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## Convention to Combat Desertification

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### Conference of the Parties

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Items 6 (c), (d) and (e) of the provisional agenda

#### Procedural matters

#### Rule 47 of the rules of procedure

#### Procedures and institutional mechanisms for the resolution of questions on implementation

#### Annexes containing arbitration and conciliation procedures

### Rule 47 of the rules of procedure

### Procedures and institutional mechanisms for the resolution of questions on implementation

### Annexes containing arbitration and conciliation procedures

### Note by the secretariat

#### *Summary*

This document comprises information on three outstanding items of the agenda of work of the eleventh session of the Conference of the Parties (COP): (a) rule 47 of the rules of procedure (majority required); (b) procedures and institutional mechanisms for the resolution of questions on implementation; and (c) annexes containing arbitration and conciliation procedures.

The secretariat has prepared reports on these matters from the second session of the COP to the present date. At its twelfth session the COP may wish to consider the relevant background information, together with submissions by Parties and interested organizations of the United Nations, and may decide (a) to remove the text in brackets within rule 47, giving final shape to this rule on the majority required for the adoption of decisions by the COP; (b) to adopt the draft terms of reference for a multilateral consultative process mechanism to be contained in the annex to document ICCD/COP(9)/3; and (c) to adopt the annexes containing arbitration and conciliation procedures as contained in document ICCD/COP(9)/13.

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If agreement within the COP cannot be reached, consideration of these outstanding items will be deferred to a future session of the COP, when Parties feel there is agreement on these matters.

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## **I. Rule 47 of the rules of procedure**

### **A. Introduction and background information**

1. The question concerning rule 47 of the rules of procedure of the Conference of the Parties (COP), which concerns the voting majority required for the adoption of decisions by the Conference, has been an item on the agenda of the COP since its second session. Background information regarding any developments since the eleventh session of the COP on this outstanding item is provided in the present document. The text of rule 47 of the rules of procedure as amended by decision 21/COP.2 can be found in the annex to document ICCD/COP(3)/13.

2. At its eleventh session, the COP adopted decision 30/COP.11 by which, inter alia, it:

(a) Took note of the report by the secretariat contained in document ICCD/COP(11)/16;

(b) Requested the secretariat to include consideration of this outstanding rule of procedure in the agenda of the twelfth session of the COP and to report on the status of similar rules of procedure in other multilateral environmental agreements.

3. In January 2015 the secretariat forwarded a note verbale reminding Parties and multilateral organizations to submit their views regarding this matter. As at 30 June 2015, the secretariat had received five submissions on this matter from Kenya, the Russian Federation, the secretariat of the Convention on Biological Diversity, the secretariat of the Basel, Rotterdam and Stockholm Conventions and the secretariat for the Vienna Convention for the Protection of the Ozone Layer and for the Montreal Protocol on Substances that Deplete the Ozone Layer (Ozone secretariat), and the secretariat of the United Nations Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention). These written proposals, as submitted to the secretariat, are reproduced in their entirety on the United Nations Convention to Combat Desertification (UNCCD) website at [www.unccd.int/Lists/SiteDocumentLibrary/COP/COP12/Submissions.pdf](http://www.unccd.int/Lists/SiteDocumentLibrary/COP/COP12/Submissions.pdf).

### **B. Summary of the submissions by Parties and United Nations organizations**

4. In its submission, Kenya believes that Parties to the UNCCD should be allowed time to make an effort to reach an agreement by consensus. However, if no agreement is reached and no consensus is reached after all efforts have been exhausted, as a last resort a decision will be taken by a two-thirds majority vote of the Parties present and voting.

5. In its submission, the Russian Federation indicates that when considering rule 47 and developing a recommendation, it is of the utmost importance to look to ensuring maximum transparency of the process and observance of the sovereign equality of all Member States pending consideration of, and taking decisions on, matters of substance.

6. The secretariat of the Basel, Rotterdam and Stockholm Conventions in its submission explains that the rule on the majority required to adopt decisions on matters of substance in a case where no consensus is reached, similar to rule 47 of the UNCCD, still contains bracketed text. In turn, within the framework of the Basel Convention, it is provided that when Parties are unable to reach agreement by consensus on a matter of substance, the decision of the COP shall, as a last resort, be taken by a two-thirds majority

vote of the Parties present and voting, unless otherwise provided for by the Basel Convention, the financial rules and the rules of procedure.

7. The rules of procedure of the Vienna Convention on the Ozone Layer do not have language similar to that contained in rule 47 of the UNCCD. The applicable rule 40 of the Vienna Convention on the Ozone Layer provides for a two-thirds majority vote and does not use consensus language. However, the language of rule 47 appears in Article 9, paragraph 3 and 4 of the Vienna Convention on the Ozone Layer. This happens when Parties would like to amend either the Vienna Convention or the Montreal Protocol.

8. The submission from the secretariat of the Aarhus Convention states that, at its first session, the Meeting of the Parties to the Aarhus Convention adopted by consensus decision I/1 on its rules of procedure. Rule 35 of its rules of procedure indicates that the Meeting of the Parties shall make every effort to reach decisions by consensus. For cases where consensus is not reached, this rule makes a distinction between substantive and procedural matters. If there is a lack of consensus for substantive matters, decisions may be taken based on a three-fourths majority vote of Parties present and voting, whereas for procedural matters, a simple majority vote would suffice. "Parties present" means Parties represented at the meeting and "voting" means casting a vote, since abstaining from voting shall be considered as not voting. In substantive matters, the Aarhus Convention or its other rules of procedure may provide different guidance, which would then prevail over rule 35 of its rules of procedure. For example, rule 47 of its rules of procedure states that decision I/1 can be amended by consensus only, as is the case with decisions on financial arrangements and on establishing arrangements for reviewing compliance

### **C. Conclusions, recommendations and proposed action**

9. As pointed out in previous documents on this matter, this outstanding item has been on the agenda of subsequent sessions of the COP since COP 2. Given that through the years there has been no agreement on deciding the method of establishing the voting majority required for the adoption of decisions by the COP, or the type of subjects, it would seem advisable and practical, since Parties feel they are not ready to reach a final solution in this matter, to postpone consideration of a draft rule 47 to a later stage.

10. Alternatively, and as proposed in previous documents on this matter, such as ICCD/COP(11)/16, the COP may wish to consider the following options:

- (a) Adopting the principle of consensus on all matters of substance;
- (b) Reaching agreement by a simple or qualified majority when it is not possible to reach a decision by consensus;
- (c) Determining specifically, in rule 47, which decisions should be reached by consensus and which by majority vote.

## **II. Institutional mechanisms for the resolution of questions on implementation**

### **A. Introduction and background information**

11. At its eleventh session, the COP adopted decision 31/COP.11, in which it:

(a) Decided to reconvene the open-ended ad hoc group of experts (AHGE) to examine further, and make recommendations on, procedures and institutional mechanisms for the resolution of questions on implementation;

(b) Invited any Parties and interested institutions and organizations wishing to communicate their views on article 27 to do so, in writing, to the secretariat by 31 January 2015;

(c) Requested the secretariat to prepare a new working document to include (i) a compilation of submissions by Parties contained in previous COP documents on this matter, including a draft to provide options for, and the terms of reference of, a multilateral consultative process, and (ii) a compilation of views submitted by Parties;

(d) Decided further that the AHGE shall take as the basis of its work the new working document to be prepared by the secretariat.

12. The present note integrates and updates document ICCD/COP(11)/17. More particularly, it provides current information with regard to the relevant precedents cited in that document, as well as information on new developments. Due to requirements regarding the format and submission of reports of the United Nations, it is not possible to reproduce submissions by Parties contained in previous COP reports as requested in decision 31/COP.11. These are, however, found in their entirety, as submitted to the secretariat, on the UNCCD website at <[www.unccd.int/Lists/SiteDocumentLibrary/COP/COP12/Submissions.pdf](http://www.unccd.int/Lists/SiteDocumentLibrary/COP/COP12/Submissions.pdf)>.

## **B. Summary of the submissions by Parties and interested institutions and organizations**

13. In January 2015 the secretariat forwarded a note verbale reminding Parties and interested institutions and organizations to communicate their views regarding this matter. As at 30 June 2015, the secretariat had received submissions or had done research regarding two Parties and six interested institutions and organizations: Kenya, Senegal, the secretariat for the Vienna Convention for the Protection of the Ozone Layer and for the Montreal Protocol on Substances that Deplete the Ozone Layer (Ozone Secretariat), the Convention on Long-Range Transboundary Air Pollution (LRTAP Convention), the Protocol on Biosafety to the Convention on Biological Diversity (Cartagena Protocol), the Kyoto Protocol to the United Nations Framework Convention on Climate Change (Kyoto Protocol) and the Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (Basel Convention), the Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (Rotterdam Convention) and the Convention on Persistent Organic Pollutants (Stockholm Convention).

### **1. Submissions by Parties**

14. Kenya is of the opinion that Parties should be allowed to exercise their right under Article 27 to consider and adopt a suitable means for the resolution of questions on implementation. For Senegal, only the adoption of binding provisions relating to the fight against desertification would assist and foster the implementation of the UNCCD. It is equally important to strengthen the collaboration and synergies among the Rio conventions in order to attain full implementation of the UNCCD.

**2. Submissions by interested institutions and organizations**

**(a) Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol)**

15. Article 8 of the Montreal Protocol is similar to Article 27 of the UNCCD,<sup>1</sup> as it sets up a mechanism whereby any Party may refer non-compliance by another Party to the secretariat.

16. The fifty-third meeting of the Implementation Committee under the Non-Compliance Procedure for the Montreal Protocol was held at the headquarters of the United Nations Educational, Scientific and Cultural Organization, Paris, on 14 and 15 November 2014.<sup>2</sup>

17. The Executive Secretary of the Ozone Secretariat noted that the number of Parties in non-compliance with the Protocol was steadily declining and that no Party had ever been persistently in non-compliance. That, she said, was testament to the benefits of the Committee's close monitoring of compliance and its proactive approach, and would not have been possible without the technical and financial assistance provided by the Multilateral Fund for the Implementation of the Montreal Protocol and the close involvement of the implementing agencies.

**(b) Convention on Long-Range Transboundary Air Pollution (LRTAP Convention)**

18. To improve air quality at the local, national and regional levels, the United Nations Economic Commission for Europe (UNECE) member States have been working successfully to gradually reduce and prevent air pollution in the region. One of the vehicles through which this has been achieved is the Convention on Long-range Transboundary Air Pollution, which was signed in 1979.<sup>3</sup> Over the years, it has been extended by eight protocols which identify specific measures to be taken by Parties to cut their emissions of air pollutants. Fifty-one UNECE member States are Parties to the Convention. Member States also formulate air pollution policies within the framework of the Committee on Environmental Policy.

19. The Implementation Committee was established by the Executive Body in 1997 to review compliance by Parties with their obligations under the protocols to the Convention. The Committee's work focuses on three main areas:

(a) It considers any submission or referral of possible non-compliance by an individual Party with any of its emission reduction obligations under a given protocol;

(b) It periodically reviews compliance by Parties with their reporting obligations based on referrals by the secretariat.

20. The seventeenth report of the Implementation Committee contains information on the LRTAP Implementation Committee's activities in 2014 with regard to individual Parties' compliance with their protocol obligations concerning emissions reduction, summarizing the work carried out at the Committee's thirty-third and thirty-fourth

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<sup>1</sup> The procedure pursuant to Article 8 of the Montreal Protocol applies 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."

<sup>2</sup> See report of the Implementation Committee contained in document UNEP/OzL.Pro/ImpCom/53/4.

<sup>3</sup> See <[www.unece.org/env/lrtap/welcome.html](http://www.unece.org/env/lrtap/welcome.html)>.

sessions.<sup>4</sup> On the basis of the above considerations, the LRTAP Implementation Committee recommended that the Executive Body adopt the draft decisions on compliance with reporting obligations, contained in document ECE/EB.AIR/2014/4.

**(c) Protocol on Biosafety to the Convention on Biological Diversity (Cartagena Protocol)**

21. The eleventh meeting of the Compliance Committee was held in the offices of the Secretariat in Montreal, from 28 to 30 May 2014.<sup>5</sup> The Secretariat of the Convention on Biosafety outlined the structure and content of document UNEP/CBD/BS/CC/11/2 on the status of compliance with respect to cases reviewed at the previous meeting. This document provides a report of the activities undertaken by the Secretariat and the Chair of the Compliance Committee since the tenth meeting of this Committee with regard to the compliance of Parties with their obligation to: (a) submit a second national report, (b) put in place national biosafety frameworks, and (c) make information available to the Biosafety Clearing-House (BCH) as required under the various provisions of the Protocol.

22. With regard to the compliance of Parties with their obligations, the Compliance Committee agreed to make the following recommendations to the seventh meeting of the Parties:<sup>6</sup>

(a) Provide guidance on what constitutes unintentional transboundary movements in contrast with illegal transboundary movements and what follow-up action is required in each circumstance;

(b) Encourage Parties to provide to the BCH the actual documents that contain the information required under the Protocol and, in the event where they provide a link to a website to access a document, ensure that the link is functional and up to date and that the information is easily accessible;

(c) To request Parties and urge other Governments and relevant international and regional organizations to undertake or support capacity-building initiatives to assist developing country Parties in the use of the BCH, and to put in place facilities enabling them to submit consistent, up-to-date and complete information through the BCH and their national reports.

**(d) The Kyoto Protocol to the United Nations Framework Convention on Climate Change (Kyoto Protocol)**

23. The Kyoto Protocol was adopted in Kyoto, Japan, on 11 December 1997 and entered into force on 16 February 2005. The detailed rules for the implementation of the Protocol were adopted at COP 7 in Marrakesh, Morocco, in 2001, and are referred to as the “Marrakesh Accords”. Its first commitment period started in 2008 and ended in 2012.<sup>7</sup>

24. In Doha, Qatar, on 8 December 2012, the “Doha Amendment to the Kyoto Protocol” was adopted. The amendment includes:

(a) New commitments for Annex I Parties to the Kyoto Protocol who agreed to take on commitments in a second commitment period from 1 January 2013 to 31 December 2020;

(b) A revised list of greenhouse gases (GHG) to be reported on by Parties in the second commitment period; and

<sup>4</sup> See ECE/EB.AIR/2014/2.

<sup>5</sup> See UNEP/CBD/BS/CC/11/4.

<sup>6</sup> *Idem*, item 4.

<sup>7</sup> UNFCCC secretariat web site’s link at <[http://unfccc.int/kyoto\\_protocol/items/2830.php](http://unfccc.int/kyoto_protocol/items/2830.php)>.

(c) Amendments to several articles of the Kyoto Protocol which specifically referenced issues pertaining to the first commitment period and which needed to be updated for the second commitment period.

25. On 21 December 2012, the amendment was circulated by the Secretary-General of the United Nations, acting in his capacity as Depositary, to all Parties to the Kyoto Protocol in accordance with Articles 20 and 21 of the Kyoto Protocol.

26. During the first commitment period, 37 industrialized countries and the European Community committed to reduce GHG emissions to an average of five per cent against 1990 levels. During the second commitment period, Parties committed to reduce GHG emissions by at least 18 per cent below 1990 levels in the eight-year period from 2013 to 2020.

27. At the seventeenth session of the Conference of the Parties (COP) in Durban (South Africa) in 2011, the Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP) was established to develop a protocol, another legal instrument or an agreed outcome with legal force under the United Nations Framework Convention on Climate Change, applicable to all Parties. The ADP is to complete its work as early as possible, but no later than 2015, in order to adopt this protocol, legal instrument or agreed outcome with legal force at the twenty-first session of the COP (to take place in December in Paris) and for it to come into effect and be implemented from 2020.<sup>8</sup>

**(e) Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (Basel Convention), Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (Rotterdam Convention) and Convention on Persistent Organic Pollutants (Stockholm Convention)**

28. During its sixth meeting in 2002, the Conference of the Parties to the Basel Convention adopted the terms of reference of the Mechanism for Promoting Implementation and Compliance (decision VI/12). These terms of reference were amended by the tenth meeting of the Conference of the Parties (decision BC-10/11). The Conference of the Parties is expected to consider at its twelfth meeting whether or not to confirm the Secretariat trigger.

29. With respect to the Rotterdam Convention and the Stockholm Convention, both treaties provide, in their respective Articles 17, that the Conference of the Parties shall, as soon as practicable, develop and approve procedures and institutional mechanisms to determine non-compliance with the provisions of the Convention and for the treatment of Parties found to be in non-compliance. The respective Conferences of the Parties have considered this matter at all six of their previous meetings and are expected to consider it further this year at their seventh meeting.

**(f) United Nations Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention)**

30. The forty-fifth meeting of the Compliance Committee under the Aarhus Convention was held from 29 June to 2 July 2014 in Maastricht, the Netherlands.<sup>9</sup> The secretariat of the Aarhus Convention informed the Committee that no new submissions had been made by

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<sup>8</sup> Idem.

<sup>9</sup> See the Report of the Compliance Committee on its forty-fifth meeting, contained in document ECE/MP.PP/C.1/2014/7.

Parties concerning compliance by other Parties. The secretariat also informed the Committee that no submissions had been made by Parties concerning problems with their own compliance since the Committee's last meeting in 2013.

31. A number of Parties, as well as some non-governmental organizations (NGOs), appreciated the Committee's suggestion that, in the future, concerned Parties should be informed by the secretariat promptly following the receipt of any new communication concerning their compliance. There were differing views as to whether or not new communications should be posted on the website at the same time as the Party was informed, or only after a preliminary determination had been made.

32. A Party stressed the importance of exhausting domestic remedies before a case of alleged non-compliance was brought to the international level, in order to ensure that domestic legal systems had the opportunity to address those issues first. It should not be possible to assess non-compliance without establishing first that domestic remedies had failed to correct it. Two other Parties pointed out that exhaustion of domestic remedies was not a prerequisite for admissibility, and that whether to accept a communication or not where such remedies were not exhausted was at the discretion of the Compliance Committee. The Chair of the Compliance Committee noted that, in any case, the Committee was paying increasing attention to the use of domestic remedies; for example, it would not admit a case if it were aware, prior to the preliminary determination of admissibility, of ongoing domestic proceedings.

### **C. Conclusions, recommendations and proposed action**

33. **At its twelfth session, the COP may wish to consider the relevant background on procedures and institutional mechanisms for the resolution of questions that may arise with regard to the implementation of the Convention, in order to assist Parties in complying with their commitments under the Convention.**

34. **At previous meetings of the AHGE, it was agreed, firstly, that any procedure or institutional mechanism to resolve questions on implementation should be facilitative and non-confrontational in character and, secondly, that such procedures and institutional mechanisms should assist the Parties to fulfil their obligations under the Convention. The draft terms of reference for a multilateral consultative process in the annex to document ICCD/COP(9)/13 would be a good starting point for giving shape to a mechanism to address questions on implementation efficiently and to resolve them bearing in mind the nature, scope, objectives and specific characteristics of the Convention, including the particularities of its five Regional Implementation Annexes. Thus the COP may wish to adopt the draft terms of reference attached as an annex to document ICCD/COP(9)/13 and to establish a multilateral consultative committee to assist Parties in the resolution of questions on implementation.**

35. **If at the twelfth session of the COP, there is no agreement on this matter, the COP may wish to defer the consideration of Article 27 of the Convention to a future meeting of the COP.**

## **III. Annexes containing arbitration and conciliation procedures**

### **A. Introduction and background information**

36. Article 28, paragraph 2, of the UNCCD provides that: "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 one or both of the following means of dispute settlement as compulsory in relation to any Party accepting the same obligation: (a) arbitration ... ; (b) submission of the dispute to the International Court of Justice.” Paragraph 6 of the same article further provides that: “If the Parties to a dispute have not accepted the same or any procedure ... and if they have not been able to settle their dispute within twelve months following notification by one Party to another that a dispute exists between them, the dispute shall be submitted to conciliation at the request of any Party to the dispute, in accordance with procedures adopted by the Conference of the Parties in an annex as soon as practicable.”

37. The secretariat prepared reports on arbitration and conciliation procedures for the second to the eleventh sessions of the COP. The reports present background information, precedents and latest developments concerning these matters in the context of environmental agencies, and they compile and analyse written proposals by Parties and interested institutions and organizations.

38. The COP, by its decision 32/COP.11, decided:

(a) For the purposes of fulfilling the provisions of article 28 of the Convention, to reconvene the AHGE, at its eleventh session, to examine further and make recommendations on:

- (i) Annex on arbitration procedures
- (ii) Annex on conciliation procedures;

(b) To invite any Parties and interested institutions and organizations wishing to communicate their views on the issues referred to in paragraph 38 (a), above to do so, in writing, to the secretariat by 31 January 2015;

(c) To request the secretariat to prepare a new working document to include a compilation of submissions contained in previous documents of the COP on this matter and those submitted pursuant to paragraph 38 (b) above, and an updated version of the annexes contained in document ICCD/COP(9)/14 to reflect these views;

(d) That the AHGE shall take as the basis of its work the new working document to be prepared by the secretariat.

39. In January 2015 the secretariat forwarded a note verbale reminding Parties to communicate their views regarding this matter by 31 January 2015. As at 30 June 2015, the secretariat had received two submissions from Parties and two submissions on the aforementioned matters. These submissions are found on the UNCCD website at <[www.unccd.int/Lists/SiteDocumentLibrary/COP/COP12/Submissions.pdf](http://www.unccd.int/Lists/SiteDocumentLibrary/COP/COP12/Submissions.pdf)>. In accordance with decision 32/COP.11, the secretariat has now prepared a report that updates document ICCD/COP(11)/18.

## **B. Summary of the submissions by Parties and United Nations organizations**

### **1. Kenya**

40. Arbitration and conciliation procedures provide grounds for Parties to submit a dispute to an unbiased third person designated by the Parties to the controversy, who agree in advance to comply with the decision issued after the Parties have had an opportunity to be heard. Therefore, introducing rule 47 of the rules of procedure will be an infringement of

the Parties' rights to enjoy this privilege, and for this reason the vote by two thirds majority should not be incorporated under this decision. Arbitration should be given a lifeline.

## 2. Senegal

41. The means to achieve a suitable solution relating to settlement of disputes should be based on a pre-emptive and non-confrontational approach, as indicated in paragraph 3 of document ICCD/COP(9)/14. In addition, if there is a need to make recourse to arbitration, it would be useful to follow the procedure proposed by Tuvalu, as contained in document ICCD/COP(11)/17.<sup>10</sup>

## 3. Optional Rules for Arbitration and Conciliation of Disputes Relating to Natural Resources and/or the Environment of the Permanent Court of Arbitration (PCA)

42. The PCA administers arbitration and conciliation and undertakes fact finding in disputes involving various combinations of states, private parties, state entities, and intergovernmental organizations. International commercial arbitration can also be conducted under PCA auspices.<sup>11</sup>

43. Under the Arbitration Rules of the United Nations Commission on International Trade Law, the PCA Secretary-General is charged with designating "appointing authorities" upon the request of a party to arbitral proceedings. The Secretary-General may designate an appointing authority for the appointment of an arbitrator to complete an incomplete arbitral tribunal and/or to decide challenges to arbitrators.

44. The PCA Optional Rules for Arbitration of Disputes Relating to the Environment and/or Natural Resources ("Environmental Rules") were adopted in 2001. The rules were drafted by a working group and committee of experts in environmental law and arbitration. The Environmental Rules seek to address the principal lacunae in environmental dispute resolution identified by the working group. The Optional Rules for Conciliation of Disputes Relating to the Environment and/or Natural Resources were adopted in 2002. These Rules provide the most comprehensive set of environmentally-tailored dispute resolution procedural rules at present available. The PCA also provides guidance on drafting environmentally-related dispute settlement clauses.<sup>12</sup>

45. With regard to Multilateral Environmental Agreements (MEAs), the Environmental Rules were drafted, inter alia, to serve as procedural rules for the resolution of disputes between States parties to MEAs. To assist with the incorporation of references to the PCA Environmental Rules in the dispute resolution clauses in these instruments, the PCA participates regularly in negotiations facilitated by United Nations convention secretariats, such as Conferences of the Parties to the UNFCCC. Recourse to arbitration administered by the PCA is also among the dispute settlement options recommended in the draft International Covenant on Environment and Development, a model agreement developed by NGOs with the purpose of facilitating treaty negotiations in the environmental sector.

46. In the field of climate change, the PCA actively promotes the use of its Environmental Rules in dispute resolution clauses in emissions trading contracts. The

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<sup>10</sup> See Section III, A on page 4.

<sup>11</sup> See the Permanent Court of Arbitration link at <[http://pca-cpa.org/showpage.asp?pag\\_id=1028](http://pca-cpa.org/showpage.asp?pag_id=1028)>.

<sup>12</sup> See the "Guidelines for Negotiating and Drafting Dispute Settlement Clauses for International Environmental Agreements", IUCN Environmental Law Programme & International Council of Environmental Law, fourth edition updated – 2010, Bonn, Germany.

International Emissions Trading Association recommends the PCA Environmental Arbitration Rules in its various Model Emissions Reduction Purchase Agreements.<sup>13</sup>

**4. Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (Basel Convention)**

47. The Basel Convention refers specifically to arbitration only in its Article 20, paragraph 2, where procedures on arbitration are set out in Annex VI. Article 20, paragraph 2 of the Rotterdam Convention and Article 18, paragraph 2 of the Stockholm Convention are quite similar to Article 28, paragraph 2 of the UNCCD. At its first meeting, the Conference of the Parties to the Rotterdam Convention adopted, by its decision RC-1/11, Annex VI to the Convention on settlements of disputes which sets out in part A procedures for arbitration, and in part B rules on conciliation. At its first meeting, the Conference of the Parties to the Stockholm Convention adopted, by its decision SC-1/2, Annex G on arbitration and conciliation procedures for settlement of disputes, with part I on the arbitration procedure and part II on the conciliation procedure.

**C. Conclusions, recommendations and proposed action**

48. As stated in document ICCD/COP(7)/9, the information with regard to relevant precedents and latest developments, and especially a number of preliminary questions contained in section I.F of document ICCD/COP(4)/8, remains useful for the purpose of assisting the COP in its deliberations on formulating procedures and mechanisms as required by article 28 of the UNCCD. The comparative tables on draft annexes on arbitration and conciliation procedures contained in document ICCD/COP(7)/9 would be a useful working tool to make a comparative analysis of the evolution of these matters and to learn about and consider the views of Parties and other interested institutions and organizations concerning the final outcome of these annexes.

49. At its twelfth session the COP may wish to adopt annexes containing arbitration and conciliation procedures in order to assist Parties to fulfil their obligations concerning the Convention, in particular article 28, paragraphs 2 (a) and 6. However, if at the twelfth session of the COP, there is no agreement on this matter, the COP may wish to defer the consideration of Article 27 of the Convention to a future meeting of the COP.

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<sup>13</sup> See footnote 11 above.