedures, especially at times of particularly increased workload. Also, if a domestic remedy has not been used, the Committee is not precluded from considering the communication. The Committee may decide to give priority to communications, where there is an obvious lack of effective domestic remedies.

Should the Committee be faced with a mounting workload, non-exhaustion of a domestic remedy might also constitute a reason for the Committee to decide not to proceed beyond initial consideration of a communication.

Confidentiality

If the communicant is concerned that the disclosure of information submitted to the Committee could result in his or her being penalized, persecuted or harassed, he or she is entitled to request that such information, including any information relating to his or her identity, be kept confidential. The same applies if the communicant is concerned that the disclosure of information submitted to the Committee could result in the penalization, persecution or harassment. The Committee respects any request for confidentiality.

The communicant should clearly indicate what information is submitted in confidence to the Committee. In lack of a clear request for confidentiality, no information communicated to the Committee will be deemed confidential.

When the secretariat receives a communication and/or supporting documentation, parts of which are confidential, it highlights the confidentiality issue when forwarding the material to the Committee. The secretariat in consultation with the communicant prepares a redacted copy of the communication and/or supporting documentation for public use.

A communicant that puts a request for confidentiality may elaborate on the reasons of his or her request, but there is no obligation to do so. Also, it is important that there is enough information in the communication for the Committee to process the case. In some cases, if the request for confidentiality relates to a lot of information, this may impede the processing of the case. Finally, if the communicant requests that his or her identity be kept confidential, it is strongly recommended that he or she indicates a representative, such as a lawyer or NGO. Therefore, while there is no restriction in requesting confidentiality, this right should be exercised only when it is considered absolutely necessary.

Supporting documentation

Copies of all relevant documents to the communication, especially legislative and administrative measures and judgments relating to the application and enforcement of the Convention in the Party concerned, and which are necessary as background information, should be submitted as corroborating material to facilitate the Committee's work. Any judgments in support of the arguments of the communicant or of the Party concerned should be dated after the Convention entered into force for the Party concerned.

Language of the communication and related documentation

Communications should be submitted in one of the official languages of the Convention, i.e. English, French or Russian. If a communication is made in Russian or French, the secretariat will arrange for its translation into English. The communicant will be offered the opportunity to comment on the accuracy of the translation if he or she so wishes. A similar procedure will apply to responses received from the Party concerned in the official languages other than English and the Party concerned will be invited to comment on the accuracy of the translations of official documents originating from a different source, e.g. legal acts, letters from public authorities.

Supporting documentation is also translated unless it is very bulky. In such circumstances, a member of the Committee familiar with the specific language could summarize the information and/or identify those parts of the documentation which it would be essential to translate into English. Also, if an important document to the communication is not available in one of the official languages, the communicant should submit a translation preferably in English and submit it together with the original. Certified translations are preferable to unofficial.

The need for translation of any supportive documentation submitted in languages other than the official ones will be considered on an ad hoc basis. When informing the public of its right to make a communication, it should be made clear that if a communication is not submitted in English, this may considerably slow down the process of its consideration.

IV. Nature of alleged non-compliance

Indicate whether the communication concerns a specific case of a person's rights of access to information, public participation or access to justice being violated as a result of non-compliance or relates to a general failure to implement, or to implement correctly, (certain of) the provisions of the Convention by the Party concerned:

V. Provisions of the Convention relevant for the communication

List as precisely as possible the provisions (articles, paragraphs, subparagraphs) of the Convention that the Party concerned is alleged to not comply with:

VI. Use of domestic remedies or other international procedures

Indicate if any domestic procedures have been invoked to address the particular matter of non-compliance which is the subject of the communication and specify which procedures were used, when which claims were made and what the results were:

If no domestic procedures have been invoked, indicate why not:

Indicate if any other international procedures have been invoked to address the issue of non-compliance which is the subject of the communication and if so, provide details (as for domestic procedures):

VII. Confidentiality

Unless you expressly request it, none of the information contained in your communication will be kept confidential. If you are concerned that you may be penalized, harassed or persecuted, you may request that information contained in your communication, including the information on your identity, be kept confidential. If you request any information to be kept confidential, you are invited to clearly indicate which. You may also elaborate on why you wish it to be kept confidential, though this is entirely optional.

VIII. Supporting documentation (copies, not originals)

- Relevant national legislation, highlighting the most relevant provisions.
- Decisions/results of other procedures.
- Any other documentation substantiating the information provided under VII.
- Relevant pieces of correspondence with the authorities.
- Avoid including extraneous or superfluous documentation and, if it is necessary to include bulky documentation, endeavour to highlight the parts which are essential to the case.

XI. Summary

Attach a two to three-page summary of all the relevant facts of your communication.

X. Signature

The communication should be signed and dated. If the communication is submitted by an organization, a person authorized to sign on behalf of that organization must sign it.

XI. Address

Please send the communication by email AND by registered post to the following address:

Mr. Jeremy Wates
Secretary to the Aarhus Convention
United Nations Economic Commission for Europe
Environment and Human Settlement Division
Room 332, Palais des Nations
CH-1211 Geneva 10, Switzerland
Phone: +41 22 917 2384
Fax: +41 22 917 0634
E-mail: public.participation@unece.org

Clearly indicate: "Communication to the Aarhus Convention's Compliance Committee"

ANNEX II - CHAIR'S INTRODUCTION TO FORMAL DISCUSSIONS ON THE SUBSTANCE OF COMMUNICATIONS AND SUBMISSIONS

The Committee is going to discuss the substance of communication /submission number (ref. number).

The Committee was elected at the first Meeting of the Parties in Lucca, Italy, in October 2002.

The work of the Committee, its functions and procedures are governed by Decision I/7 of the Meeting of the Parties on Review of Compliance.

This decision was taken pursuant to Article 15 of the Convention providing for non-confrontational, non-judicial, and consultative arrangements for reviewing compliance with the provisions of the Convention.

So, what we are entering is not a trial or a lawsuit. There is no plaintiff, no defendant, and the findings of the Committee will not be a judgment. Nobody will gain, and nobody will lose. The Convention is the heart of the matter.

Furthermore, the arrangements are of a non-confrontational nature. This means that the meeting should not be seen as a confrontation between the communicant and the concerned Government. The Committee is aiming at a constructive and amicable meeting.

The arrangements are of a consultative nature. Therefore, the meeting is a consultation with a view to assisting the Committee in its upcoming deliberations on whether there are problems of compliance and if so, how those problems might be remedied in the future. The fact that our proceedings will not follow the adversarial model also means that the Committee will not feel constrained to only examine those arguments presented by a communicant, by the secretariat, by a submitting Party or by a Party concerned. Since the Committee's initial purpose in each case is to establish whether there appears to be non-compliance, it may formulate its own arguments and draw conclusions which go beyond the scope of those presented by the parties concerned and communicant.

The ultimate task of the Committee is to facilitate resolving problems, if any, and not to condemn a Government for acts committed in the past. We intend to start from the assumption that any non-compliance with international obligations is not due to a will or intention not to comply. Furthermore, the main powers to take measures to address non-compliance, where it exists, are vested in the Meeting of the Parties itself, and the primary role of the Committee, particularly at this meeting and the next one, will be to prepare recommendations to the MOP.

The Convention is not an easy instrument to implement. There are many provisions and several of them are extremely detailed. In a number of Parties there is not much experience. And we have not yet gained a lot of common experience. We have to take that into consideration. This is exactly why it is emphasized in decision I/7 that the Meeting of the Parties when considering possible non-compliance response measures shall take into account the cause and degree of non-compliance.

We have indicated in the letter inviting you to this meeting how we are going to proceed. Our time is limited:

- 1) 10-15 minutes Presentation of the subject matter by the curator.
- 2) 10-15 minutes Intervention by the communicant.
- 3) 10-15 minutes Intervention by the Government.
- 4) 30 minutes Discussion by the Committee – questions and answers.
- 5) 10 minutes Comments from observers.
- 6) 20 minutes Final comments (everybody).
- 7) 5 minutes Close of the open session.

I appeal to everybody to comply with the time-schedule.

After our discussion, but still during this meeting in Geneva, the Committee will deliberate in a closed session as to whether we are prepared to draw any conclusions, and if we are in a position to do so, what conclusions we should draw and, in the event that we identify compliance problems, what recommendations and/or measures we should propose to the Party concerned and/or the Meeting of the Parties. So, what

we hope to achieve in the course of this meeting is to conclude the file, at least on a preliminary basis.

Following this deliberation, the Committee will re-convene the open session to inform the parties concerned of the next steps in the procedure and, should the Committee consider it necessary, to clarify any points of substance with the parties concerned.

The main body of the discussion today will be included or reflected in summarized form in the draft findings of the Committee, which following the meeting will be sent to the parties concerned (with a small 'p') for comment. The Report on the Meeting is only going to state the fact that a discussion took place and who attended or participated in the discussion. So, the Report will be the report of the Committee and will not be submitted for your approval.

As mentioned, our draft findings, recommendations and/or measures will be presented to those directly involved for comments before being finalized. Please be prepared that you will not get a lot of time to comment, because we are aiming at finalizing our conclusions in time for their inclusion in our report to the MOP, which is the decision-making body.

Before we start to address the different cases one by one, I would like to make a couple of general points.

Many points and arguments are usually raised in the correspondence pertaining to communications and submissions. Some of these are of central importance to the question of compliance; others, less so. Some put forward specific interpretations of the meaning of the Convention. If the Committee was required to address each of these arguments put forward, our task would be even more challenging than it is, and our documents would be very lengthy. Therefore, the Committee may decide not to address all of the arguments or assertions made, and the fact that it does not explicitly refute any given assertion or argument in the correspondence, whether made by a communicant, a submitting Party or by a Party concerned, should not be taken to imply that it endorses such arguments or assertions. If this view is shared by the Committee, I would propose to reflect this point in the report of our meeting.

I should also inform you that Committee members are under a general obligation to declare any conflict of interest, and any such member will take on the status of observer with respect to the case in question (and therefore be excluded from the preparation of draft findings, measures or recommendations). Where this is the case for a particular communication or submission, it will be announced at the beginning of the discussion on that communication or submission.

9 RAMSAR CONVENTION ON WETLANDS 1971

9.1 Performance Review Information

9.1.1 Convention Text – Article 2

1. Each Contracting Party shall designate suitable wetlands within its territory for inclusion in a List of Wetlands of International Importance, hereinafter referred to as “the List” which is maintained by the bureau established under Article 8. The boundaries of each wetland shall be precisely described and also delimited on a map and they may incorporate riparian and coastal zones adjacent to the wetlands, and islands or bodies of marine water deeper than six metres at low tide lying within the wetlands, especially where these have importance as waterfowl habitat.
2. Wetlands should be selected for the List on account of their international significance in terms of ecology, botany, zoology, limnology or hydrology. In the first instance wetlands of international importance to waterfowl at any season should be included.
3. The inclusion of a wetland in the List does not prejudice the exclusive sovereign rights of the Contracting Party in whose territory the wetland is situated.
4. Each Contracting Party shall designate at least one wetland to be included in the List when signing this Convention or when depositing its instrument of ratification or accession, as provided in Article 9.
5. Any Contracting Party shall have the right to add to the List further wetlands situated within its territory, to extend the boundaries of those wetlands already included by it in the List, or, because of its urgent national interests, to delete or restrict the boundaries of wetlands already included by it in the List and shall, at the earliest possible time, inform the organization or government responsible for the continuing bureau duties specified in Article 8 of any such changes.
6. Each Contracting Party shall consider its international responsibilities for the conservation, management and wise use of migratory stocks of waterfowl, both when designating entries for the List and when exercising its right to change entries in the List relating to wetlands within its territory.

9.1.2 Resolution VIII.20 - General guidance for interpreting “urgent national interests” under Article 2.5 of the Convention and considering compensation under Article 4.2 (2002)

1. Recalling that Article 2.5 of the Ramsar Convention states that “any Contracting Party shall have the right . . . because of its urgent national interests, to delete or restrict the boundaries of wetlands already included by it in the List”;

2. Recalling that Article 4.2 of the Ramsar Convention states that “Where a Contracting Party in its urgent national interest, deletes or restricts the boundaries of a wetland included in the List, it should as far as possible compensate for any loss of wetland resources”;
3. Recognizing that Articles 2.5 and 4.2 of the Ramsar Convention do not supply any guidance as to the interpretation of the term “urgent national interests” or to how compensation should be determined;
4. Noting that Resolution VII.23 requested the Standing Committee, in cooperation with the Bureau and the Scientific and Technical Review Panel (STRP), to develop for consideration and possible adoption at COP8 guidance for the Contracting Parties in interpreting Articles 2.5 and 4.2; and
5. Reaffirming the provision of Article 2.3 of the Convention which states that “the inclusion of a wetland in the List does not prejudice the exclusive sovereign rights of the Contracting Party in whose territory the wetland is situated”;

The Conference of the Contracting Parties

6. Adopts the Annex to this Resolution entitled General guidance for interpreting “urgent national interests” under Article 2.5 of the Convention and considering compensation under Article 4.2 of the Convention; and
7. Encourages Contracting Parties to take into account this general guidance when invoking their right under Article 2.5 and considering compensation in those cases where the boundaries of sites included in the Ramsar List are restricted or a Ramsar site is deleted from the List.

Annex

General guidance for interpreting “urgent national interests” under Article 2.5 of the Convention and considering compensation under Article 4.2

Purpose

1. In keeping with Article 2.3 of the Convention that “the inclusion of a wetland in the List does not prejudice the exclusive sovereign rights of the Contracting Party in whose territory the wetland is situated,” the determination of “urgent national interests” lies solely with the Contracting Party. The following guidance may assist Contracting Parties in interpreting Article 2.5 and Article 4.2. This guidance may be used by Contracting Parties if they so wish.
2. This general guidance does not prevent a Contracting Party from maintaining or introducing more stringent regulations for the application of the “urgent national interests” clause of the Convention and the provisions for compensation when the clause has been invoked.

Urgent national interests

3. When invoking its right under Article 2.5 to delete from or restrict the boundaries of wetlands included in the List of Wetlands of International Importance (Ramsar sites) in the case of urgent national interests, a Contracting Party may take into account, inter alia:
 - 3.1 the national benefits of maintaining the integrity of the wetlands system and its related benefits;
 - 3.2 whether maintaining the status quo threatens a national interest;
 - 3.3 whether the proposed change is consistent with national policies;
 - 3.4 whether the immediate action is required to avert a significant threat;
 - 3.5 whether a national interest is being increasingly threatened;
 - 3.6 all reasonable alternatives to the proposed action, including the “without project” option, finding an alternative location, introducing buffer zones, etc.;
 - 3.7 the existing functions and economic, social and ecological values of the site in question. (The more important the site’s values and functions, the higher should be the social, economic, or ecological benefits of the proposed project.);
 - 3.8 the particular value of habitats harbouring endemic, threatened, rare, vulnerable or endangered species;
 - 3.9 whether the proposed action provides benefits to a large base of recipients;
 - 3.10 whether, over the long term, the proposed action offers greater benefits;
 - 3.11 the alternative that will best minimize harm to the site in question; and
 - 3.12 transboundary effects.

Compensation

4. When invoking its right under Article 2.5 of the Convention in cases of urgent national interests, a Contracting Party should as far as possible compensate for any loss of wetland resources. When considering such compensation, a Contracting Party may take into account, inter alia, the following:
 - 4.1 the maintenance of the overall value of the Contracting Party’s wetland area included in the Ramsar List at the national and global level;
 - 4.2 the availability of compensatory replacement;
 - 4.3 the relevance of the compensatory measure to the ecological character, habitat, or value of the affected Ramsar site(s);

- 4.4 scientific and other uncertainties;
- 4.5 the timing of the compensatory measure relative to the proposed action; and
- 4.6 the adverse effect the compensatory measure itself may cause.

Procedural matters

5. A prior environmental assessment, taking into consideration the full range of functions, services, and benefits offered by the wetland, would normally be an appropriate first step when a Contracting Party is invoking the right under Article 2.5 to delete from the List or restrict the boundaries of listed wetlands, and proposing mitigation or compensatory measures under Article 4.2. Whenever possible, the assessment should be made in full consultation with all stakeholders.
6. In invoking the right under Article 2.5 to delete from the List or restrict the boundaries of listed wetlands, a Contracting Party should take into account that where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.
7. In invoking the right under Article 2.5 to delete from the List or restrict the boundaries of listed wetlands, a Contracting Party shall inform the Ramsar Bureau of such changes in boundaries at the earliest possible time, as required by Article 2.5. A Contracting Party, when notifying such changes to the Bureau, may request advice including from the Scientific and Technical Review Panel (STRP) and/or Standing Committee before any irreversible action is taken.

9.1.3 Resolution IX.6 - Guidance for addressing Ramsar sites or parts of sites which no longer meet the Criteria for designation (2005)

1. Recalling that Article 2.5 of the Convention makes provision for site deletions or restrictions and states that “any Contracting Party shall have the right . . . because of its urgent national interests, to delete or restrict the boundaries of wetlands already included by it in the List”, and that Article 4.2 states that “where a Contracting Party in its urgent national interest, deletes or restricts the boundaries of a wetland included in the List, it should as far as possible compensate for any loss of wetland resources, and in particular it should create additional nature reserves for waterfowl and for the protection, either in the same area or elsewhere, of an adequate portion of the original habitat”;
2. Also recalling that Resolution 5.3 established a review procedure for listed sites which may not qualify under any of the Criteria established by Recommendation 4.2;

3. Noting that Resolution VIII.20 provides general guidance for interpreting “urgent national interests” under Article 2.5 of the Convention and for considering compensation under Article 4.2;
4. Further recalling that Resolution VIII.22 recognized that there are situations other than the urgent national interest provision of Article 2.5 of the Convention text in which Ramsar site boundaries may warrant further definition, and further that there may be situations where:
 - a) a Ramsar site never met the Criteria for designation as a Wetland of International Importance;
 - b) part or all of a Ramsar site unavoidably loses the values, functions and attributes for which it was included, or was included in error; or
 - c) a Ramsar site at the time of listing met the criteria but, whilst its values, functions and attributes remain unchanged, it later fails to meet the Criteria because of a change in those Criteria or in the population estimates or parameters which underpin them;
5. Also noting that Resolution VIII.21 provides guidance for defining Ramsar site boundaries more accurately in the Information Sheet on Ramsar Wetlands (RIS), in order to address situations where boundaries were erroneously or inaccurately defined at the time of listing, and that Resolution VIII.13 provides further guidance for the application and completion of the RIS, including the provision of maps;6. Further recalling that Resolution VIII.22 recognized that no guidance has been provided by the Convention to assist Contracting Parties where a Ramsar site ceases to fulfill the Criteria for designation as a Wetland of International Importance, with the exception of Resolution 5.3 which includes as its annex a Review Procedure for sites which did not meet the Criteria at the time of listing; and that no guidance has been provided on situations where part of a site either unavoidably loses the values, functions and attributes for which it was included, or was included in error;
7. Aware that Resolution VIII.22 requested that the Standing Committee, with support from the Ramsar Bureau and International Organization Partners, the Scientific and Technical Review Panel (STRP), appropriate legal and other experts, and interested Contracting Parties, develop for consideration and possible adoption at COP9 guidance for Contracting Parties about:
 - a) identification of scenarios in which a listed Ramsar site may cease to fulfill the Criteria for designation as a Wetland of International Importance;
 - b) obligations of Contracting Parties under the Convention and the possible application of compensation measures under Article 4.2;
 - c) procedures that could be applied should the deletion or restriction of boundaries need to be contemplated in such situations; and

- d) their relationship to the issues covered by Resolutions VIII.20 and VIII.21;
8. Noting that in the Information Paper COP9 DOC. 15, ten scenarios are identified under which a listed Ramsar site or part(s) of a site may cease to fulfill the Criteria for designation; and
9. Reaffirming that it is an overarching principle that a wetland should remain designated as a Ramsar site, and that the whole of its original extent should remain designated, whenever possible and appropriate;

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10. Adopts the guidance in the Annex to this Resolution concerning how to address issues of Ramsar sites or parts of sites which cease to fulfil or never fulfilled the Criteria for designation;
11. Requests Contracting Parties to apply the guidance and procedures set out in this Annex when contemplating the deletion of a site from the List of Wetlands of International Importance or a restriction to the boundaries of such a site;
12. Urges Contracting Parties to provide developing countries with assistance, including capacity building, in order to help reverse, where possible, the factors leading to consideration of deletion or restriction of a site;
13. Instructs the Ramsar Secretariat to take into account the guidance in the Annex to this Resolution when advising Contracting Parties on issues concerning reduction or deletion of a site from the List of Wetlands of International Importance, including on the provision by Contracting Parties of updated Information Sheets on Ramsar Wetlands; and
14. Also instructs the Ramsar Secretariat, with the advice of the Scientific and Technical Review Panel, to report to COP10 on these matters under Article 8.2 and URGES Contracting Parties to provide to the Ramsar Secretariat information on their experiences and lessons learned in their application of this Resolution.

Annex

Guidance for the consideration of the deletion or restriction of the boundaries of a listed Ramsar site

1. This guidance covers principles and procedures for situations not foreseen in the treaty text concerning the loss or deterioration of the ecological character of wetlands on the List of Wetlands of International Importance under circumstances other than those addressed by Article 2.5.

I. The relationship between this guidance and issues covered by Resolutions VIII.20 and VIII.21

2. This guidance covers situations under which the terms of Article 2.5 of the Convention text concerning “urgent national interests” for situations of loss of the ecological character of a listed Ramsar site have not been invoked by the Contracting Party concerned, or where such “urgent national interest” cannot be justified. Procedures and responsibilities of Parties in relation to Article 2.5 are covered by the guidance adopted by COP8 as the Annex to Resolution VIII.20.
3. In relation to boundary restrictions of listed Ramsar sites, this guidance concerns those situations where reductions in the area of the site are being contemplated owing to the loss or deterioration of the ecological character of the site, where the proposed changes would affect the fundamental objectives, and the application of the Criteria for designation, for which the site was listed.
4. Situations concerning improvements only to the accuracy of defining the boundary of a listed site (for example, through the availability and use of Global Positioning Systems (GPS) and Geographic Information Systems (GIS)), whether this leads to a reduction or an increase in the measured area of the site, are covered in Resolution VIII.21.
5. Contracting Parties at COP5 (1993) through the Annex to Resolution 5.3 established a review procedure for listed sites which may not qualify under any of the Criteria (at that time those established by Recommendation 4.2). The guidance below incorporates relevant aspects of the Resolution 5.3 procedure.

II. Scenarios under which deletion or restriction might be contemplated

6. The following 10 scenarios have been identified in the review prepared by the Ramsar Secretariat (see COP9 DOC. 15). Of the 10 scenarios described, at the time of preparation of this guidance seven have already arisen in documented cases, and an eighth, while not having been reported to the Ramsar Secretariat, may have arisen. Seven of the scenarios fall under one or other of the three situations identified in Resolution VIII.22:

A Ramsar site never met the Criteria for designation as a Wetland of International Importance:

- i) At the time of accession a Party supplies, as required by the Convention text, only a name and boundary map but not a completed Ramsar Information Sheet (RIS). Subsequently, in compiling the RIS, it becomes apparent that the site does not fulfil any of the Criteria. This scenario was addressed by the annex to Resolution 5.3.
- ii) The site was designated incorrectly owing to inadequate or incorrect information being available at the time of preparation of the RIS (or pre-RIS information provided at the time of listing), and it subsequently

becomes apparent that the site as a whole does not fulfill any of the Criteria. This scenario was also addressed by the annex to Resolution 5.3.

Part of a Ramsar site unavoidably loses the components, processes, and services for which it was included, or was included in error:

- iii) A Ramsar site is designated after completion of a domestic protected areas procedure under national legislation, such that the Ramsar site boundary follows that established for the site first selected for its national importance, and the boundaries of the nationally-designated site are then changed.
- iv) All or part of a Ramsar site loses the components, processes, and services of its ecological character as a wetland for which it was listed, for reasons other than changes covered by Article 2.5.
- v) A set of linear boundaries has been used to define the Ramsar site boundaries which do not relate directly to the eco-geography of the wetlands or their associated catchments.

A Ramsar site met the Criteria but the Criteria or the parameters underpinning them are subsequently changed:

- vi) The site's values, functions and attributes remain unchanged, but it subsequently fails to meet the Criteria owing to a change in those Criteria.
- vii) The site's values, functions and attributes remain unchanged, but it subsequently fails to meet the Criteria owing to a change in the population estimates or parameters which underpin them.

7. Two other scenarios do not fall directly within any of the three categories identified in Resolution VIII.22:

- i) A Ramsar site designated by a former Contracting Party is now within the territory of a successor country which is presently acceding to the Convention and indicating a different boundary and area for that site.
- ii) Part or all of a listed Ramsar site is proposed for deletion in order to permit possible future developments or other land use change in that area which cannot be justified as "urgent national interest".

8. One other scenario can be envisaged which could arise from one or other of the specific scenarios listed above:

- i) A Contracting Party has designated only one Ramsar site (at the time of its accession) and that site ceases to qualify under the Criteria.

III. Obligations of Parties under the Convention, especially Articles 2.1, 2.5, 3.1, 3.2 and 4.2: general principles for the contemplation of deletion or restriction of listed Ramsar sites

9. The obligations of Parties under Articles 2.1 and 3.1 of the Convention text are that Parties should designate Ramsar sites and implement planning so as to promote their conservation (i.e., maintain their ecological character). This has been further elaborated by Resolution VIII.8 in which the Parties committed themselves to maintain or restore the ecological character of their Ramsar sites.
10. If a human-induced change to the ecological character of a Ramsar site has occurred, is occurring or is likely to occur, under Article 3.2 it is the obligation of the Party concerned to report this “without delay” to the Ramsar Secretariat.
11. The Convention text (Article 2.5) allows for the deletion or restriction of the boundary of a designated Ramsar site only if this is justified as being in the “urgent national interests”.
12. Resolution VIII.22 concerns particular situations in which ecological character loss of a designated Ramsar site is or was “unavoidable”. It follows that if such a situation is or was avoidable, the appropriate steps to take are to avoid such loss.
13. Under some of the scenarios, deletion or boundary restriction should not be considered to be acceptable under the Convention, notably when such deletion or restriction is being proposed in order to permit or facilitate future developments or other land use change in that area which is not justified as in the “urgent national interests” (i.e., para. 7 ii above).
14. Parties have already indicated that compensation for the loss or degradation of wetlands, including listed sites, should be applied under three circumstances:
 - i) in cases of change leading to considerations of boundary restriction or deletion of listed sites where an “urgent national interest” applies (Article 4.2 and Resolution VIII.20);
 - ii) in cases of change resulting in loss of wetland ecosystem components, processes and services, but not leading to considerations of boundary restriction or deletion (Resolution VII.24); and
 - iii) in cases of sites which did not, at the time of designation, qualify under any of the criteria for designation (Resolution 5.3).
15. Since the provision of compensation (Article 4.2) is expected even when “urgent national interest” is considered to override the other provisions of the Convention text, when no such justification applies the other obligations of the Convention text, notably Article 3.1, and those of Resolution VII.24 apply. Thus if the loss of ecological character was “unavoidable” (Resolution VIII.22, paragraph 6 b) at least equivalent provision of compensation should be made,

if practicable, in line with the considerations in the Annex to Resolution VIII.20 (paragraph 4). This is also the approach which was adopted in the procedure annexed to Resolution 5.3 for a site which proves not to have fulfilled the Criteria at the time of designation.

16. Parties should consider, if such policies and legislation are not already in place, establishing policies and legislative mechanisms for addressing third-party damage to the ecological character of listed Ramsar sites, including the issue of compensation, as is called for in Resolution VII.24, and applying the guidance in Ramsar Wise Use Handbook 3 (“Laws and Institutions”) adopted by Resolution VII.7, as necessary.
17. If a deletion or boundary restriction is still contemplated after all such other considerations and options have been weighed, the procedures for such an action should follow the terms of Article 8.2 (b), (d) and (e): i.e. for the Secretariat to forward notification of such an alteration to the List to all Contracting Parties; to arrange for the matter to be discussed at the next Conference of the Contracting Parties; and to make known to the Contracting Party concerned the recommendations of the Conference in respect of such alterations.

IV. Procedures to apply should deletion or restriction be contemplated

18. Drawing upon issues raised under the scenarios outlined above, the following steps should be followed for any consideration of boundary restriction of part of a listed site or delisting of an entire site in circumstances where Article 2.5 does not apply. Restriction of boundary should be considered first and only in exceptional circumstances should delisting of the site be considered.
19. The approach focuses on scenarios where part or all of a site appears to have lost the wetland ecosystem components, processes and/or services for which it was originally designated. Additional information on a range of issues to consider under each of these scenarios is provided in COP9 DOC. 15.
20. A Party should consult with the Ramsar Secretariat at an early stage in their contemplation of any deletion or restriction of a listed site (as is already expected under Resolution 5.3 for a site which may not have fulfilled the Criteria at the time of designation).
21. Step 1. Substantiate and confirm the reasons why the case at hand is one where Article 2.5 of the Convention does not apply.
22. Step 2. If the ecological character of part or all of the listed site has changed owing to human-induced activities in line with Resolution VIII.8, make an Article 3.2 report without delay to the Ramsar Secretariat.
23. Step 3. At the same time, consider:
 - i) whether it would be helpful to seek the advice of the Scientific and Technical Review Panel (STRP);

- ii) whether adding the site to the Montreux Record would be a helpful step, in line with the purposes set out in Resolution VIII.8, paragraph 21;
 - iii) whether a Ramsar Advisory Mission should be requested; and/or
 - iv) whether requesting emergency assistance under the Ramsar Small Grant Fund is appropriate.
24. Step 4. Undertake an assessment of the present ecological character of the site, and establish whether the site still qualifies as a Wetland of International Importance under one or more of the current Criteria. It may be that the changed character of the site leads to it qualifying under another Criterion or other Criteria than those for which it was originally listed, and/or that such other Criteria may have always been applicable but were not used at the time of listing.
 25. Step 5. As part of the assessment in Step 4, establish whether the change in ecological character that has led to the site, or part of the site, ceasing to qualify is truly irreversible. If the change appears to have a chance of reversibility, define the conditions under which the change may reverse or be reversed, and the management actions (including restoration) needed to secure this, as well as the likely timescales needed to permit the recovery of the character of the site.
 26. Such reversibility could arise through, inter alia, recovery from damage caused by a natural disaster, the natural inter-annual variability of the size of waterbird or other populations, and/or management interventions including restoration or rehabilitation of the affected part(s) of the site.
 27. Step 6. If there is potential for reversibility, monitor the key ecological features of the site for the time period necessary as identified under Step 5, and then re-assess the status of the site in relation to its qualification under the Criteria.
 28. Step 7. Report on the recovery of the site, including through a further Article 3.2 report to the Secretariat, requesting removal of the site from the Montreux Record if appropriate, and prepare and submit an updated Ramsar Information Sheet which clearly identifies the changes which have occurred.
 29. Step 8. If the loss of part or all of the listed site is irreversible, and the attempts at recovery or restoration have failed in terms of its qualification for the Ramsar List, or if there is clear evidence that the site was listed in error in the first place, prepare a report on the restriction of the site's boundary or its removal from the List, as appropriate. This report should include, inter alia, a description of the loss of ecological character and the reasons for it, a description of any assessments made and their results, the steps taken to seek the recovery of the site, and proposals for the provision of compensation (including in line with Resolutions 5.3, VII.24 and VIII.20), accompanied by relevant maps. If the intention is for a boundary restriction, this should include an updated Information Sheet on Ramsar Wetlands (RIS).

V. Procedures for confirming a boundary restriction or deletion of a listed site

30. The following procedure should be followed when a Party wishes to confirm restriction or delisting a Ramsar site:
- i) The Party should submit its intent, covering the aspects of the issue as outlined in Step 8 above, to the Ramsar Secretariat, which will make arrangements to advise all Contracting Parties, in line with Article 8.2 (d);
 - ii) All such cases and their outcomes will be reported for discussion at the next COP, in line with Article 8.2 (d), which may wish to make recommendations to the Party concerned, in line with Article 8.2 (e);
 - iii) The Secretariat will transmit any such recommendations made by the COP to the Contracting Party concerned (Article 8 (e)).

9.1.4 Convention Text – Article 3

The Contracting Parties shall formulate and implement their planning so as to promote the conservation of the wetlands included in the List, and as far as possible the wise use of wetlands in their territory.

Each Contracting Party shall arrange to be informed at the earliest possible time if the ecological character of any wetland in its territory and included in the List has changed, is changing or is likely to change as the result of technological developments, pollution or other human interference. Information on such changes shall be passed without delay to the organization or government responsible for the continuing bureau duties specified in Article 8.

9.1.5 Resolution VIII.8 - Assessing and reporting the status and trends of wetlands, and the implementation of Article 3.2 of the Convention (2002)

1. Recognizing that assessment of the status and trends of wetlands, and assessing and reporting on their ecological character and change in ecological character, provide an essential basis for improving understanding of the state of, and pressures on, wetland ecosystems at the global, regional and national scales in support of future policy development, decision-making and prioritisation under the Convention, and for management interventions on Ramsar sites and other wetlands;
2. Recalling Article 3.1 of the Convention, whereby Contracting Parties have committed themselves to formulate and implement their planning so as to promote the conservation of wetlands included in the List of Wetlands of International Importance, and as far as possible the wise use of wetlands in their territory;
3. Recalling also that the Strategic Framework and guidelines for the future development of the List of Wetlands of International Importance (Resolution

VII.11) calls for the establishment of an international network of wetland sites built from coherent and comprehensive networks of Ramsar sites within the territory of each Contracting Party to the Convention, and that Objective 4.1 of the Strategic Framework concerns the use of the Ramsar site network for monitoring the status and trends of wetlands, specifically „to use Ramsar sites as baseline and reference areas for national, supranational/regional, and international environmental monitoring to detect trends in the loss of biological diversity, climate change, and the processes of desertification“; and concerned that national and international mechanisms for detecting and reporting such trends under the Convention should be improved;

4. Further recalling that under Article 3.2 of the Convention, each Contracting Party has agreed that it will arrange to be informed at the earliest possible time if the ecological character of any wetland in its territory and included in the List has changed, is changing or is likely to change as the result of technological developments, pollution or other human interference, and to report any such change, without delay, to the Ramsar Bureau;
5. Noting that Resolution VI.1 interpreted ‘change in the ecological character of a site’ as meaning adverse change, caused by human activities, and noted that this excludes the process of natural evolutionary change occurring in wetlands;
6. Concerned that, according to available information including the National Reports to COP8, many Contracting Parties do not have in place the mechanisms to comply with Article 3.2, or that these are not being implemented;
7. Further recalling that in Recommendation 4.8 the Contracting Parties instructed the Ramsar Bureau to maintain the “Montreux Record” of listed sites where change in ecological character has occurred, is occurring or is likely to occur; that in Resolution 5.4 they established guidelines for the operation of this Montreux Record and determined that its purpose should be, inter alia, to identify priority sites for positive national and international conservation attention; and that in Resolution VI.1 they adopted a revised procedure for its operation;
8. Recognizing that many Ramsar sites have undergone or are undergoing change in their ecological character, or are likely to undergo such change, by virtue of the land use and other pressures affecting them, and noting that since its establishment 76 Ramsar sites have been included by Contracting Parties on the Montreux Record;
9. Recognizing also that the information fields contained in the Ramsar Information Sheet (RIS), as revised by Resolution VIII.13, used for the designation of Wetlands of International Importance should also form a statement of the ecological character of these wetlands and the factors affecting their character; but also recognizing that Resolution VIII.7 calls for the Scientific and Technical Review

Panel (STRP) to review and prepare further guidance on harmonising statements of ecological character in the RIS for wetland inventory and other purposes;

10. Aware of the substantial body of tools and guidance already adopted by the Conference of the Parties to assist in the identification, assessment, and maintenance of the ecological character of sites on the List of Wetlands of International Importance and other wetlands, through inventory, assessment, monitoring and management, compiled and published as Ramsar Wise Use Handbooks 7 and 8; and also aware that the tools and guidance for application of the Strategic Framework and guidelines for the future development of the List (Resolution VII.11) are applicable to all wetlands; and
11. Recognizing that further guidance on these matters has been adopted by this meeting of the Conference of the Parties, notably the New Guidelines for management planning for Ramsar sites and other wetlands (Resolution VIII.14), which includes guidance on the assessment and monitoring of ecological character and the factors that affect it, the Framework for Wetland Inventory (Resolution VIII.6), and the Principles and guidelines for wetland restoration (Resolution VIII.16);

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12. Urges Contracting Parties, as a matter of high priority, to put in place mechanisms in order to be informed at the earliest possible time, including through reports by national authorities and local and indigenous communities and NGOs, if the ecological character of any wetland in its territory included in the Ramsar List has changed, is changing or is likely to change, and to report any such change without delay to the Ramsar Bureau so as to implement fully Article 3.2 of the Convention, and to report on these matters in the National Reports prepared on the occasion of each meeting of the Conference of the Parties;
13. Confirms that Article 3.2 reports should be made for types and causes of adverse, human-induced change in ecological character in order inter alia to provide the basis for analysis of status and trends in Ramsar sites in line with Objective 4.1 of the Strategic Framework and guidelines for the future development of the List of Wetlands of International Importance (Resolution VII.11);
14. Reaffirms that in accordance with Resolution 5.4 this information will be maintained as part of the Ramsar Sites Database reports by Contracting Parties in fulfillment of Article 3.2, and directs the Ramsar Bureau, in cooperation with Wetlands International, to prepare and circulate to all Contracting Parties a simple format for this reporting;
15. Recognizes that reporting under Article 3.2 of the Convention does not substitute for the requirement as adopted by Resolution VI.13 for Contracting Parties to provide a fully updated Ramsar Information Sheet for each of their designated

Ramsar sites at intervals of not more than six years, and urges Contracting Parties to renew their efforts to provide such updated Ramsar Information Sheets in a timely manner;

16. Requests the Scientific and Technical Review Panel (STRP), with the assistance of Wetlands International, the Ramsar Bureau, and other relevant organizations to prepare an analysis and report of the status and trends in the ecological character of sites in the Ramsar List for consideration by COP9 and each subsequent meeting of the Conference of the Parties, and to set, as far as possible, the status and trends of Ramsar sites within the wider context of the status and trends of marine, coastal and inland wetlands, drawing upon the results of the Millennium Ecosystem Assessment (MA) and other assessment initiatives as appropriate;
17. Also requests the STRP to prepare further consolidated guidance on the overall process of detecting, reporting and responding to change in ecological character, including guidelines for determining when such a change is too trivial to require reporting, having regard to the reasons why a given site is important and to the conservation objectives which have been set for it, and encourages Contracting Parties in the meantime to take a precautionary approach;
18. Recognizes that the establishment of a management planning process, in line with the guidance on management planning adopted by this meeting of the COP, on all Ramsar sites greatly facilitates the identification, reporting and resolution of changes in ecological character, and that inclusion in each management plan of an objective of maintenance of the ecological character of the site provides a basis for implementation of Article 3.1 of the Convention;
19. Further recognizes that several response options and mechanisms are available to the Contracting Party concerned to address and resolve identified negative changes, or likely changes, in the ecological character of sites on the List, including inter alia:
 - a) when resources permit, using an established management planning process, including undertaking an environmental impact assessment, to guide implementation of appropriate management action;
 - b) seeking the advice of the STRP, and its National Focal Points, on appropriate issues to take into account in addressing the matter, through the mechanism of requesting the Bureau to circulate the Article 3.2 pro-forma completed by the Contracting Party concerned to the STRP for comment;
 - c) for developing countries and countries with economies in transition, requesting resources to implement management action through the emergency assistance category of the Ramsar Small Grants Fund or seeking such resources from other relevant sources; and

- d) listing, if appropriate, on the Montreux Record and requesting a Ramsar Advisory Mission (RAM) in order to bring international expertise to bear in providing advice on appropriate actions;
20. Calls upon Contracting Parties to maintain or restore the ecological character of their Ramsar sites, including utilizing all appropriate mechanisms to address and resolve as soon as practicable the matters for which a site may have been the subject of a report pursuant to Article 3.2; and, once those matters have been resolved, to submit a further report, so that both positive influences at sites and changes in ecological character may be fully reflected in reporting under Article 3.2 and in the reporting to all meetings of the COP in order to establish a clear picture of the status and trends of the Ramsar site network at three-year intervals;
 21. Reaffirms, in accordance with the Guidelines for the operation of the Montreux Record (Annex to Resolution VI.1), that the Montreux Record is the principal tool of the Convention for highlighting those sites where an adverse change in ecological character has occurred, is occurring, or is likely to occur and which are therefore in need of priority conservation action, and acknowledges that the voluntary inclusion of a particular site on the Montreux Record is a useful tool available to Contracting Parties in circumstances where:
 - a) demonstrating national commitment to resolve the adverse changes would assist in their resolution;
 - b) highlighting particularly serious cases would be beneficial at national and/or international level;
 - c) positive national and international conservation attention would benefit the site; and/or
 - d) inclusion on the Record would provide guidance in the allocation of resources available under financial mechanisms;
 22. Encourages Contracting Parties, when submitting a report in fulfillment of Article 3.2, to consider whether the site would benefit from listing on the Montreux Record, and to request such listing as appropriate; and
 23. Requests Contracting Parties with sites on the Montreux Record to regularly provide the Ramsar Bureau with an update on their progress in taking action to address the issues for which these Ramsar sites were listed on the Record, including reporting fully on these matters in their National Reports to each meeting of the Conference of the Parties.

9.1.6 Convention Text – Article 6

1. There shall be established a Conference of the Contracting Parties to review and promote the implementation of this Convention. The Bureau referred to in Article 8, paragraph 1, shall convene ordinary meetings of the Conference

of the Contracting Parties at intervals of not more than three years, unless the Conference decides otherwise, and extraordinary meetings at the written requests of at least one third of the Contracting Parties. Each ordinary meeting of the Conference of the Contracting Parties shall determine the time and venue of the next ordinary meeting.

3. The Contracting Parties shall ensure that those responsible at all levels for wetlands management shall be informed of, and take into consideration, recommendations of such Conferences concerning the conservation, management and wise use of wetlands and their flora and fauna.

9.1.7 Convention Text – Article 8

1. The International Union for Conservation of Nature and Natural Resources shall perform the continuing bureau duties under this Convention until such time as another organization or government is appointed by a majority of two-thirds of all Contracting Parties.
2. The continuing bureau duties shall be, *inter alia*:
 - c. to be informed by the Contracting Parties of any changes in the ecological character of wetlands included in the List provided in accordance with paragraph 2 of Article 3;
to forward notification of any alterations to the List, or changes in character of wetlands included therein, to all Contracting Parties and to arrange for these matters to be discussed at the next Conference;

10. 1995 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

10.1 Performance Review Information

10.1.1 Agreement Text – Art. 36⁸¹

Review conference

1. Four years after the date of entry into force of this Agreement, the Secretary-General of the United Nations shall convene a conference with a view to assessing the effectiveness of this Agreement in securing the conservation and management of straddling fish stocks and highly migratory fish stocks. The Secretary-General shall invite to the conference all States Parties and those States and entities which are entitled to become parties to this Agreement as well as those intergovernmental and non-governmental organizations entitled to participate as observers.
2. The conference shall review and assess the adequacy of the provisions of this Agreement and, if necessary, propose means of strengthening the substance and methods of implementation of those provisions in order better to address any continuing problems in the conservation and management of straddling fish stocks and highly migratory fish stocks.

10.2 Multilateral Procedures to Consider Non-Compliance and Non-Compliance Response Measures

10.2.1 Agreement Text – Article 17

Non-members of organizations and non-participants in arrangements

1. A State which is not a member of a subregional or regional fisheries management organization or is not a participant in a subregional or regional fisheries management arrangement, and which does not otherwise agree to apply the conservation and management measures established by such organization or arrangement, is not discharged from the obligation to cooperate, in accordance with the Convention and this Agreement, in the conservation and management of the relevant straddling fish stocks and highly migratory fish stocks.

81 A Review Conference was convened in 2006 pursuant to article 36 and in accordance with paragraph 15 of General Assembly resolution 59/25. The outcome of the Review Conference is contained in document A/CONF.210/2006/15. Pursuant to resolution 63/112, paragraph 31, the Review Conference will resume in 2010.

2. Such State shall not authorize vessels flying its flag to engage in fishing operations for the straddling fish stocks or highly migratory fish stocks which are subject to the conservation and management measures established by such organization or arrangement.
3. States which are members of a subregional or regional fisheries management organization or participants in a subregional or regional fisheries management arrangement shall, individually or jointly, request the fishing entities referred to in article 1, paragraph 3, which have fishing vessels in the relevant area to cooperate fully with such organization or arrangement in implementing the conservation and management measures it has established, with a view to having such measures applied de facto as extensively as possible to fishing activities in the relevant area. Such fishing entities shall enjoy benefits from participation in the fishery commensurate with their commitment to comply with conservation and management measures in respect of the stocks.
4. States which are members of such organization or participants in such arrangement shall exchange information with respect to the activities of fishing vessels flying the flags of States which are neither members of the organization nor participants in the arrangement and which are engaged in fishing operations for the relevant stocks. They shall take measures consistent with this Agreement and international law to deter activities of such vessels which undermine the effectiveness of subregional or regional conservation and management measures.

10.2.2 Agreement Text – Article 19

Compliance and enforcement by the flag State

1. A State shall ensure compliance by vessels flying its flag with subregional and regional conservation and management measures for straddling fish stocks and highly migratory fish stocks. To this end, that State shall:
 - (a) enforce such measures irrespective of where violations occur;
 - (b) investigate immediately and fully any alleged violation of subregional or regional conservation and management measures, which may include the physical inspection of the vessels concerned, and report promptly to the State alleging the violation and the relevant subregional or regional organization or arrangement on the progress and outcome of the investigation;
 - (c) require any vessel flying its flag to give information to the investigating authority regarding vessel position, catches, fishing gear, fishing operations and related activities in the area of an alleged violation;
 - (d) if satisfied that sufficient evidence is available in respect of an alleged violation, refer the case to its authorities with a view to instituting

proceedings without delay in accordance with its laws and, where appropriate, detain the vessel concerned; and

- (e) ensure that, where it has been established, in accordance with its laws, a vessel has been involved in the commission of a serious violation of such measures, the vessel does not engage in fishing operations on the high seas until such time as all outstanding sanctions imposed by the flag State in respect of the violation have been complied with.
2. All investigations and judicial proceedings shall be carried out expeditiously. Sanctions applicable in respect of violations shall be adequate in severity to be effective in securing compliance and to discourage violations wherever they occur and shall deprive offenders of the benefits accruing from their illegal activities. Measures applicable in respect of masters and other officers of fishing vessels shall include provisions which may permit, inter alia, refusal, withdrawal or suspension of authorizations to serve as masters or officers on such vessels.

10.2.3 Agreement Text – Article 20

International cooperation in enforcement

1. States shall cooperate, either directly or through subregional or regional fisheries management organizations or arrangements, to ensure compliance with and enforcement of subregional and regional conservation and management measures for straddling fish stocks and highly migratory fish stocks.
2. A flag State conducting an investigation of an alleged violation of conservation and management measures for straddling fish stocks or highly migratory fish stocks may request the assistance of any other State whose cooperation may be useful in the conduct of that investigation. All States shall endeavour to meet reasonable requests made by a flag State in connection with such investigations.
3. A flag State may undertake such investigations directly, in cooperation with other interested States or through the relevant subregional or regional fisheries management organization or arrangement. Information on the progress and outcome of the investigations shall be provided to all States having an interest in, or affected by, the alleged violation.
4. States shall assist each other in identifying vessels reported to have engaged in activities undermining the effectiveness of subregional, regional or global conservation and management measures.
5. States shall, to the extent permitted by national laws and regulations, establish arrangements for making available to prosecuting authorities in other States evidence relating to alleged violations of such measures.
6. Where there are reasonable grounds for believing that a vessel on the high seas has been engaged in unauthorized fishing within an area under the jurisdiction

of a coastal State, the flag State of that vessel, at the request of the coastal State concerned, shall immediately and fully investigate the matter. The flag State shall cooperate with the coastal State in taking appropriate enforcement action in such cases and may authorize the relevant authorities of the coastal State to board and inspect the vessel on the high seas. This paragraph is without prejudice to article 111 of the Convention.

7. States Parties which are members of a subregional or regional fisheries management organization or participants in a subregional or regional fisheries management arrangement may take action in accordance with international law, including through recourse to subregional or regional procedures established for this purpose, to deter vessels which have engaged in activities which undermine the effectiveness of or otherwise violate the conservation and management measures established by that organization or arrangement from fishing on the high seas in the subregion or region until such time as appropriate action is taken by the flag State.

10.2.4 Agreement Text – Article 21

Subregional and regional cooperation in enforcement

1. In any high seas area covered by a subregional or regional fisheries management organization or arrangement, a State Party which is a member of such organization or a participant in such arrangement may, through its duly authorized inspectors, board and inspect, in accordance with paragraph 2, fishing vessels flying the flag of another State Party to this Agreement, whether or not such State Party is also a member of the organization or a participant in the arrangement, for the purpose of ensuring compliance with conservation and management measures for straddling fish stocks and highly migratory fish stocks established by that organization or arrangement.
2. States shall establish, through subregional or regional fisheries management organizations or arrangements, procedures for boarding and inspection pursuant to paragraph 1, as well as procedures to implement other provisions of this article. Such procedures shall be consistent with this article and the basic procedures set out in article 22 and shall not discriminate against non-members of the organization or non-participants in the arrangement. Boarding and inspection as well as any subsequent enforcement action shall be conducted in accordance with such procedures. States shall give due publicity to procedures established pursuant to this paragraph.
3. If, within two years of the adoption of this Agreement, any organization or arrangement has not established such procedures, boarding and inspection pursuant to paragraph 1, as well as any subsequent enforcement action, shall, pending the establishment of such procedures, be conducted in accordance with this article and the basic procedures set out in article 22.

4. Prior to taking action under this article, inspecting States shall, either directly or through the relevant subregional or regional fisheries management organization or arrangement, inform all States whose vessels fish on the high seas in the subregion or region of the form of identification issued to their duly authorized inspectors. The vessels used for boarding and inspection shall be clearly marked and identifiable as being on government service. At the time of becoming a Party to this Agreement, a State shall designate an appropriate authority to receive notifications pursuant to this article and shall give due publicity of such designation through the relevant subregional or regional fisheries management organization or arrangement.
5. Where, following a boarding and inspection, there are clear grounds for believing that a vessel has engaged in any activity contrary to the conservation and management measures referred to in paragraph 1, the inspecting State shall, where appropriate, secure evidence and shall promptly notify the flag State of the alleged violation.
6. The flag State shall respond to the notification referred to in paragraph 5 within three working days of its receipt, or such other period as may be prescribed in procedures established in accordance with paragraph 2, and shall either:
 - (a) fulfil, without delay, its obligations under article 19 to investigate and, if evidence so warrants, take enforcement action with respect to the vessel, in which case it shall promptly inform the inspecting State of the results of the investigation and of any enforcement action taken; or
 - (b) authorize the inspecting State to investigate.
7. Where the flag State authorizes the inspecting State to investigate an alleged violation, the inspecting State shall, without delay, communicate the results of that investigation to the flag State. The flag State shall, if evidence so warrants, fulfil its obligations to take enforcement action with respect to the vessel. Alternatively, the flag State may authorize the inspecting State to take such enforcement action as the flag State may specify with respect to the vessel, consistent with the rights and obligations of the flag State under this Agreement.
8. Where, following boarding and inspection, there are clear grounds for believing that a vessel has committed a serious violation, and the flag State has either failed to respond or failed to take action as required under paragraphs 6 or 7, the inspectors may remain on board and secure evidence and may require the master to assist in further investigation including, where appropriate, by bringing the vessel without delay to the nearest appropriate port, or to such other port as may be specified in procedures established in accordance with paragraph 2. The inspecting State shall immediately inform the flag State of the name of the port to which the vessel is to proceed. The inspecting State and the flag State and, as appropriate, the port State shall take all necessary steps to ensure the well-being of the crew regardless of their nationality.

9. The inspecting State shall inform the flag State and the relevant organization or the participants in the relevant arrangement of the results of any further investigation.
10. The inspecting State shall require its inspectors to observe generally accepted international regulations, procedures and practices relating to the safety of the vessel and the crew, minimize interference with fishing operations and, to the extent practicable, avoid action which would adversely affect the quality of the catch on board. The inspecting State shall ensure that boarding and inspection is not conducted in a manner that would constitute harassment of any fishing vessel.
11. For the purposes of this article, a serious violation means:
 - (a) fishing without a valid licence, authorization or permit issued by the flag State in accordance with article 18, paragraph 3 (a);
 - (b) failing to maintain accurate records of catch and catch-related data, as required by the relevant subregional or regional fisheries management organization or arrangement, or serious misreporting of catch, contrary to the catch reporting requirements of such organization or arrangement;
 - (c) fishing in a closed area, fishing during a closed season or fishing without, or after attainment of, a quota established by the relevant subregional or regional fisheries management organization or arrangement;
 - (d) directed fishing for a stock which is subject to a moratorium or for which fishing is prohibited;
 - (e) using prohibited fishing gear;
 - (f) falsifying or concealing the markings, identity or registration of a fishing vessel;
 - (g) concealing, tampering with or disposing of evidence relating to an investigation;
 - (h) multiple violations which together constitute a serious disregard of conservation and management measures; or
 - (i) such other violations as may be specified in procedures established by the relevant subregional or regional fisheries management organization or arrangement.
12. Notwithstanding the other provisions of this article, the flag State may, at any time, take action to fulfil its obligations under article 19 with respect to an alleged violation. Where the vessel is under the direction of the inspecting State, the inspecting State shall, at the request of the flag State, release the vessel to the flag State along with full information on the progress and outcome of its investigation.

13. This article is without prejudice to the right of the flag State to take any measures, including proceedings to impose penalties, according to its laws.
14. This article applies mutatis mutandis to boarding and inspection by a State Party which is a member of a subregional or regional fisheries management organization or a participant in a subregional or regional fisheries management arrangement and which has clear grounds for believing that a fishing vessel flying the flag of another State Party has engaged in any activity contrary to relevant conservation and management measures referred to in paragraph 1 in the high seas area covered by such organization or arrangement, and such vessel has subsequently, during the same fishing trip, entered into an area under the national jurisdiction of the inspecting State.
15. Where a subregional or regional fisheries management organization or arrangement has established an alternative mechanism which effectively discharges the obligation under this Agreement of its members or participants to ensure compliance with the conservation and management measures established by the organization or arrangement, members of such organization or participants in such arrangement may agree to limit the application of paragraph 1 as between themselves in respect of the conservation and management measures which have been established in the relevant high seas area.
16. Action taken by States other than the flag State in respect of vessels having engaged in activities contrary to subregional or regional conservation and management measures shall be proportionate to the seriousness of the violation.
17. Where there are reasonable grounds for suspecting that a fishing vessel on the high seas is without nationality, a State may board and inspect the vessel. Where evidence so warrants, the State may take such action as may be appropriate in accordance with international law.
18. States shall be liable for damage or loss attributable to them arising from action taken pursuant to this article when such action is unlawful or exceeds that reasonably required in the light of available information to implement the provisions of this article.

10.2.5 Agreement Text – Article 22

Basic procedures for boarding and inspection pursuant to article 21

1. The inspecting State shall ensure that its duly authorized inspectors:
 - (a) present credentials to the master of the vessel and produce a copy of the text of the relevant conservation and management measures or rules and regulations in force in the high seas area in question pursuant to those measures;
 - (b) initiate notice to the flag State at the time of the boarding and inspection;

- (c) do not interfere with the master's ability to communicate with the authorities of the flag State during the boarding and inspection;
 - (d) provide a copy of a report on the boarding and inspection to the master and to the authorities of the flag State, noting therein any objection or statement which the master wishes to have included in the report;
 - (e) promptly leave the vessel following completion of the inspection if they find no evidence of a serious violation; and
 - (f) avoid the use of force except when and to the degree necessary to ensure the safety of the inspectors and where the inspectors are obstructed in the execution of their duties. The degree of force used shall not exceed that reasonably required in the circumstances.
2. The duly authorized inspectors of an inspecting State shall have the authority to inspect the vessel, its licence, gear, equipment, records, facilities, fish and fish products and any relevant documents necessary to verify compliance with the relevant conservation and management measures.
3. The flag State shall ensure that vessel masters:
 - (a) accept and facilitate prompt and safe boarding by the inspectors;
 - (b) cooperate with and assist in the inspection of the vessel conducted pursuant to these procedures;
 - (c) do not obstruct, intimidate or interfere with the inspectors in the performance of their duties;
 - (d) allow the inspectors to communicate with the authorities of the flag State and the inspecting State during the boarding and inspection;
 - (e) provide reasonable facilities, including, where appropriate, food and accommodation, to the inspectors; and
 - (f) facilitate safe disembarkation by the inspectors.
4. In the event that the master of a vessel refuses to accept boarding and inspection in accordance with this article and article 21, the flag State shall, except in circumstances where, in accordance with generally accepted international regulations, procedures and practices relating to safety at sea, it is necessary to delay the boarding and inspection, direct the master of the vessel to submit immediately to boarding and inspection and, if the master does not comply with such direction, shall suspend the vessel's authorization to fish and order the vessel to return immediately to port. The flag State shall advise the inspecting State of the action it has taken when the circumstances referred to in this paragraph arise.

10.2.6 Agreement Text – Article 23

Measures taken by a port State

1. A port State has the right and the duty to take measures, in accordance with international law, to promote the effectiveness of subregional, regional and global conservation and management measures. When taking such measures a port State shall not discriminate in form or in fact against the vessels of any State.
2. A port State may, inter alia, inspect documents, fishing gear and catch on board fishing vessels, when such vessels are voluntarily in its ports or at its offshore terminals.
3. States may adopt regulations empowering the relevant national authorities to prohibit landings and transshipments where it has been established that the catch has been taken in a manner which undermines the effectiveness of subregional, regional or global conservation and management measures on the high seas.
4. Nothing in this article affects the exercise by States of their sovereignty over ports in their territory in accordance with international law.

10.2.7 Agreement Text – Article 33

Non-parties to this Agreement

1. States Parties shall encourage non-parties to this Agreement to become parties thereto and to adopt laws and regulations consistent with its provisions.
2. States Parties shall take measures consistent with this Agreement and international law to deter the activities of vessels flying the flag of non-parties which undermine the effective implementation of this Agreement.

10.3 Technical and Financial Assistance⁸²

10.3.1 Agreement Text – Article 24

Recognition of the special requirements of developing States

1. States shall give full recognition to the special requirements of developing States in relation to conservation and management of straddling fish stocks and highly migratory fish stocks and development of fisheries for such stocks. To this end, States shall, either directly or through the United Nations Development

⁸² The General Assembly, in Resolution 58/14, Paragraph 10, decided to establish the “Assistance Fund under Part VII of the Agreement” to assist developing States Parties in the implementation of the Agreement.

Programme, the Food and Agriculture Organization of the United Nations and other specialized agencies, the Global Environment Facility, the Commission on Sustainable Development and other appropriate international and regional organizations and bodies, provide assistance to developing States.

2. In giving effect to the duty to cooperate in the establishment of conservation and management measures for straddling fish stocks and highly migratory fish stocks, States shall take into account the special requirements of developing States, in particular:
 - (a) the vulnerability of developing States which are dependent on the exploitation of living marine resources, including for meeting the nutritional requirements of their populations or parts thereof;
 - (b) the need to avoid adverse impacts on, and ensure access to fisheries by, subsistence, small-scale and artisanal fishers and women fishworkers, as well as indigenous people in developing States, particularly small island developing States; and
 - (c) the need to ensure that such measures do not result in transferring, directly or indirectly, a disproportionate burden of conservation action onto developing States.

10.3.2 Agreement Text – Article 25

Forms of cooperation with developing States

1. States shall cooperate, either directly or through subregional, regional or global organizations:
 - (a) to enhance the ability of developing States, in particular the least-developed among them and small island developing States, to conserve and manage straddling fish stocks and highly migratory fish stocks and to develop their own fisheries for such stocks;
 - (b) to assist developing States, in particular the least-developed among them and small island developing States, to enable them to participate in high seas fisheries for such stocks, including facilitating access to such fisheries subject to articles 5 and 11; and
 - (c) to facilitate the participation of developing States in subregional and regional fisheries management organizations and arrangements.
2. Cooperation with developing States for the purposes set out in this article shall include the provision of financial assistance, assistance relating to human resources development, technical assistance, transfer of technology, including through joint venture arrangements, and advisory and consultative services.

3. Such assistance shall, *inter alia*, be directed specifically towards:
 - (a) improved conservation and management of straddling fish stocks and highly migratory fish stocks through collection, reporting, verification, exchange and analysis of fisheries data and related information;
 - (b) stock assessment and scientific research; and
 - (c) monitoring, control, surveillance, compliance and enforcement, including training and capacity-building at the local level, development and funding of national and regional observer programmes and access to technology and equipment.

10.3.3 Agreement Text – Article 26

Special assistance in the implementation of this Agreement

1. States shall cooperate to establish special funds to assist developing States in the implementation of this Agreement, including assisting developing States to meet the costs involved in any proceedings for the settlement of disputes to which they may be parties.
2. States and international organizations should assist developing States in establishing new subregional or regional fisheries management organizations or arrangements, or in strengthening existing organizations or arrangements, for the conservation and management of straddling fish stocks and highly migratory fish stocks.

10.4 Dispute Settlement

10.4.1 Agreement Text – Article 7

Compatibility of conservation and management measures

1. Without prejudice to the sovereign rights of coastal States for the purpose of exploring and exploiting, conserving and managing the living marine resources within areas under national jurisdiction as provided for in the Convention, and the right of all States for their nationals to engage in fishing on the high seas in accordance with the Convention:
 - (a) with respect to straddling fish stocks, the relevant coastal States and the States whose nationals fish for such stocks in the adjacent high seas area shall seek, either directly or through the appropriate mechanisms for cooperation provided for in Part III, to agree upon the measures necessary for the conservation of these stocks in the adjacent high seas area;
 - (b) with respect to highly migratory fish stocks, the relevant coastal States and other States whose nationals fish for such stocks in the region shall

cooperate, either directly or through the appropriate mechanisms for cooperation provided for in Part III, with a view to ensuring conservation and promoting the objective of optimum utilization of such stocks throughout the region, both within and beyond the areas under national jurisdiction.

2. Conservation and management measures established for the high seas and those adopted for areas under national jurisdiction shall be compatible in order to ensure conservation and management of the straddling fish stocks and highly migratory fish stocks in their entirety. To this end, coastal States and States fishing on the high seas have a duty to cooperate for the purpose of achieving compatible measures in respect of such stocks. In determining compatible conservation and management measures, States shall:
 - (a) take into account the conservation and management measures adopted and applied in accordance with article 61 of the Convention in respect of the same stocks by coastal States within areas under national jurisdiction and ensure that measures established in respect of such stocks for the high seas do not undermine the effectiveness of such measures;
 - (b) take into account previously agreed measures established and applied for the high seas in accordance with the Convention in respect of the same stocks by relevant coastal States and States fishing on the high seas;
 - (c) take into account previously agreed measures established and applied in accordance with the Convention in respect of the same stocks by a subregional or regional fisheries management organization or arrangement;
 - (d) take into account the biological unity and other biological characteristics of the stocks and the relationships between the distribution of the stocks, the fisheries and the geographical particularities of the region concerned, including the extent to which the stocks occur and are fished in areas under national jurisdiction;
 - (e) take into account the respective dependence of the coastal States and the States fishing on the high seas on the stocks concerned; and
 - (f) ensure that such measures do not result in harmful impact on the living marine resources as a whole.
3. In giving effect to their duty to cooperate, States shall make every effort to agree on compatible conservation and management measures within a reasonable period of time.
4. If no agreement can be reached within a reasonable period of time, any of the States concerned may invoke the procedures for the settlement of disputes provided for in Part VIII.

5. Pending agreement on compatible conservation and management measures, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature. In the event that they are unable to agree on such arrangements, any of the States concerned may, for the purpose of obtaining provisional measures, submit the dispute to a court or tribunal in accordance with the procedures for the settlement of disputes provided for in Part VIII.
6. Provisional arrangements or measures entered into or prescribed pursuant to paragraph 5 shall take into account the provisions of this Part, shall have due regard to the rights and obligations of all States concerned, shall not jeopardize or hamper the reaching of final agreement on compatible conservation and management measures and shall be without prejudice to the final outcome of any dispute settlement procedure.
7. Coastal States shall regularly inform States fishing on the high seas in the subregion or region, either directly or through appropriate subregional or regional fisheries management organizations or arrangements, or through other appropriate means, of the measures they have adopted for straddling fish stocks and highly migratory fish stocks within areas under their national jurisdiction.
8. States fishing on the high seas shall regularly inform other interested States, either directly or through appropriate subregional or regional fisheries management organizations or arrangements, or through other appropriate means, of the measures they have adopted for regulating the activities of vessels flying their flag which fish for such stocks on the high seas.

10.4.2 Agreement Text – Article 27

Obligation to settle disputes by peaceful means

States have the obligation to settle their disputes by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

10.4.3 Agreement Text – Article 28

Prevention of disputes

States shall cooperate in order to prevent disputes. To this end, States shall agree on efficient and expeditious decision-making procedures within subregional and regional fisheries management organizations and arrangements and shall strengthen existing decision-making procedures as necessary.

10.4.4 Agreement Text – Article 29

Disputes of a technical nature

Where a dispute concerns a matter of a technical nature, the States concerned may refer the dispute to an ad hoc expert panel established by them. The panel shall confer with the States concerned and shall endeavour to resolve the dispute expeditiously without recourse to binding procedures for the settlement of disputes.

10.4.5 Agreement Text – Article 30

Procedures for the settlement of disputes

1. The provisions relating to the settlement of disputes set out in Part XV of the Convention apply mutatis mutandis to any dispute between States Parties to this Agreement concerning the interpretation or application of this Agreement, whether or not they are also Parties to the Convention.
2. The provisions relating to the settlement of disputes set out in Part XV of the Convention apply mutatis mutandis to any dispute between States Parties to this Agreement concerning the interpretation or application of a subregional, regional or global fisheries agreement relating to straddling fish stocks or highly migratory fish stocks to which they are parties, including any dispute concerning the conservation and management of such stocks, whether or not they are also Parties to the Convention.
3. Any procedure accepted by a State Party to this Agreement and the Convention pursuant to article 287 of the Convention shall apply to the settlement of disputes under this Part, unless that State Party, when signing, ratifying or acceding to this Agreement, or at any time thereafter, has accepted another procedure pursuant to article 287 for the settlement of disputes under this Part.
4. A State Party to this Agreement which is not a Party to the Convention, when signing, ratifying or acceding to this Agreement, or at any time thereafter, shall be free to choose, by means of a written declaration, one or more of the means set out in article 287, paragraph 1, of the Convention for the settlement of disputes under this Part. Article 287 shall apply to such a declaration, as well as to any dispute to which such State is a party which is not covered by a declaration in force. For the purposes of conciliation and arbitration in accordance with Annexes V, VII and VIII to the Convention, such State shall be entitled to nominate conciliators, arbitrators and experts to be included in the lists referred to in Annex V, article 2, Annex VII, article 2, and Annex VIII, article 2, for the settlement of disputes under this Part.
5. Any court or tribunal to which a dispute has been submitted under this Part shall apply the relevant provisions of the Convention, of this Agreement and of any relevant subregional, regional or global fisheries agreement, as well as

generally accepted standards for the conservation and management of living marine resources and other rules of international law not incompatible with the Convention, with a view to ensuring the conservation of the straddling fish stocks and highly migratory fish stocks concerned.

10.4.6 Agreement Text – Article 31

Provisional measures

1. Pending the settlement of a dispute in accordance with this Part, the parties to the dispute shall make every effort to enter into provisional arrangements of a practical nature.
2. Without prejudice to article 290 of the Convention, the court or tribunal to which the dispute has been submitted under this Part may prescribe any provisional measures which it considers appropriate under the circumstances to preserve the respective rights of the parties to the dispute or to prevent damage to the stocks in question, as well as in the circumstances referred to in article 7, paragraph 5, and article 16, paragraph 2.
3. A State Party to this Agreement which is not a Party to the Convention may declare that, notwithstanding article 290, paragraph 5, of the Convention, the International Tribunal for the Law of the Sea shall not be entitled to prescribe, modify or revoke provisional measures without the agreement of such State.

10.4.7 Agreement Text – Article 32

Limitations on applicability of procedures for the settlement of disputes

Article 297, paragraph 3, of the Convention applies also to this Agreement.

10.4.8 Agreement Text – Article 35

Responsibility and liability

States Parties are liable in accordance with international law for damage or loss attributable to them in regard to this Agreement.

11. BERN CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE AND NATURAL HABITATS 1979

11.1 Monitoring and Reporting

11.1.1 Convention Text – Article 9 II

2. The Contracting Parties shall report every two years to the Standing Committee on the exceptions made under the preceding paragraph. These reports must specify:
 - the populations which are or have been subject to the exceptions and, when practical, the number of specimens involved;
 - the means authorised for the killing or capture;
 - the conditions of risk and the circumstances of time and place under which such exceptions were granted;
 - the authority empowered to declare that these conditions have been fulfilled, and to take decisions in respect of the means that may be used, their limits and the persons instructed to carry them out;
 - the controls involved.

11.1.2 Standing Committee Resolution No. 2 - Scope of articles 8 and 9 of the Bern convention (1993)

The Standing Committee of the Convention on the Conservation of European Wildlife and Natural Habitats, acting under the terms of Article 14 of the Convention;

Considering that it would be useful to clarify the conditions laid down in Article 9 for the granting of exceptions and the submission of two-yearly reports on such exceptions;

Recommends that the Contracting Parties bring the appended document, which contains useful information for interpreting the scope of Article 9, to the attention of all those responsible for applying and interpreting the Convention in their respective countries;

Resolves that, in future, the reports which the Contracting Parties are required to submit every two years under Article 9 on the exceptions made from the provisions of Articles 4, 5, 6, 7 and 8 shall cover only:

- a) general exceptions;
- b) individual exceptions if they are so numerous as to result in a generalised practice;
- c) individual exceptions concerning more than 10 individuals of a species;

- d) individual exceptions concerning individuals of endangered or vulnerable populations of species.

Appendix to Resolution No. 2

Interpretation of Articles 8 and 9 of the Convention

I. Prohibited means of capture and killing

1. Article 8 of the Convention forbids, in respect of the species specified in Appendices III and II (in the case of exceptions under Article 9), the use of:
 - a) all indiscriminate means of capture and killing;
 - b) means capable of causing local disappearance of populations of a species; and
 - c) means capable of causing serious disturbance to populations of a species.
2. Article 8 refers, in connection with the means forbidden, to Appendix IV of the Convention, which lists means and methods of hunting and other forbidden forms of exploitation, in respect of both animals and birds.
3. It should be noted that some of the means forbidden under Appendix IV are not prohibited absolutely, but only in certain circumstances. Thus, the footnotes indicate that:
 - a) explosives are prohibited “except for whale hunting”;
 - b) nets and traps are prohibited “if applied for large-scale or non-selective capture or killing”;
 - c) snares are not allowed “except Lagopus north of latitude 58° North”.

II. Exceptions allowed by Article 9

4. Article 9 allows exceptions to the provisions of a number of articles of the Bern Convention, and in particular derogations in respect of:
 - a) the capture and killing of the strictly protected species listed in Appendices I and II; and
 - b) the use of non-selective means of capture and killing and the other means prohibited in Article 8, in respect of the species listed in Appendices II and III.
5. The possibility of derogating from the articles of the Convention is subject to two very clearly defined general conditions, and the non cumulative specific reasons for which the exceptions may be granted are listed exhaustively in Article 9.

6. The two general conditions that must be met are:
 - a) that there is no other satisfactory solution; and
 - b) that the exception will not be detrimental to the survival of the population concerned.
7. These two conditions are mandatory and cumulative, but the first raises a difficult problem of interpretation.

The existence of another satisfactory solution should be appreciated by considering possible alternatives which, in fact, depend on the motives for the derogation whilst ensuring that the survival of the population is not threatened. Thus, for example, in the case of the first derogation under Article 9 (1), “for the protection of flora and fauna”, alternatives must be taken into consideration which are likely to cause as little damage as possible to flora and fauna. In the case of the last indent of paragraph 1, since the motives for the derogations are not spelled out in Article 9 and States are free to decide for what reasons derogations have to be granted, it is up to them to ensure that the condition “no other satisfactory solution” is satisfied. The Standing Committee of the Bern Convention can only examine this condition if the State who presents the report on derogations based on the last indent, states spontaneously the motive for the derogation.

8. If the two general conditions indicated at paragraph 10 above are fulfilled, exceptions are allowed:
 - i) for the protection of flora and fauna;
 - ii) to prevent serious damage to crops, livestock, forests, fisheries, water and other forms of property;
 - iii) in the interests of public health and safety, air safety or other overriding public interests;
 - iv) for the purposes of research and education, of repopulation, of reintroduction and for the necessary breeding;
 - v) to permit, under strictly supervised conditions, on a selective basis and to a limited extent, the taking, keeping or other judicious exploitation of certain wild animals and plants in small numbers.
9. There is an important difference between the reasons given under 12 i) to iv) above and those given under v). In the first case, the Convention specifies the purpose of the exception (protection of flora and fauna, prevention of serious damage to crops, interests of health, etc), whereas in the second the Convention merely specifies the characteristics of the means to be used, without indicating the purpose for which the exception is granted.

10. The relevant characteristics are:
- the possibility of strictly controlling the use of the means of capture or killing;
 - the selective nature of the means used; and
 - the limited numbers of individuals whose taking, keeping or other judicious exploitation are permitted.

11. From the differing nature of the exceptions contained in the last indent of paragraph 1 of Article 9, it follows that these exceptions, while they conform to the general conditions indicated in paragraph 10 above and the special characteristics indicated in paragraph 14 above:

- a) may be decided by a Contracting Party for any reason which to it seems valid (for instance, hunting, recreation, etc) and without any reason having to be given;
- b) may not necessarily be temporary, in other words they may be granted permanently, or at the very least renewed from time to time.

It can be taken that, from the legal angle, the application of the conditions laid down in Article 9 remains the same irrespective of the species in question, with no possibility of a distinction being drawn on the basis of the Appendices in which the species appears. When it comes to interpreting the conditions themselves, however, regard may be had to the state of populations of species. The expression “small numbers” may thus be construed in the light of the state of preservation of the population of a species.

12. It follows from the above that in the case of this exception the Standing Committee of the Bern Convention is not required to check the merits of the purpose of the exception, but to ensure that the other conditions are satisfied, ie:

- a) The provision “under strictly supervised conditions” means that the authority granting the exception must possess the necessary means for checking on such exceptions either beforehand (eg, a system of individual authorisations) or afterwards (eg, effective on-the-spot supervision), or also combining the two possibilities;
- b) The expression “on a selective basis” raises difficult problems of interpretation in view of its apparent contradiction with the wording of Article 9 in that it could lead to the following paradox: exceptions to the prohibition of using the non-selective means mentioned in Article 8 are permitted provided that the capture is done on a selective basis. In reality, this contradiction disappears if the indent in question is interpreted in the following manner: the non-selective means may be used provided

it is used for the purpose of permitting the “taking, keeping or other judicious exploitation” on a selective basis. In other words, the means used must allow the individuals of the species in question to be kept (“selection”) and those of other species to be released without harm. In other words, the means used must either allow individuals of the species in question to be kept (“selection”) and those of other species to be released unharmed or enable the capture of individuals of the species to be avoided by appropriate methods, or else permit a combination of the two. The expression “judicious exploitation” denotes that any taking, keeping or killing allowed by way of an exception must be “reasonable”, as distinct from any “excessive” action that would prejudice the conservation of the populations concerned in favourable conditions. The expression “exploitation” refers to any activity other than the taking and keeping of individuals of a species, such as the taking of eggs, the use of down, selling, and the offensive viewing of animals by tourists, etc. Such exploitation must nonetheless be “judicious”, ie carried out in a reasonable manner, without any excessive action liable to prejudice the conservation of the populations of the species concerned in favourable conditions;

- c) The expression “to a limited extent” suggests that the means authorised should not be general, but should be limited in both space and time;
 - d) The expression “small numbers” is more difficult to interpret, especially if considered from a global point of view. How, in fact, can “small numbers” be defined at national or regional levels? In contrast, if applied to the individual granted the exception, the expression acquires a meaning in that the means employed must not allow the whole-scale taking of members of the species concerned. Of course, from an overall point of view, the introductory sentence of paragraph 1 of Article 9 still applies since the number of persons granted exceptions must not be such as to be detrimental “to the survival of the population concerned”.
13. Although not related to Article 8, the third indent of paragraph 1 of Article 9 raises a very difficult problem, namely the interpretation of the expression “other overriding public interests”.
 14. With regard to the definition of the scope of similar concepts, eg “public order”, experience with other international conventions (including the European Convention on Human Rights) has in fact shown that it is extremely difficult, if not impossible, to find a general, prior interpretation for such concepts.
 15. In contrast, the bodies responsible for interpreting these conventions have powers to establish whether a particular case is justified on the grounds put forward, in this case “other overriding public interests”. Consequently, if the grounds in question were put forward, the Standing Committee of the Bern

Convention could assess the merits of the exception in the light of all the provisions contained in the Convention. Article 18 could be applied in the event of difficulties.

16. A further worrying question that arises in connection with Article 9, paragraph 1, second sub-paragraph, is that of how to interpret “serious damage” (to crops, livestock, forests, fisheries, water and other forms of property). If “damage” is taken to mean prejudice sustained by a person as a result of damage caused to those items of property that are listed in Article 9, paragraph 1, second sub-paragraph, and it seems legitimate to do so, then the adjective “serious” must be evaluated in terms of the intensity and duration of the prejudicial action, the direct or indirect links between that action and the results, and the scale of the destruction or deterioration committed. “Serious” does not, of course, necessarily mean that the damage was widespread: in some cases the item of property affected may cover only a limited geographical area (for example, a region), or even a particular farm or group of farms. However, in the latter case, the exceptions must be proportional: the fact that an isolated farm sustains damage would not justify the capture or killing of a species over a very wide area, unless there is evidence that the damage could extend to other areas.

11.1.3 Standing Committee Recommendation No. 16 - Areas of special conservation interest (1989)

The Standing Committee of the Convention on the Conservation of European Wildlife and Natural Habitats, acting under the terms of Article 14 of the convention,

Having regard to Article 4 of the convention and to Resolution N° 1 (1989) on the provisions relating to the conservation of habitats;

Desirous of establishing common criteria for the identification of areas to be conserved;

Desirous also of ensuring that the conservation and management of such areas have regard to certain minimum requirements,

Recommends that Contracting Parties:

1. take steps to designate areas of special conservation interest to ensure that necessary and appropriate conservation measures are taken for each area situated within their territory or under their responsibility where that area fits one or several of the following conditions;
 - a. it contributes substantially to the survival of threatened species, endemic species, or any species listed in Appendices I and II of the convention;
 - b. it supports significant numbers of species in an area of high species diversity or supports important populations of non or more species;

- c. it contains an important and/or representative sample of endangered habitat types;
 - d. it contains an outstanding example of a particular habitat type or a mosaic of different habitat types;
 - e. it represents an important area for one or more migratory species;
 - f. it otherwise contributes substantially to the achievement of the objectives of the convention;
2. review regularly or continually in a systematic fashion their performance in the implementation of paragraph 1 above;
 3. take such steps, either by legislation or otherwise, to ensure wherever possible that :
 - a. areas referred to in paragraph 1 above are the subject of an appropriate regime, designed to achieve the conservation of the factors set out in that paragraph;
 - b. the agencies responsible for the designation and/or management and/or conservation of such areas or any one of them have available to it sufficient manpower, training, equipment and resources (including financial resources) to enable them properly to manage, conserve and survey the areas;
 - c. appropriate ecological and other research is conducted, in a properly co-ordinated fashion, with a view to furthering the understanding of the critical elements in the management of such areas and to monitoring the status of the factors giving rise to their designation and conservation;
 - d. activities taking place adjacent to such areas or within their vicinity do not adversely affect the factors giving rise to the designation and conservation of those sites;
 4. take steps, as appropriate, in respect of areas referred to in paragraph 1 above, to:
 - a. draw up and implement management plans which will identify both short-and long-term objectives (such management plans can relate to individual areas or to a collection of areas such as heathlands);
 - b. regularly review the terms of the management plans in the light of changing conditions or of increased scientific knowledge;
 - c. clearly mark the boundaries of such areas on maps and, as far as possible, on the ground;
 - d. advise the competent authorities and landowners of the extent of the areas and their characteristics;

- e. provide for the monitoring of such areas and especially of the factors for which their conservation is important;
5. determine those areas which remain inadequately provided for under existing mechanisms and improve the conservation status of such areas, using whatever mechanisms are appropriate in order to meet the requirements of the convention.

11.1.4 Standing Committee Resolution No. 3 - Setting up of a pan-European Ecological Network (1996)

The Standing Committee of the Convention on the Conservation of European Wildlife and Natural Habitats, acting under the terms of Article 14 of the Convention,

Desirous to pursue the implementation of its Recommendation No. 16 (1989) on Areas of Special Conservation Interest,

Desirous also to contribute as a first step to the implementation of the Pan-European Biological and Landscape Diversity Strategy, in particular to Theme 1 of the Strategy „establishing the Pan-European Ecological Network“, as endorsed at the Ministerial Conference „Environment for Europe“ (Sofia, Bulgaria, October 1995),

Resolves to:

1. Set up a Network (EMERALD Network) which would include the Areas of Special Conservation Interest designated following its Recommendation No. 16;
2. Create a group of experts to carry out the necessary activities related to the building up of the Network;
3. Encourage Contracting Parties and observer States to designate Areas of Special Conservation Interest and to notify them to the Secretariat;
4. Invite European States which are observer states in the Standing Committee of the Bern Convention, to participate in the Network and designate Areas of Special Conservation Interest.

11.1.5 Standing Committee Resolution No. 5 - Rules for the Network of Areas of Special Conservation Interest (Emerald Network) (1998)

The Standing Committee of the Convention on the Conservation of European Wildlife and Natural Habitats, acting under the terms of Article 14 of the convention,

Having regard to its Resolution No. 1 (1989) on the provisions relating to the conservation of habitats;

Having regard to its Recommendation No. 14 (1989) on species habitat conservation and on the conservation of endangered natural habitats;

Having regard to its Recommendation No. 16 (1989) on Areas of Special Conservation Interest;

Having regard to its Resolution No. 3 (1996) on the setting-up of a pan-European Ecological Network;

Having regard to its Resolution No. 4 (1996) listing endangered natural habitats requiring specific habitat conservation measures;

Having regard to its Resolution No. 6 (1998) listing the species requiring specific habitat conservation measures;

Considering that for Contracting Parties which are Member States of the European Union Emerald Network sites are those of the Natura 2000 Network. Thus the procedures established by European Council Directives 79/409/EEC and 92/43/EEC will be the only rules to apply;

Noting that, following points 3 and 4 of Resolution No 3 (1996), the use of the term „governments“ in this resolution means the governments of the States Contracting Parties to the Convention, of other Council of Europe States and of other States which are observer States in the Standing Committee of the Convention,

Resolves to adopt hereby the Rules for the Emerald Network of Areas of Special Conservation Interest:

Article 1

Any area, whether land or sea, where that area fits one or several of the conditions established in Recommendation No. 16 (1989), point 1, may form part of the Emerald Network.

Article 2

- 2.1. Areas of Special Conservation Interest (ASCIs) to be included in the Emerald Network shall be designated by the governments.
- 2.2. The Standing Committee may advise the government concerned on the advisability of designating one or more ASCIs that are of a particular interest to the Emerald Network.

Article 3

- 3.1. Any government designating an ASCI shall deposit a standard Data Form with the Secretariat. A model for this Standard Data Form, derived from and compatible with the Natura 2000 Standard Data Form, is found as appendix to this resolution. Governments are encouraged to provide the information for the Standard Data Form on electronic support.

- 3.2. Where the designations conform with the provisions of Article 1 of this resolution, the Secretariat shall notify the government of the fact and shall register them.
- 3.3. If not, the Standing Committee shall advise the government concerned to withdraw the designation. If the government nevertheless maintains the designation, the Standing Committee may decide not to accept it.
- 3.4. The information on ASCIs shall be public and stored in a database, except for information communicated as confidential. Governments are requested not to send any confidential information in electronic form, but to do it separately, mentioning its confidentiality. Confidential information shall not be included in the database and shall not become public.

Article 4

- 4.1 The governments shall undertake surveillance of the conservation status of species and natural habitats in designated ASCIs
- 4.2. The governments shall inform the Secretariat of any important changes likely to affect negatively in a substantial way the ecological character of the designated ASCIs or the conditions having justified their designation.
- 4.3. Where any such changes come to light, the Standing Committee may advise the government concerned on steps to be taken to ensure conformity with the provisions of Recommendation No. 16 (1989).
- 4.4. Exceptions to the provisions of Articles 4, 5, 6 and 7 of the Convention in designated ASCIs shall be regulated by Article 9 of the Convention.

Article 5

- 5.1. The Group of Experts on the Setting-up of the Emerald Network shall follow the progress of the Emerald Network under the aegis of the Standing Committee. It will endeavour, under the aegis of the Standing Committee, to publish regularly lists of designated ASCIs and their character and to make that information available in electronic form.
- 5.2. The Standing Committee shall periodically review the contribution of the Emerald Network towards the achievement of the objectives of the Convention. In this context a designated ASCI may be considered for declassification where this is warranted by natural developments noted as a result of the surveillance provided for in Article 4.1.

Article 6

The Standing Committee shall encourage governments to implement Recommendation No. 16 (1989) on designated ASCIs and shall use its best endeavours

to solve any difficulty that may arise in the implementation or interpretation of this resolution.

11.2 Multilateral Procedures to Promote Compliance

11.2.1 Convention Text – Article 13

1. For the purposes of this Convention, a Standing Committee shall be set up.
2. Any Contracting Party may be represented on the Standing Committee by one or more delegates. Each delegation shall have one vote. Within the areas of its competence, the European Economic Community shall exercise its right to vote with a number of votes equal to the number of its member States which are Contracting Parties to this Convention; the European Economic Community shall not exercise its right to vote in cases where the member States concerned exercise theirs, and conversely.
3. Any member State of the Council of Europe which is not a Contracting Party to the Convention may be represented on the committee as an observer. The Standing Committee may, by unanimous decision, invite any non-member State of the Council of Europe which is not a Contracting Party to the Convention to be represented by an observer at one of its meetings. Any body or agency technically qualified in the protection, conservation or management of wild fauna and flora and their habitats, and belonging to one of the following categories:
 - a. international agencies or bodies, either governmental or non-governmental, and national governmental agencies or bodies;
 - b. national non-governmental agencies or bodies which have been approved for this purpose by the State in which they are located,

may inform the Secretary General of the Council of Europe, at least three months before the meeting of the Committee, of its wish to be represented at that meeting by observers. They shall be admitted unless, at least one month before the meeting, one-third of the Contracting Parties have informed the Secretary General of their objection.
4. The Standing Committee shall be convened by the Secretary General of the Council of Europe. Its first meeting shall be held within one year of the date of the entry into force of the Convention. It shall subsequently meet at least every two years and whenever a majority of the Contracting Parties so request.
5. A majority of the Contracting Parties shall constitute a quorum for holding a meeting of the Standing Committee.
6. Subject to the provisions of this Convention, the Standing Committee shall draw up its own Rules of Procedure.

11.2.2 Convention Text – Article 14

1. The Standing Committee shall be responsible for following the application of this Convention. It may in particular:
 - keep under review the provisions of this Convention, including its appendices, and examine any modifications necessary;
 - make recommendations to the Contracting Parties concerning measures to be taken for the purposes of this Convention;
 - recommend the appropriate measures to keep the public informed about the activities undertaken within the framework of this Convention;
 - make recommendations to the Committee of Ministers concerning non-member States of the Council of Europe to be invited to accede to this Convention;
 - make any proposal for improving the effectiveness of this Convention, including proposals for the conclusion, with the States which are not Contracting Parties to the Convention, of agreements that would enhance the effective conservation of species or groups of species.
2. In order to discharge its functions, the Standing Committee may, on its own initiative, arrange for meetings of groups of experts.

11.2.3 Standing Committee Document (96) 23 – Opening and Closing of files and follow-up of recommendations (1996)

I. Opening and closing of files

The purpose of the „files“ is to find a satisfactory solution to problems encountered in implementing the Convention and to monitor as effectively as possible the means chosen to resolve them.

A. Opening of files

1. The Secretariat examines all letters sent to the Standing Committee of the Bern Convention („the Convention“) itself or to its Chairman or Secretariat by a Contracting Party, individual, non-governmental organisation or group of private persons containing a complaint about one or more Contracting Parties' failure to comply with one or more provisions of the Convention.
2. The Secretariat, on the basis of the information available to it, and if necessary requesting further information from the complainant, informs the Contracting Party (-ies) and decides whether to act on the complaint. It ensures in particular that the complaint is not anonymous and examines, taking account of any procedures that may be pending at national and/or international level, whether

the complaint is sufficiently serious to warrant examination at international level.

3. Where it decides on such action, the Secretariat forwards the complaint to the Contracting Party or Parties concerned, seeking their opinion and, if necessary, further information. It informs the Bureau of the action taken.
4. The Contracting Parties must respond to the Secretariat's request within a period of about four months.
5. In the light of the reply received, the Secretariat decides, in agreement with the Bureau, whether there are grounds for placing the complaint on the agenda for the next meeting of the Standing Committee. The Contracting Party or Parties concerned are informed of this at least two months before the date of the meeting.
6. In cases of urgency and in order to expedite the possible settlement of a difficulty between two meetings of the Standing Committee, the Bureau may decide, with the agreement of the Contracting Party concerned, to organise an on-site assessment.
7. At the meeting of the Standing Committee, the Secretariat or - with the consent of the Chairman or a Contracting Party - an observer concerned in the matter explains the complaint and, depending on the circumstances, proposes that further information be awaited or requested, that a specific recommendation be adopted (see II below) or that an on-the-spot enquiry be conducted for the purpose of a more thorough examination in accordance with Rule 11 of the Rules of Procedure.

In accordance with Rule 9 c. of the Rules of Procedure, proposals made by observers may be put to the vote if sponsored by a delegation.

8. The Standing Committee then studies the complaint submitted and proposals formulated and decides in the absence of consensus and as required by Rules 8 c. of the Rules of Procedure, by a two-thirds majority of the votes cast, whether it is appropriate to open a file.

If such is the case, the Standing Committee, also by consensus, or in the absence of consensus by a two-thirds majority of the votes cast, as required by Rule 8 b. of the Rules of Procedure, decides whether it is preferable to adopt a specific recommendation or to conduct an on-the-spot enquiry first.

9. The recommendations adopted are communicated to the Contracting Parties for implementation and are public.

B. Closing of files

10. If, after it has examined the report made by an expert following an on-the-spot enquiry or the report forwarded by the Contracting Party concerned as part

of the follow-up to a specific recommendation (see paragraph 15 below), the Standing Committee finds that the difficulties relating to implementation of the Convention have been resolved, it decides by consensus, or in the absence of consensus by a two-thirds majority of the votes cast, as required under Rule 8 b. of the Rules of Procedure, to close the file.

II. Follow-up to recommendations

Article 14, paragraph 1, of the Convention states that:

- I. The Standing Committee shall be responsible for following the application of this Convention. It may in particular:

(...)

- make recommendations to the Contracting Parties concerning measures to be taken for the purposes of this Convention;

(...).”

In accordance with the practice that has developed in recent years, the Standing Committee adopts two types of recommendation:

- general recommendations pursuant to its general programme of action (recommendations arising in particular from meetings of groups of experts, the work of consultants or seminars);
- specific recommendations following its examination of a file which it has decided to consider. Specifically addressed to one or more Contracting Parties, these recommendations concern situations in which the implementation of the Convention raises, in a particular case, problems over the conservation of flora, fauna, or a natural habitat (for example, unsatisfactory protection of a species of fauna in a specified location).

The recommendations constitute essential means of giving substance to the provisions of the Convention and may even constitute, in time, international customary law. The monitoring of their follow-up is therefore fundamental.

The Standing Committee also adopts guidelines. Though more detailed than general recommendations, they nevertheless have comparable standing. They offer guidance to the Contracting Parties on the action to be taken.

A. General recommendations and guidelines

11. The follow-up to general recommendations or guidelines takes place mainly through general four-yearly reports in which the Contracting Parties concerned

are invited to describe the legal and/or other measures taken to comply with the policies they propose.

12. With the agreement of the Bureau, the Secretariat prepares a „Summary of General Recommendations/Guidelines“ containing, for each of them:
 - the text of the general recommendation/guideline;
 - the information provided by the Contracting Party or Parties concerned and any expert’s report that may have been prepared; and
 - a proposal that also takes account of any other available information.
13. It is the responsibility of the Standing Committee, in the light of this information and after discussion, to decide - by consensus or in the absence of the consensus, by a two-thirds majority of the votes cast, as required under Rule 8 b. of the Rules of Procedure - on any measures which ought to be taken in respect of each general recommendation/guideline (plan or programme of action, strategy, training courses, technical or financial assistance, expert report, etc.).

Where the follow-up to a general recommendation/guideline proves to be no longer necessary, the Standing Committee may decide - by consensus, or in the absence of consensus by a two-thirds majority of the votes cast, as required under Rule 8 b. of the Rules of Procedure - to consider that implementation is satisfactory.

B. Specific recommendations

14. For the purpose of following up specific recommendations, the Secretariat writes to the Contracting Parties concerned asking them to submit a report summarising the legal and/or other measure or measures adopted to comply with the policies laid down in those recommendations.
15. After receiving the reports, within a period of about four months, the Secretariat prepares, with the agreement of the Bureau, a „Summary of Specific Recommendations“ containing, for each of them:
 - the text of the recommendation;
 - the report submitted by the Contracting Party or Parties concerned, any excessively bulky appendices or documentation included with the report being kept available for consultation at the Secretariat; and
 - a proposal that also takes account of any other available information.
16. The Standing Committee decides in the light of this document and after discussion whether, in the case of each recommendation, the measure or measures adopted by the Contracting Party or Parties concerned are sufficient

or not. It decides by consensus, or in the absence of consensus by a two-thirds majority of the votes cast, as required under Rule 8 b. of the Rules of Procedure:

- a. if the measures taken by the Contracting Party(ies) are sufficient, to consider that the implementation of the specific recommendation is satisfactory and to close the file (see paragraph 10 above);
- b. if, on the contrary, they are insufficient, to consider that the Contracting Party(ies) has(have) failed to comply with its(their) obligations under the Convention in the case concerned.

17. If paragraph 16 b. above applies, the problem then arises as to the attitude to be taken by the Standing Committee in cases where, despite the maintenance of a specific recommendation, the Contracting Party(ies) to which it is addressed continue(s) not to implement it. In this connection it is appropriate to refer to Article 18, paragraph 2 of the Convention, which provides for the possibility of recourse to arbitration for any dispute over the interpretation or application of the Convention. The Standing Committee might look into this possibility and, in certain cases of particular gravity, invite one or more Contracting Parties to set in motion, on behalf of the Standing Committee, the procedure laid down in Article 18 of the Convention.

11.2.4 - Group of Experts on Conservation of Large Carnivores, Document T-PVS (2000) 17 – Action Plan for the conservation of the Iberian Lynx (*Lynx pardinus*) in Europe (2000); goals, objectives and example for action

3. Goals and objectives

The goal of this plan is “to conserve and recover populations in order to ensure their viability in long term of the Iberian lynx, an European endemic, as an essential element of the Mediterranean forest ecosystem in the Iberian Peninsula”. This goes through stopping the present decreasing trend of Iberian lynx populations and turning them into viable populations. The lynx ecosystem depends on a specific kind of traditional management that has operated for millennia.

To attain this goal it is indispensable to retain every functional element of this man-shaped ecosystem. Only saving the Iberian lynx from extinction will grant Europe the moral authority to call for the conservation of biodiversity in other parts of the world.

3.1. Objective 1

Increase the size of the extant Iberian lynx populations up to levels that guarantee long-term viability, and maximise connection between isolated populations, especially small ones, in order to reduce their risk of extinction.

3.2. Objective 2

Favour natural or, where required, assisted recolonization primarily in areas where lynx have disappeared in the last decades, in potential lynx areas for recuperation, or in other areas where a successful reintroduction would be feasible.

3.3. Objective 3

Develop new and alternative ways to make profitable the preservation of every functional element in the Mediterranean forest, as the only sustainable way to achieve objectives 1 and 2.

4. Actions required to meet goals and objectives at the European level

4.1. Lynx conservation: co-ordination and planning

Compared with large carnivore standards, the Iberian lynx has a reduced range, limited to two European countries. Hence, the implementation of an international co-ordinated strategy for its conservation will not be really complex. Once the present Action Plan will be adopted by the Bern Convention, its main features could be incorporated into: a) the European Union biodiversity conservation policy; b) a national plan for the conservation of the Iberian lynx in Portugal; and c) a global strategy for the conservation of lynx in Spain that provides the basic settings for regional recovery plans. In Spain the CA Administrations could endeavour to institute a co-ordinated conservation policy in order to optimise their efficiency in the management of shared lynx populations.

One of the primary tasks of the Portuguese National Plan and the Spanish National Strategy is to define a 'lynx area', i.e. the area where long-term conservation plans should be applied. Obviously, the limits of this area have to exceed not only the current distribution of the species, but also the known limits of the lynx range during the late 1980's, as by then range fragmentation was strong enough to preclude the persistence of many populations in the long-term. The lynx area must also include places where corridors or other habitat links will be placed in order to connect isolated populations, as well as other areas having the potential for lynx natural recolonisation or assisted reintroduction. Besides, the Spanish Strategy and the Portuguese Plan need to clearly state priorities, time schedules, financial sources, and monitoring programs in order to accomplish all the actions proposed in the present Plan.

To collaborate with Portuguese and Spanish Administrations, and promote joint work between them, it is strongly recommended to establish specific working teams in each country. A full-time supervisor with co-ordination and monitoring functions should be at the head of each group. From the beginning, each team should include representatives of every involved

sector: the appropriate administrative branches, researchers, NGOs, landowners, hunters, and so on.

Specifically, the Spanish team should incorporate representatives of the CA that harbour lynx within their boundaries. It would be convenient that this group be inserted within the already established Lynx Group of the Wild Fauna and Flora National Committee. Some members of both Spanish and Portuguese teams are expected to set up a Mixed Committee facilitating coordination between policies at the country level. Where required, the declaration of areas harbouring transborder lynx populations as international reserves with co-ordinated management could be considered.

To confer legal meaning to these conservation efforts, it would be convenient that the Portuguese National Plan and the Spanish National Strategy were published in the respective national official gazettes, and that plan guidelines were formally stated in an Iberian international agreement. It is recommended that lynx conservation plans will be officially published as soon as possible; given the current status of the Iberian lynx, the approval and publication of the plans should be ready before the end of 1999.

Comprehensive information about the problems of lynx, as well as conservation plans and strategies, should be diffused widely, with special emphasis on administrative sectors involved in habitat management and rural economy. In case of conflictive initiatives between different administrative branches, the critical situation of the Iberian lynx compels giving priority to the conservation of this species and its habitat. Arbitration mechanisms to establish this priority could be developed.

Actions:

- 1.1. The Bern Convention adopts this Action Plan and proposes it to the Portuguese and Spanish authorities.
- 1.2. The governments of Portugal and Spain set up an interdisciplinary team to draw up, coordinate, implement, and supervise the Portuguese Plan and the Spanish Strategy for the Iberian lynx conservation, respectively. With regard to the Spanish part, this strategy has to fit into the recovery plans of every involved CA. Each team is co-ordinated by a full-time supervisor.
- 1.3. Develop specific formulas of trans-regional and trans-national co-ordination in lynx management (e.g. international reserves).
- 1.4. Integrate specific conservation measures for the Iberian lynx into existing laws and regulations and, if necessary, provide new legal coverage to such measures.
- 1.5. Publish the Iberian lynx conservation plans and strategies in the official gazettes.

11.3 Dispute Settlement

11.3.1 Convention Text – Article 18

1. The Standing Committee shall use its best endeavours to facilitate a friendly settlement of any difficulty to which the execution of this Convention may give rise.
2. Any dispute between Contracting Parties concerning the interpretation or application of this Convention which has not been settled on the basis of the provisions of the preceding paragraph or by negotiation between the parties concerned shall, unless the said parties agree otherwise, be submitted, at the request of one of them, to arbitration. Each party shall designate an arbitrator and the two arbitrators shall designate a third arbitrator. Subject to the provisions of paragraph 3 of this article, if one of the parties has not designated its arbitrator within the three months following the request for arbitration, he shall be designated at the request of the other party by the President of the European Court of Human Rights within a further three months' period. The same procedure shall be observed if the arbitrators cannot agree on the choice of the third arbitrator within the three months following the designation of the two first arbitrators.
3. In the event of a dispute between two Contracting Parties one of which is a member State of the European Economic Community, the latter itself being a Contracting Party, the other Contracting Party shall address the request for arbitration both to the member State and to the Community, which jointly shall notify it, within two months of receipt of the request, whether the member State or the Community, or the member and the Community jointly, shall be party to the dispute. In the absence of such notification within the said time limit, the member State and the Community shall be considered as being one and the same party to the dispute for the purposes of the application of the provisions governing the constitution and procedure of the arbitration tribunal. The same shall apply when the member State and the Community jointly present themselves as party to the dispute.
4. The arbitration tribunal shall draw up its own Rules of Procedure. Its decisions shall be taken by majority vote. Its award shall be final and binding.
5. Each party to the dispute shall bear the expenses of the arbitrator designated by it and the parties shall share equally the expenses of the third arbitrator, as well as other costs entailed by the arbitration.

11.3.2 Standing Committee Decision - Conservation of Laganas Bay, Zakynthos, Greece (1995)

The Standing Committee, acting under Article 14 of the Convention,

Recognising that the beaches of Laganas Bay are very important nesting sites for the endangered loggerhead turtle *Caretta caretta*, listed in Appendix II of the Convention;

Recalling the obligations of Contracting Parties under Article 4 of the Convention to take measures to ensure the conservation of fauna species specified in Appendix II of the Convention;

Recalling that Article 4 of the Convention asks Contracting Parties to give special attention to the protection of areas of importance for the migratory species specified in Appendix II (such as *Caretta caretta*) and which are appropriately situated in relation to breeding areas;

Recalling that Article 6 of the Convention requires Parties to ensure the special protection of the wild fauna species specified in Appendix II and that the deliberate damage to or destruction of breeding sites is particularly prohibited in this context;

Recognising that the nesting beaches of *Caretta caretta* in Laganas Bay fall unmistakably within the scope of Article 4 paragraphs 1 to 3 and of Article 6 of the Convention;

Having been informed of a number of facts contributing to the deterioration of the nesting beaches of *Caretta caretta* in Laganas Bay;

Recognising that it has not been possible to find so far an acceptable balance between development and conservation in this case;

Recalling and confirming the positions it has taken on this issue, namely its Decision of December 1986, its Recommendation No. 9 of 1987, the measures it invited Greece to examine in 1989, the Declaration it transmitted to the Committee of Ministers in December 1992 and its Declaration of December 1993;

Concerned that the credibility of the Convention is at stake;

Eager to find an acceptable solution to the issue that may assure the long-term preservation of the nesting sites of *Caretta caretta*;

Taking note of the will expressed by the Greek government to give a quick and acceptable solution to the case:

1. Urges Greece to implement without any delay the decisions already taken to demolish 13 illegal buildings surrounding the Daphni beach;
2. Urges Greece to take without any delay all the necessary steps to reach

decisions about all the other illegal buildings in the area of Laganas Bay and to swiftly implement these decisions;

3. Urges Greece to actually implement Recommendation No. 9 in order to achieve a favourable conservation statut;
4. Urges Greece to create within three years the planned national marine park in Laganas Bay;
5. Declares that failure of Greece to comply with any of these four conditions will be understood by the Committee as a grave and repeated breach of its obligations under the convention and as an encouragement to Parties to proceed according to Article 18 paragraphs 2 to 5 of the Convention.

11.3.3 Standing Committee Decision - Lack of appropriate conservation measures of Laganas Bay, Zakynthos, Greece (1999)

The Standing Committee Convention on the Conservation of European Wildlife and Natural Habitats, acting under Article 14 of the Convention,

Recognising that the beaches of Laganas Bay are very important nesting sites for the endangered loggerhead turtle *Caretta caretta*, listed in Appendix II of the Convention;

Recalling the obligations of the Contracting Parties under Article 4 of the Convention to take measures to ensure the conservation of fauna species specified in Appendix II of the Convention;

Recalling that Article 4 of the Convention asks Contracting Parties to give special attention to the protection of areas of importance for the migratory species specified in Appendix II (such as *Caretta caretta*) and which are appropriately situated in relation to breeding areas;

Recalling that Article 6 of the Convention requires Parties to ensure the special protection of the wild fauna species specified in Appendix II and that the deliberate damage to or destruction of breeding sites is particularly prohibited in this context;

Recognising that the nesting beaches of *Caretta caretta* in Laganas Bay fall unmistakably within the scope of Article 4 paragraphs 1 to 3 and of Article 6 of the Convention;

Having been informed of a number of facts contributing to the deterioration of the nesting beaches of *Caretta caretta* in Laganas Bay;

Recognising that it has not been possible to find so far an acceptable balance between development and conservation in this case;

Recalling and confirming the positions it has taken on this issue, namely its Decision of December 1986, its Recommendation No. 9 of 1987, the measures it invited Greece

to examine in 1989, the Declaration it transmitted to the Committee of Ministers in December 1992, and its Declaration of December 1993;

Noting that the Committee has discussed this case 13 times since 1986, without substantial positive results;

Recalling its Decision of 24 March 1995;

Noting with regret that Greece has failed to demolish 13 illegal buildings surrounding the Dafni beach;

Noting with regret that Greece has failed to demolish other illegal buildings in the area of Laganas Bay;

Noting with regret that many important parts of its Recommendation No. 9 (1987) have not been implemented by Greece;

Noting with regret that Greece has failed to create a national marine park in Laganas Bay;

Recalling the terms of Article 18 of the Convention, and the rights of Contracting Parties concerning the settlement of disputes;

Taking into account that the European Commission has taken this case to the Court of Justice of the European Community;

Deeply concerned that the credibility of the Convention is at stake:

Declares that in the present case Greece has failed to comply with the conditions set up in its Decision of 24 March 1995;

Decides that in the 13 years it has discussed this case, the Committee has fulfilled more than sufficiently its obligations under Article 18, paragraph 1, of the Convention;

Decides to close the file.

12. ESPOO CONVENTION ON ENVIRONMENTAL IMPACT ASSESSMENT IN A TRANSBOUNDARY CONTEXT, 1991

12.1 Multilateral Procedures to Promote Compliance and Address Non-Compliance

12.1.1 MOP Decision III/7 – Second amendment to the Espoo Convention, Article 14bis (2004)

The amendment has not yet entered into force -

Review of compliance

1. The Parties shall review compliance with the provisions of this Convention on the basis of the compliance procedure, as a non-adversarial and assistance-oriented procedure adopted by the Meeting of the Parties. The review shall be based on, but not limited to, regular reporting by the Parties. The Meeting of Parties shall decide on the frequency of regular reporting required by the Parties and the information to be included in those regular reports.
2. The compliance procedure shall be available for application to any protocol adopted under this Convention.

12.1.2 MOP Decision III/2 - Revised mandate of the implementation committee (2004)

The Meeting,

Recalling Article 11, paragraph 2, of the Convention, and decision II/4 on the review of compliance,

Determined to promote and improve compliance with the Convention,

Having reviewed the structure and functions of the Implementation Committee, bearing in mind the possible involvement of the public,

Recognizing the importance of rigorous reporting by Parties of their compliance with the Convention, and noting the first review of the implementation of the Convention as referred to in its decision III/1,

Recalling that Parties may make submissions to the Committee regarding their own compliance, in accordance with paragraph 4 (b) of the appendix to decision II/4,

1. Encourages Parties to bring issues concerning their own compliance before the Committee;

2. Decides that the structure and functions of the Committee and the procedures for review of compliance shall be those set out in the appendix to this decision, amending and replacing the appendix to decision II/4;
3. Resolves that the procedure for the review of compliance shall apply to the Convention and any amendments to it;
4. Encourages the application of the procedure for the review of compliance to the Protocol on Strategic Environmental Assessment and to any future protocols to the Convention, in accordance with their relevant provisions;
5. Decides to keep under review and develop if necessary the structure and functions of the Committee at the fourth meeting of the Parties in the light of experience gained by the Committee in the interim, including with public involvement, and in this context requests the Committee to prepare any necessary proposals for the fourth meeting of the Parties;
6. Recommends that further measures should be taken to strengthen reporting, and in this respect welcomes decision III/9 on the work plan; and
7. Welcomes the reports of the first five meetings of the Implementation Committee and requests the Committee to consider developing criteria for dealing with information other than submissions from Parties and proposals on membership of the Committee when considering matters under the Protocol on Strategic Environmental Assessment.

Appendix

Structure and functions of the Implementation Committee and Procedures for Review of Compliance

Structure

1. (a) The Committee shall consist of eight Parties to the Convention. Each of the eight Parties shall appoint a member of the Committee. At their second meeting, the Parties elected four Parties to the Committee for two terms and four Parties for one term. At each session thereafter, the Meeting of the Parties shall elect four new Parties for two terms. Outgoing Parties may be reelected once, unless in a given case the Meeting of the Parties decides otherwise. The Committee shall elect its own Chair and Vice-Chair;
- (b) For the purposes of this paragraph „term(s)“ means the period that begins at the end of one meeting of the Parties and ends at the end of the next meeting of the Parties.

Meetings

2. The Committee shall, unless it decides otherwise, meet at least once a year. The secretariat shall arrange for and service its meetings. The agenda for each meeting shall be made publicly available before the meeting.
3. Its meetings shall be open to other Parties and the public, unless the Committee decides otherwise. Parts of meetings dealing with specific submissions relating to compliance shall not be open to other Parties or to the public, unless the Committee and the Party whose compliance is in question agree otherwise.

Objective and functions of the Committee

4. The objective of the Committee shall be to assist Parties to comply fully with their obligations under the Convention, and to this end it shall:
 - (a) Consider any submission made in accordance with paragraph 5 below or any other possible non-compliance by a Party with its obligations that the Committee decides to consider in accordance with paragraph 6, with a view to securing a constructive solution;
 - (b) Review periodically, in accordance with guidelines or criteria formulated by the Meeting of the Parties, compliance by the Parties with the ir obligations under the Convention on the basis of the information provided in their reports;
 - (c) Prepare the reports referred to in paragraph 11 with a view to providing any appropriate assistance to the Party or Parties concerned, for example by clarifying and assisting in the resolution of questions; providing advice and recommendations relating to procedural, technical or administrative matters; and providing advice on the compilation and communication of information; and
 - (d) Prepare, at the request of the Meeting of the Parties, and based on relevant experience acquired in the performance of its functions under subparagraphs (a), (b) and (c) above, a report on compliance with or implementation of specified obligations in the provisions of the Convention.

Submission by Parties

5. A submission may be brought before the Committee by:
 - (a) One or more Parties to the Convention that have concerns about another Party's compliance with its obligations under that instrument. Such a submission shall relate specifically to those concerns and shall be addressed in writing by the focal point of the Party in question to the secretariat and supported by corroborating information. The secretariat shall, within two weeks of receiving a submission, send a copy of it to

the focal point of the Party whose compliance is at issue. Any reply and information in support thereof shall be submitted to the secretariat and to the focal points of the Parties involved within three months or such longer period as the Parties involved agree. The secretariat shall transmit the submission and the reply, as well as all corroborating and supporting information, to the Committee, which shall consider the matter as soon as possible; or

- (b) A Party that concludes that, despite its best endeavours, it is or will be unable to comply fully with its obligations under the Convention. Such a submission shall be addressed in writing to the secretariat and explain, in particular, the specific circumstances that the Party considers to be the cause of its non-compliance. The secretariat shall transmit the submission to the Committee, which shall consider it as soon as possible.

Committee initiative

- 6. Where the Committee becomes aware of possible non-compliance by a Party with its obligations, it may request the Party concerned to furnish necessary information about the matter. Any reply and information in support shall be provided to the Committee within three months or such longer period as the circumstances of a particular case may require. The Committee shall consider the matter as soon as possible in the light of any reply that the Party may provide.

Information gathering

- 7. To assist the performance of its functions under paragraph 4 above, the Committee may:
 - (a) Request further information on matters under its consideration, through the secretariat;
 - (b) Undertake, at the invitation of the Party of origin and/or the affected Party, information gathering in the territory of that Party;
 - (c) Consider any information forwarded by the secretariat concerning compliance with the Convention; and
 - (d) As appropriate, seek the services of scientific experts and other technical advice or consult other relevant sources.
- 8. The Committee shall ensure the confidentiality of information that has been provided to it in confidence, inter alia, with regard to the reports of its meetings.

Entitlement to participate

- 9. A Party in respect of which a submission is made or which makes a submission shall be entitled to participate in, or be present during, the consideration by the

Committee of that submission, but shall not take part in the preparation and adoption of any report or recommendations of the Committee. The Committee shall decide on the content of any report or recommendations by consensus, send a copy of the draft report or recommendations to the Parties concerned, and shall take into account any representations from such Parties in the finalization of the report.

10. A member of the Committee that represents a Party in respect of which a submission is made or which makes a submission shall be entitled to participate in the consideration by the Committee of that submission but shall not participate in, or be present during, the preparation and adoption of any part of a report or recommendation of the Committee that relates to that submission.

Committee reports to the Meeting of the Parties

11. The Committee shall report on its activities at each meeting of the Parties through the secretariat and make such recommendations as it considers appropriate, taking into account the circumstances of the matter, regarding compliance with the Convention. Each report shall be finalized by the Committee not later than ten weeks in advance of the session of the Meeting of the Parties at which it is to be considered. Every effort shall be made to adopt the report by consensus. Where this is not possible the report shall reflect the views of all the Committee members. Committee reports shall be available to the public.

Competence of Committee members

12. If as a result of the operation of paragraph 10 the size of the Committee is reduced to five members or less, the Committee shall forthwith refer the matter in question to the Meeting of the Parties.

Consideration by the Meeting of the Parties

13. The Meeting of the Parties may, upon consideration of a report and any recommendations of the Committee, decide upon appropriate general measures to bring about compliance with the Convention and measures to assist an individual Party's compliance. The Parties shall make every effort to reach a decision by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the decision shall, as a last resort, be adopted by a three-fourths majority vote of the Parties present and voting at the meeting. Relationship to settlement of disputes and the inquiry procedure
14. The present compliance procedure, as a non-adversarial and assistance-oriented procedure, shall be without prejudice to the settlement of disputes provisions in Article 15 of the Convention.

15. Where a matter is being considered under an inquiry procedure under Article 3, paragraph 7, of the Convention, that matter may not be the subject of a submission under this decision.

12.1.3 MOP Decision IV/2 Annex IV - Operating rules of the implementation committee (2008)

Operating rules of the Implementation Committee

Preamble

The second meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context decided to establish an Implementation Committee for the review of compliance by the Parties with their obligations under the Convention, with a view to assisting them fully to meet their commitments (decision II/4). The third meeting of the Parties decided to revise the structure and functions of the Committee and the procedures for review of compliance (decision III/2).

These operating rules guide the Implementation Committee in the execution of its functions and provide more detail on how the Committee should operate within its structure and functions. The Committee considers that the rules are needed to facilitate its work. The rules incorporate decisions made by the Committee in its meetings and reflected in their reports. It is intended that the rules promote consistency, predictability, credibility, transparency, accountability and efficiency in the work of the Committee, particularly with regard to procedures for the review of compliance. It is also intended that the rules will provide a flexible means of adapting the Committee's mode of operation in the light of its experience.

Purposes

Rule 1⁸³

These operating rules should apply to any meeting and to any other conduct of business of the Implementation Committee under the Convention and should be read together with and in furtherance of the structure, functions and procedures set out in the appendix to decision III/2 of the Meeting of the Parties to the Convention.

Rule 2

The following rules of procedure of the Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context, should apply, *mutatis mutandis*, to any meeting of the Implementation Committee under the Convention on Environmental Impact Assessment in a Transboundary Context, except as otherwise provided in the rules set out herein and in the appendix to decision III/2: rule 3 (Place of meetings); rules 12 and 13 (Agenda); rules 20 to 22 (Officers); rules 24 and 25(c) (Secretariat); rules 28 and 30 to 35 (Conduct of business), except rule 32, paragraph 2; and rules 38 to 46 (Voting).

83 The Committee should refer here to paragraph 4 of the appendix to decision III/2.

Definitions

Rule 3

For the purposes of these rules:

- (a) "Convention" means the Convention on Environmental Impact Assessment in a Transboundary Context, adopted at Espoo (Finland) on 25 February 1991;
- (b) "Parties" means Contracting Parties to the Convention;
- (c) "Meeting of the Parties" means the Meeting of the Parties established in accordance with Article 11 of the Convention;
- (d) "Committee" means the Implementation Committee first established by decision II/4 of the Meeting of the Parties;
- (e) "Submitting Party" means one or more Parties that have concerns about another Party's compliance with its obligations under the Convention and accordingly bring a submission before the Committee in accordance with paragraph 5 (a) of the appendix to decision III/2 of the Meeting of the Parties;
- (f) "Parties involved" means the Party whose compliance with its obligations under the Convention is in question and, as appropriate, the submitting Party;
- (g) "Chair" and "Vice-Chair" mean, respectively, the Chairperson and the Vice Chairperson elected in accordance with rule 6 and with paragraph 1 (a) of the appendix to decision III/2;
- (h) "Member" means a member of the Committee appointed in accordance with paragraph 1 of the appendix to decision III/2 or a replacement appointed in accordance with of rule 4;
- (i) "Secretariat" means, in accordance with Article 13 of the Convention, the Executive Secretary of the United Nations Economic Commission for Europe;
- (j) "Official language" means one of the official languages of the United Nations Economic Commission for Europe: English, French and Russian.

Members

Rule 4⁸⁴

1. The Meeting of the Parties should elect Parties for serving two terms in the Committee.

84 The Committee should refer here to the first four sentences of paragraph 1 (a), and to paragraph 1 (b), of the appendix to decision III/.

Each Party elected by the Meeting of the Parties should appoint a member of the Committee for two terms. The term of office of a member shall commence with the appointment by a Party.

This paragraph should apply without prejudice to the right of a Party elected by the Meeting of the Parties to appoint in exceptional cases a permanent replacement for that member.

2. Members are expected to participate in every meeting of the Committee. If in exceptional cases a member is unable to participate in a meeting of the Committee, the respective Party should make all efforts to provide a suitable replacement of that member for the meeting of the Committee, informing the Chair and the secretariat accordingly well in advance of the meeting.
3. Each member should ensure the confidentiality of information in accordance with these rules.

Rule 5

1. Each member should, with respect to any matter that is under consideration by the Committee, avoid direct or indirect conflict of interest. Where a member finds himself or herself faced with a direct or indirect conflict of interest, that member should bring the conflict of interest to the attention of the Committee before consideration of that particular matter. The concerned member should not participate in the elaboration and adoption of a finding or recommendation of the Committee in relation to that matter.
2. A member that represents a Party in respect of which a submission is made or which makes a submission should be entitled to participate in the consideration by the Committee of that submission but should not participate in, or be present during, the preparation and adoption of any part of a report, finding or recommendation of the Committee that relates to that submission.⁸⁵ This paragraph should be applied, *mutatis mutandis*, in the case of a Committee initiative.
3. The members and the secretariat might accept invitations to present the Convention's compliance mechanism at appropriate events, such as conferences and workshops.

85 The Committee should refer here to paragraph 10 of the appendix to decision III/2.

Officers

Rule 6

1. The Committee should elect a Chair and a Vice-Chair for one term.⁸⁶ They should serve in those capacities until their successors are elected. The Chair and Vice-Chair could be reelected. If an officer resigns during, or is unable to complete, his or her term of office, the Committee should elect a successor until the end of the term.
2. In the case that a Party intends to provide a permanent replacement for a member elected as a Chair or Vice-Chair, it should notify the Committee well in advance in order to allow a new election of the respective officer.
3. No officer should serve for more than two consecutive terms.

Meetings⁸⁷

Rule 7⁸⁸

1. At each meeting, the Committee, taking into account the current workplan adopted by the Meeting of the Parties, should set the indicative date for the opening and the duration of its next meeting.
2. The Committee should decide on the date, duration and venue of its meetings having regard to the budget adopted by the Meeting of the Parties. If the Committee considers necessary for the execution of its functions the holding of meetings for which no budget has been adopted by the Meeting of the Parties, it should first ensure that the necessary additional funding is available.

Rule 8

The secretariat should notify all members of the dates and venue of a meeting at least four weeks before the meeting is due to take place.

Agenda

Rule 9

In agreement with the Chair, the secretariat should prepare the provisional agenda of each meeting. The provisional agenda should include items arising from the Committee's functions as specified by the Meeting of the Parties and other matters related thereto. The provisional agenda for each meeting should indicate which items are closed to the public in accordance with rule 17, paragraph 1.

86 The Committee should refer here to the fifth sentence of paragraph 1 (a), and to paragraph 1 (b), of the appendix to decision III/2.

87 The Committee should refer here to the second sentence of paragraph 2 of the appendix to decision III/2.

88 The Committee should refer here to the first sentence of paragraph 2 of the appendix to decision III/2.

Rule 10

To the extent possible, the provisional agenda should be distributed by the secretariat to all members at least four weeks before the meeting takes place. Other documents, prepared by the secretariat or by members, should be distributed, to the extent possible, at least two weeks before the meeting begins.

Procedures for Submissions⁸⁹

Rule 11

1. Generally, the Committee should not begin the formal discussion on a matter at any meeting that takes place before any requested reply has been received from the Party whose compliance is in question or the applicable deadline for replying has passed. This paragraph should be applied, *mutatis mutandis*, in the case that the Committee requests additional information from the Submitting Party.
2. When it is known that the Committee will discuss the matter of any submission at a particular meeting, the secretariat should notify the Parties involved that the matter will be discussed as well as of their right to participate in the discussion and to present to the Committee information and opinions on the matter under consideration.
3. Generally, the Parties involved should present any new substantial information to the Committee through the secretariat at least two weeks in advance of the meeting at which the matter will be discussed.

Rule 12⁹⁰

1. The Committee should prepare draft findings and recommendations in closed session, taking into account, *inter alia*, any submission, reply, corroborating and supporting information and presentations to the Committee by the Parties involved. The Committee should start by considering and drawing appropriate conclusions as to whether or not the Party concerned is in compliance. It might distinguish at this point between failure to establish the necessary implementing measures and failure to apply such measures.
2. If the Committee provisionally finds that the Party whose compliance is in question is not in compliance, it should then consider and agree upon possible recommendations to the Meeting of the Parties, recalling that the present compliance procedure is non-adversarial and assistance-orientated.

⁸⁹ The Committee should refer here to paragraphs 5 (a), 5 (b) and 7 of the appendix to decision III/2.

⁹⁰ The Committee should refer here to the second sentence of paragraph 9 of the appendix to decision III/2.

Possible recommendations to bring about compliance might include:

- (a) Recommendations to the Party concerned on what legislation, procedures or institutions require strengthening and how;
- (b) A recommendation to the Party concerned to submit to the Committee a strategy, with time schedule, for action to bring about compliance, and to report to the Committee on its implementation of the strategy;
- (c) A recommendation to the Meeting of the Parties, and to potential donors, to provide assistance to the Party concerned through national or subregional workshops, training, seminars or technical assistance;
- (d) A recommendation to the Meeting of the Parties to issue a declaration of non compliance or a caution;
- (e) In exceptional circumstances, a recommendation to the Meeting of the Parties to suspend, in accordance with the applicable rules of international law concerning the suspension of the operation of a treaty, the special rights and privileges accorded to the Party concerned under the Convention.⁹¹

Rule 13⁹²

1. Once prepared, the draft findings and recommendations should be transmitted to the Parties involved inviting them to comment (or make representations) within a reasonable deadline, and to submit their comments through the secretariat. The draft findings and recommendations should not be publicly available at this stage. If possible and if necessary to help the Parties involved to comment, the Committee might arrange for the draft findings and recommendations to be translated into another official language.
2. Within two weeks of receiving any comments, the secretariat should transmit the comments to the Committee and the other Parties involved, unless the Party providing the comments requested otherwise, in which case those comments should be forwarded only to the Committee.
3. At its meeting following the deadline for comments, the Committee should review and finalize the draft findings and recommendations taking into account the comments received. The findings and recommendations should be prepared as an addendum to the report of the meeting (i.e. as an official document), and transmitted to the Parties involved and to the Meeting of the Parties.

91 See Article 60 of the Convention on the Law of Treaties (Vienna, 1969), which provides for the termination or suspension of the operation of a treaty as a consequence of its breach.

92 The Committee should refer here to the second sentence of paragraph 9 of the appendix to decision III/2.

Rule 14⁹³

Pending consideration by the Meeting of the Parties, with a view to addressing compliance issues without delay, the Committee might:

- (a) Provide advice and facilitate assistance to a Party whose compliance is in question regarding its implementation of the Convention, in consultation with that Party;
- (b) Make recommendations to a Party whose compliance is in question, subject to agreement with that Party.

Procedures for Committee Initiatives⁹⁴

Rule 15

1. The sources of information by which the Committee might become aware of a possible non-compliance could be:
 - (a) Parties' work under the Convention;
 - (b) Any other source.
2. In determining whether to begin a Committee initiative, in accordance with paragraph 6 of the appendix to decision III/2, the Committee should take into account, inter alia, the following:
 - (a) The source of the information is known and not anonymous;
 - (b) The information relates to an activity listed in Appendix I to the Convention likely to have a significant adverse transboundary impact;
 - (c) The information is the basis for a profound suspicion of non-compliance;
 - (d) The information relates to the implementation of Convention provisions;
 - (e) Committee time and resources are available.
3. The Committee should consider the information on a non-discriminatory, non-arbitrary and unbiased basis.
4. Rules 11 to 14 should be applied, mutatis mutandis, in the case of a Committee initiative.

93 The Committee should refer here to paragraph 11 of the appendix to decision III/2.

94 The Committee should refer here to paragraphs 6 and 7 of the appendix to decision III/2.

Publication of Documents and Information

Rule 16⁹⁵

1. The provisional agenda, together with related official documents (other than confidential items) of a meeting of the Committee, should be publicly available on the Convention website.
2. Meeting reports, together with other related official documents (other than confidential items), should be publicly available on the Convention website once agreed by the Committee.
3. Discussion papers prepared by the secretariat or by members for meetings of the Committee should not be publicly available unless the Committee decides otherwise.
4. Submissions and related documents should not be publicly available on the Convention website, but the secretariat should prepare a short summary of each submission (including in particular the names of the Parties involved, the date of the submission, and the name and type of the activity in question). This short summary should be publicly available on the Convention website once agreed by the Committee. Apart from this short summary, working documents and further information related to specific submissions should not be published and their contents should be treated as confidential if requested. This paragraph should be applied, *mutatis mutandis*, in the case of a Committee initiative.

Participation in Meetings of the Committee

Rule 17⁹⁶

1. Meetings of the Committee should be open to observers (other Parties, States, bodies, agencies and the public), unless the Committee decides otherwise. Parts of meetings dealing with specific submissions relating to compliance should not be open to observers, unless the Committee and the Party whose compliance is in question agree otherwise. Observers should register with the secretariat in advance of each meeting.
2. A Party in respect of which a submission is made or which makes a submission should be entitled to participate in, or be present during, the consideration by the Committee of that submission, but should not take part in the preparation and adoption of any report, finding or recommendation of the Committee.
3. This rule should be applied, *mutatis mutandis*, in case of a Committee initiative.

95 The Committee should refer here to the third sentence of paragraph 2 and to paragraph 8 of the appendix to decision III/2.

96 The Committee should refer here to paragraphs 3 and 9 of the appendix to decision III/2.

Decision-making

Rule 18⁹⁷

1. The Committee should make every effort to reach its decisions by consensus. If all efforts to reach consensus have been exhausted and no agreement has been reached, any other decision should, as a last resort, be taken by a majority vote of the members present and voting, if at least five members are present. For decision-making, each member should have one vote. Where consensus is not possible, the report should reflect the views of all members.
2. Without prejudice to rule 19 for the purposes of these rules, the phrase “members present and voting” means members present at the meeting at which voting takes place and casting an affirmative or negative vote. Members abstaining from voting should be considered as not voting.

Rule 19

In between meetings, electronic means of communication might be used by the members for the purpose of decision-making and of conducting informal consultations on issues under consideration. Decisions could only be taken by electronic means of communication, if the issue is urgent, if no member opposes using such means in a particular case, and if all eight members participate in decision-making by submitting to the Chair and the secretariat their vote or informing the Chair and the secretariat that they are abstaining from voting. Any decisions taken by electronic means of communication should be reflected in the report of the meeting of the Committee that follows the taking of the decision.

Language

Rule 20

1. The working language of the Committee should be English. The secretariat, for meetings of the Committee held at the United Nations Office at Geneva, or the host country, for meetings held elsewhere, might arrange interpretation in one of the other official languages, if needed and agreed by the Committee.
2. The Committee might allow members to be accompanied by their own interpreters at their own cost. Members are responsible for ensuring that their own interpreters ensure the confidentiality of information in accordance with these rules.
3. Communication by electronic means and informal Committee papers should be in English. Official documents of the meetings should be drawn up in English and translated into the other official languages.

⁹⁷ The Committee should refer here to paragraphs 9, 11 and 12 of the appendix to decision III/2.

Rule 21

A submission from a Party, the reply and further documents and information should be in English.

Amendments to the Operating Rules

Rule 22

Any amendment to these rules shall be adopted by consensus by the Committee and submitted to the Meeting of the Parties for consideration and approval. These rules shall be amended to reflect, as necessary, any amendment to decision III/2.

Overriding Authority of the Convention and Decision III/2

Rule 23

In the event of a conflict between any provision in these rules and any provision in the Convention or decision III/2, the provisions of the Convention or decision III/2 shall prevail.

12.1.4 Convention Text – Article 3 VII

7. When a Party considers that it would be affected by a significant adverse transboundary impact of a proposed activity listed in Appendix I, and when no notification has taken place in accordance with paragraph 1 of this Article, the concerned Parties shall, at the request of the affected Party, exchange sufficient information for the purposes of holding discussions on whether there is likely to be a significant adverse transboundary impact. If those Parties agree that there is likely to be a significant adverse transboundary impact, the provisions of this Convention shall apply accordingly. If those Parties cannot agree whether there is likely to be a significant adverse transboundary impact, any such Party may submit that question to an inquiry commission in accordance with the provisions of Appendix IV to advise on the likelihood of significant adverse transboundary impact, unless they agree on another method of settling this question.

12.1.5 Convention Text – Appendix IV

Inquiry procedure

1. The requesting Party or Parties shall notify the secretariat that it or they submit(s) the question of whether a proposed activity listed in Appendix I is likely to have a significant adverse transboundary impact to an inquiry commission established in accordance with the provisions of this Appendix. This notification shall state the subject-matter of the inquiry. The secretariat shall notify immediately all Parties to this Convention of this submission.
2. The inquiry commission shall consist of three members. Both the requesting party and the other party to the inquiry procedure shall appoint a scientific

or technical expert, and the two experts so appointed shall designate by common agreement the third expert, who shall be the president of the inquiry commission. The latter shall not be a national of one of the parties to the inquiry procedure, nor have his or her usual place of residence in the territory of one of these parties, nor be employed by any of them, nor have dealt with the matter in any other capacity.

3. If the president of the inquiry commission has not been designated within two months of the appointment of the second expert, the Executive Secretary of the Economic Commission for Europe shall, at the request of either party, designate the president within a further two-month period.
4. If one of the parties to the inquiry procedure does not appoint an expert within one month of its receipt of the notification by the secretariat, the other party may inform the Executive Secretary of the Economic Commission for Europe, who shall designate the president of the inquiry commission within a further two-month period. Upon designation, the president of the inquiry commission shall request the party which has not appointed an expert to do so within one month. After such a period, the president shall inform the Executive Secretary of the Economic Commission for Europe, who shall make this appointment within a further two-month period.
5. The inquiry commission shall adopt its own rules of procedure.
6. The inquiry commission may take all appropriate measures in order to carry out its functions.
7. The parties to the inquiry procedure shall facilitate the work of the inquiry commission and, in particular, using all means at their disposal, shall:
 - (a) Provide it with all relevant documents, facilities and information; and
 - (b) Enable it, where necessary, to call witnesses or experts and receive their evidence.
8. The parties and the experts shall protect the confidentiality of any information they receive in confidence during the work of the inquiry commission.
9. If one of the parties to the inquiry procedure does not appear before the inquiry commission or fails to present its case, the other party may request the inquiry commission to continue the proceedings and to complete its work. Absence of a party or failure of a party to present its case shall not constitute a bar to the continuation and completion of the work of the inquiry commission.
10. Unless the inquiry commission determines otherwise because of the particular circumstances of the matter, the expenses of the inquiry commission, including the remuneration of its members, shall be borne by the parties to the inquiry procedure in equal shares. The inquiry commission shall keep a record of all its expenses, and shall furnish a final statement thereof to the parties.

11. Any Party having an interest of a factual nature in the subject-matter of the inquiry procedure, and which may be affected by an opinion in the matter, may intervene in the proceedings with the consent of the inquiry commission.
12. The decisions of the inquiry commission on matters of procedure shall be taken by majority vote of its members. The final opinion of the inquiry commission shall reflect the view of the majority of its members and shall include any dissenting view.
13. The inquiry commission shall present its final opinion within two months of the date on which it was established unless it finds it necessary to extend this time limit for a period which should not exceed two months.
14. The final opinion of the inquiry commission shall be based on accepted scientific principles. The final opinion shall be transmitted by the inquiry commission to the parties to the inquiry procedure and to the secretariat.

12.2 Dispute Settlement

12.2.1 Convention Text – Article 15

Settlement of disputes

1. If a dispute arises between two or more Parties about the interpretation or application of this Convention, they shall seek a solution by negotiation or by any other method of dispute settlement acceptable to the parties to the dispute.
2. When signing, ratifying, accepting, approving or acceding to this Convention, or at any time thereafter, a Party may declare in writing to the Depositary that for a dispute not resolved in accordance with paragraph 1 of this Article, it accepts one or both of the following means of dispute settlement as compulsory in relation to any Party accepting the same obligation:
 - (a) Submission of the dispute to the International Court of Justice;
 - (b) Arbitration in accordance with the procedure set out in Appendix VII.
3. If the parties to the dispute have accepted both means of dispute settlement referred to in paragraph 2 of this Article, the dispute may be submitted only to the International Court of Justice, unless the parties agree otherwise.

12.2.2 Convention Text – Appendix VII

Arbitration

1. The claimant Party or Parties shall notify the secretariat that the Parties have agreed to submit the dispute to arbitration pursuant to Article 15, paragraph 2, of this Convention. The notification shall state the subject-matter of arbitration

and include, in particular, the Articles of this Convention, the interpretation or application of which are at issue. The secretariat shall forward the information received to all Parties to this Convention.

2. The arbitral tribunal shall consist of three members. Both the claimant Party or Parties and the other Party or Parties to the dispute shall appoint an arbitrator, and the two arbitrators so appointed shall designate by common agreement the third arbitrator, who shall be the president of the arbitral tribunal. The latter shall not be a national of one of the parties to the dispute, nor have his or her usual place of residence in the territory of one of these parties, nor be employed by any of them, nor have dealt with the case in any other capacity.
3. If the president of the arbitral tribunal has not been designated within two months of the appointment of the second arbitrator, the Executive Secretary of the Economic Commission for Europe shall, at the request of either party to the dispute, designate the president within a further two-month period.
4. If one of the parties to the dispute does not appoint an arbitrator within two months of the receipt of the request, the other party may inform the Executive Secretary of the Economic Commission for Europe, who shall designate the president of the arbitral tribunal within a further two-month period. Upon designation, the president of the arbitral tribunal shall request the party which has not appointed an arbitrator to do so within two months. After such a period, the president shall inform the Executive Secretary of the Economic Commission for Europe, who shall make this appointment within a further two-month period.
5. The arbitral tribunal shall render its decision in accordance with international law and in accordance with the provisions of this Convention.
6. Any arbitral tribunal constituted under the provisions set out herein shall draw up its own rules of procedure.
7. The decisions of the arbitral tribunal, both on procedure and on substance, shall be taken by majority vote of its members.
8. The tribunal may take all appropriate measures in order to establish the facts.
9. The parties to the dispute shall facilitate the work of the arbitral tribunal and, in particular, using all means at their disposal, shall:
 - (a) Provide it with all relevant documents, facilities and information; and
 - (b) Enable it, where necessary, to call witnesses or experts and receive their evidence.
10. The parties and the arbitrators shall protect the confidentiality of any information they receive in confidence during the proceedings of the arbitral tribunal.
11. The arbitral tribunal may, at the request of one of the parties, recommend interim measures of protection.

12. If one of the parties to the dispute does not appear before the arbitral tribunal or fails to defend its case, the other party may request the tribunal to continue the proceedings and to render its final decision. Absence of a party or failure of a party to defend its case shall not constitute a bar to the proceedings. Before rendering its final decision, the arbitral tribunal must satisfy itself that the claim is well founded in fact and law.
13. The arbitral tribunal may hear and determine counter-claims arising directly out of the subject-matter of the dispute.
14. Unless the arbitral tribunal determines otherwise because of the particular circumstances of the case, the expenses of the tribunal, including the remuneration of its members, shall be borne by the parties to the dispute in equal shares. The tribunal shall keep a record of all its expenses, and shall furnish a final statement thereof to the parties.
15. Any Party to this Convention having an interest of a legal nature in the subject-matter of the dispute, and which may be affected by a decision in the case, may intervene in the proceedings with the consent of the tribunal.
16. The arbitral tribunal shall render its award within five months of the date on which it is established unless it finds it necessary to extend the time limit for a period which should not exceed five months.
17. The award of the arbitral tribunal shall be accompanied by a statement of reasons. It shall be final and binding upon all parties to the dispute. The award will be transmitted by the arbitral tribunal to the parties to the dispute and to the secretariat. The secretariat will forward the information received to all Parties to this Convention.
18. Any dispute which may arise between the parties concerning the interpretation or execution of the award may be submitted by either party to the arbitral tribunal which made the award or, if the latter cannot be seized thereof, to another tribunal constituted for this purpose in the same manner as the first.

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