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Procedures and institutional mechanisms for the resolution of questions on implementation

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

Note by the secretariat

Summary

This report is a follow-up of previous Conference of the Parties reports on this matter presenting background information and describing progress made in considering procedures and institutional mechanisms for the resolution of questions on implementation in accordance with article 27 of the Convention. Submissions by Parties are included, relevant precedents and new developments are highlighted, and conclusions, recommendations and proposed actions are presented.

In accordance with decision 20/COP.8, this document has been prepared on the basis of document ICCD/COP(8)/7, taking into account, as appropriate, previous reports of the Conference of the Parties relating to this matter.

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I. Background information

1. At its eighth session, the Conference of the Parties (COP) adopted decision 20/COP.8, 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 2009;

(c) Requested the secretariat to prepare a new working document to include 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 a compilation of those 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.

2. The Chair of the AHGE noted in the summary of the meeting of this Group at COP 8 that delegations participating at the eighth session of the COP were not prepared to discuss in depth the issues of implementation and compliance in connection with the United Nations Convention to Combat Desertification (UNCCD), because they felt that this legal issue could be more appropriately discussed once the 10-year strategic and framework to enhance the implementation of the Convention (The Strategy) and the future of the Committee for the Review of the Implementation of the Convention (CRIC) as a subsidiary body to the COP had been decided by the COP. The group concluded that it would therefore be advisable to postpone the consideration of these items to the ninth session of the COP (COP 9). In addition, it was also felt that each issue should be the subject of a separate decision and a separate COP report.

3. The present note integrates and updates document ICCD/COP(8)/7. 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 20/COP.8. However, the secretariat will make these reports available¹ for the ninth session of the COP for ease of reference and discussion, as appropriate.

4. The present document is composed of four parts and an annex. Chapter I is an introduction regarding decision 20/COP.8 and it also provides background information on the resolution of questions on implementation. Submissions by Parties are presented in Chapter II. Chapter III contains updated information on relevant precedents and new developments with multilateral environmental agreements (MEAs). Chapter IV consists of conclusions,

¹ Documents ICCD/COP(2)/10, ICCD/COP(3)/18, ICCD/COP(4)/8, ICCD/COP(5)/8, ICCD/COP(6)/7, ICCD/COP(7)/9 and ICCD/COP(8)/7.

recommendations and proposed actions regarding options and the way forward on measures to resolve questions on implementation. Finally, this report includes an annex containing the draft terms of reference of a multilateral consultative process as requested in decision 20/COP.8.

II. Submissions by Parties

5. In November 2008 and January 2009 the secretariat forwarded a note verbale reminding Parties and interested institutions and organizations to communicate their views regarding this matter. As at 15 May 2009, the secretariat had received submissions from Australia, Colombia, Saudi Arabia, and Trinidad and Tobago. The written proposals are reproduced in their entirety, as submitted to the secretariat, on the United Nations Convention to Combat Desertification website at <www.unccd.int>.

6. In the opinion of one Party, the function of compliance regimes should be to assist Parties that are experiencing difficulties in complying with their obligations under the Convention. The compliance regimes should be of a facilitative rather than of a punitive nature and not duplicate the dispute resolution provisions contained in article 28 of the Convention. Therefore, the elaboration of compliance mechanisms in multilateral environmental agreements (MEAs) should not be a priority for effective implementation.

7. The position of another Party regarding this matter may be summarized as follows:

(a) The AHGE should continue the study of procedures and institutional mechanisms for the resolution of questions that may arise with regard to the implementation of the Convention during the next COP meetings until an agreement among all Parties is reached;

(b) Regions and groups should be represented equitably in the AHGE, and it should include legal experts;

(c) All regional groups must appoint their representatives at every COP meeting;

(d) It is very important that while preparing the working document, the secretariat takes into account the following:

- (i) The current and previous contributions of Parties;
- (ii) Progress achieved by the other environmental conventions in this subject, especially the Convention on Biological Diversity (CBD) and the United Nations Framework Convention on Climate Change (UNFCCC);
- (iii) Documents presented to previous COP meetings, namely COP 5, COP 6, COP 7 and COP 8.

(e) It is important that all AHGE members have a strong background in the progress achieved in implementing the Convention at the national, subregional and regional levels in order to capitalize on this information while suggesting solutions to questions related to the implementation of the Convention.

III. Procedures and institutional mechanisms for the resolution of questions on implementation

8. As was the case in the previous report, the most relevant precedents and recent developments relating to article 27 of the UNCCD include the Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol), the Convention on Long-Range Transboundary Air Pollution (LRTAP), the United Nations Framework Convention on Climate Change (UNFCCC) and its Kyoto Protocol, the Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (Basel Convention), the Protocol on Biosafety to the Convention on Biological Diversity (Cartagena Protocol), 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), 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).

A. The Protocol on Substances that Deplete the Ozone Layer

9. The 39th meeting of the Implementation Committee under the non-compliance procedure for the Montreal Protocol (the Committee) was held in Montreal, Canada, from 12 to 14 September 2007. In connection with the challenges associated with future implementation of the non-compliance procedure (recommendation 37/46), the Committee agreed that its secretariat should facilitate the timely submission of data and information by Parties subject to the non-compliance procedure by including the following in its correspondence requesting data or information from Parties:

(a) Information on the scheduling of Committee meetings and the Committee's aim of concluding its assessment of compliance issues during the same year in which they were brought to its attention, in order to provide the Meeting of the Parties with the earliest opportunity to adopt any decisions necessary to support the return of an individual Party to compliance;

(b) An indication of the potential consequences of late submission of the requested information and the potential consequences of failure to submit the requested information.

10. The Committee 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:

(a) 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;

(b) 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.

11. In assessing the implementation and the applicability of the licensing systems, the Committee pointed out that according to data from the secretariat 20 of the 191 Parties had not yet established systems for licensing the import and export of ozone-depleting substances, despite having ratified the Montreal Amendment, some as long ago as 1999. Of those 20, only one had been brought before the Committee on account of that particular issue, and one other had been considered by the Committee on other grounds and the issue of non-compliance with the Montreal Amendment had been included in the recommendation on the Party concerned. Others among the 20 had been brought before the Committee for different reasons but no recommendation had been made regarding their non-compliance with the Montreal Amendment. The Committee suggested that the secretariat should write to those Parties, seeking clarification as to why they had not established licensing systems in accordance with the Amendment. The issue is of great importance to the future of the Montreal Protocol, as Parties without functioning licensing systems could become the focus of illegal trade in ozone-depleting substances.

12. A member of the Committee queried whether it was within the mandate of the Implementation Committee to take action to further implementation of article 4B in the light of decision XVIII/35, which conferred responsibility for that task upon the Meeting of the Parties. Another member said that decision XVIII/35 was more concerned with data gathering, whereas any action taken by the Committee would simply seek to identify reasons for non-compliance as a prelude to possible assistance.

13. The Committee agreed that although it differed from customary practice, the Committee was entitled to act proactively to ensure the implementation of article 4B under the monitoring role accorded to it by paragraph 4 of that article. It was also agreed that further discussion on the item would take place at the 40th meeting of the Implementation Committee.

14. The 40th meeting of the Committee took place in Bangkok from 2 to 4 July 2008. With regard to deviations from the control schedules, the exemptions, allowances and special cases permitted under the Montreal Protocol include essential use exemptions for chlorofluorocarbons (CFCs), critical use exemptions for methyl bromide, the global exemption for laboratory and analytical uses, and allowances for production to meet the basic domestic needs of article 5 Parties. Deviations attributable to stockpiling under the terms of decision XVIII/17 had been deferred for consideration until the 2009 Meeting of the Parties and, for article 5 Parties, deviations attributable to laboratory uses of carbon tetrachloride had been deferred for consideration until 2010. For Parties operating under plans of action included in decisions of the Meeting of the Parties, the relevant benchmarks were used in determining adherence to obligations, instead of using the Protocol control measures.

15. Bearing in mind all these permitted deviations, no non-article 5 Party was in non-compliance with its production or consumption requirements for 2006 or, on the basis of data reported to date, for 2007. Similarly, no article 5 Party was in non-compliance with its production requirements for 2006 or, on the basis of data reported to date, for 2007.

16. In decision XVII/16 Parties were urged to report exports and destinations of all controlled substances, and in recommendation 39/41 the secretariat was requested to include in its report information on Parties that had not so reported.

17. In summary, 32 Parties had reported exports for 2006, of which 30 had provided information on the destinations for some or all of those exports. For 11 Parties, some exports had not had their destinations specified. Some of the reasons advanced by exporting Parties for not reporting destinations included the fact that sales were reported to shipping companies rather than specific countries and, in the case of one Party, confidentiality concerns over the information.

18. The 41st meeting of the Committee was held in Doha from 12 to 14 November 2008. By the time of this meeting, all Parties required to report base-year and baseline data had reported these data for all controlled substances in accordance with article 7 of the Protocol (UNEP/OzL.Pro/ImpCom/41/2 and 41/2/Add.1). Two Parties had requested changes in their baseline data for methyl bromide. At its previous meeting the Committee had decided to recommend the acceptance of one request, but the other request could not be considered further without additional information.

19. In addition, all required Parties had submitted their consumption and production data for 2006, while 187 out of 191 Parties had submitted data for 2007; the four remaining Parties were still in non-compliance with their data-reporting obligations.

20. With regard to deviations from the control schedules, it was noted that the applicable control measures for the two years 2006 and 2007, as well as the exemptions, allowances and special cases were taken into account when assessing compliance with the control measures for production and consumption of substances controlled under the Montreal Protocol. These included essential-use exemptions for CFCs, critical-use exemptions for methyl bromide, the global exemption for laboratory and analytical uses for non-article 5 Parties and allowances for production to meet the basic domestic needs of article 5 Parties. Deviations attributable to stockpiling under the terms of decision XVIII/17 had been deferred for consideration until the 2009 Meeting of the Parties and, for article 5 Parties, deviations attributable to laboratory uses of carbon tetrachloride had been deferred for consideration until 2010. For Parties operating under plans of action included in the decisions of the Parties, the phase-out benchmarks set out in those plans were used to determine the adherence of those Parties to their commitments.

21. The Committee requested the secretariat to maintain a record of cases in which Parties had explained that their excess production was attributable to stockpiling of ozone-depleting substances for future use or disposal (decision XVIII/17). For 2007 four Parties had stockpiled a total of 1,956.8 ozone-depleting potential (ODP) tonnes.

B. The Convention on Long-Range Transboundary Air Pollution

22. In 2008 the Executive Body of the LRTAP Convention received the eleventh report of its Implementation Committee regarding compliance by Parties with their obligations under the protocols to the Convention. The Committee had reviewed cases of non-compliance and submitted recommendations.

23. In that report, the Chair of the Committee drew attention to the annual review of compliance with reporting obligations by Parties, noting non-compliance by several Parties with respect to reporting emissions as required under the protocols of the Convention, all of which were then in force. There also remained a number of instances of non-compliance with several protocols with respect to meeting emission target obligations.

24. Based on the recommendations of the Implementation Committee, the Executive Body adopted a number of decisions concerning non-compliance by specific Parties with their obligations under different protocols. It noted that in the years that the Committee had been working, some countries had moved back into compliance with their obligations; others were moving in the right direction and expected to be back in compliance soon. A few countries, however, still showed little indication of achieving compliance and the Executive Body expressed its concern about this situation. These countries in particular were called upon by the Executive Body to present further information to the Implementation Committee showing progress made towards achieving compliance and setting out a timetable that specified the year by which they expected to be in compliance, as well as listing the specific measures taken or scheduled to fulfil their emission reductions obligations. One country was also requested to invite the Committee to conduct information gathering and an in-depth review of its non-compliance in its territory.

25. The Chair of the Implementation Committee also indicated that the Committee was in the process of carrying out the second in-depth review of the 1998 Protocol on Heavy Metals and the 1998 Protocol on Persistent Organic Pollutants. These reviews will be completed in 2009.

C. The United Nations Framework Convention on Climate Change and its Kyoto Protocol

26. As stated in document ICCD/COP(7)/9, the Multilateral Consultative Committee established in accordance with article 13 of the UNFCCC (resolution of questions regarding implementation), the role of which is to address issues among Parties, has not made any progress since 2003. This is mainly due to differences of view regarding the composition of the Committee, as well as the existence of other compelling priorities for the Parties.

27. The Kyoto Protocol, which entered into force in February 2005, supplements and strengthens the Convention, providing a framework for remedial and precautionary action to tackle the adverse effects of climate change. The Protocol is founded on the same principles as the Convention and shares its ultimate objective, as well as the way it groups and classifies countries. It also shares the institutions of the Convention, including its subsidiary bodies and secretariat. The Kyoto Protocol broke new ground with three innovative mechanisms (joint implementation, the clean development mechanism and emissions trading) designed to boost the cost-effectiveness of climate change mitigation by opening ways for Parties to cut emissions, or to enhance carbon sinks, more cheaply abroad than at home.

28. In order to assess compliance with the Protocol by each Party included in annex I to the Convention (annex I Party), information is collected on the steps they have taken to implement the Protocol, as well as on their emissions over the commitment period from 2008 to 2012 and their transactions under the mechanisms. Entry into force of the Protocol has brought into play strengthened reporting and review requirements. In addition, each annex I Party was required to

have made demonstrable progress in achieving its commitments under the Protocol, to report on such progress by 1 January 2006, and to incorporate in its national communication supplementary information to demonstrate compliance with commitments under the Protocol. This supplementary information is submitted as part of the first national communications due under the Convention. In addition, the Protocol requires the submission of annual inventories by annex I Parties. These inventories and national communications are assessed by expert review teams, made up of international experts nominated by Parties.

29. The Compliance Committee was established in order to facilitate, promote and enforce compliance with the commitments under the Protocol. It is designed to strengthen the environmental integrity of the Protocol, support the credibility of the carbon market and ensure transparency of accounting by Parties.

30. The Committee consists of a plenary, a bureau and two branches (a facilitative branch and an enforcement branch). Through its branches, the Committee considers questions of implementation, which can be raised by expert review teams under article 8 of the Protocol, any Party with respect to itself, or a Party with respect to another Party (supported by corroborating information). If a Party fails to meet its emissions target, it must make up the difference, plus a penalty of 30 per cent, in the second commitment period. It must also develop a compliance action plan and its eligibility to sell credits under emissions trading will be suspended.

31. Since the Committee's first meeting in 2007, it has developed and subsequently amended its rules of procedure and reviewed the numerous reports submitted to it. Both the facilitative branch and the enforcement branch have been active, with the facilitative branch having addressed 15 questions of implementation, while the enforcement branch has addressed two. In one of the latter two cases, for the first time, a Party was found in non-compliance, suspended and later reinstated. The enforcement branch has also overseen the eligibility of annex I Parties for the Kyoto Protocol market mechanisms.

D. The Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal

32. The Committee for Administering the Mechanism for Promoting Implementation and Compliance of the Basel Convention (the Committee) was established in 2004 (decision VI/12) 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 these obligations. The mechanism is non-confrontational, transparent and preventive in nature and oriented in the direction of helping Parties to implement the provisions of the Convention. The Committee was given the mandate to review general issues of implementation and compliance under the Convention, as directed by the Conference of Parties, as well as to consider specific submissions. Under the terms of reference of the Committee, submissions may be made to the Committee by a Party with regard to itself, a Party that has concerns or is affected by a failure to comply or implement by another Party, or the secretariat if, while pursuant to its functions under articles 13 (transmission of information) and 16 (secretariat), it becomes aware of possible difficulties of any Party in complying with its reporting obligations, provided that the matter has not been resolved within three months by consultation with the Party concerned. More information on the

mechanism, in particular an explanation of the procedures of the Committee, can be found at: <www.basel.int/legalmatters/compcommittee/index.html>.

33. In decision VIII/32, the Conference of the Parties at its eighth meeting adopted the Committee's 2007–2008 work programme whereby it mandated the Committee to work on two general issues of implementation and compliance: (a) further develop its understanding of national reporting issues, with a view to providing guidance on how national reporting could be improved, and (b) 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 such wastes. On the basis of this mandate, the Committee has developed a draft guidance document on improving national reporting by Parties as well as a draft directory of training institutions offering activities aimed at improving capacity for detection, prevention and prosecution of cases of illegal traffic. The Committee will consider both drafts during its forthcoming seventh session, to be held on 25–26 June 2009 in Geneva.

34. In decision IX/2, the Conference of the Parties at its ninth meeting decided 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 to establish an implementation fund to assist any Party that is a developing country or a country with an economy in transition and is the subject of a submission. In the same decision, the Conference of the Parties adopted the Committee's 2009–2011 work programme whereby it mandated the Committee to review several general issues of compliance and implementation under the Convention. The Committee was instructed to undertake specific activities in order to monitor, assess and facilitate reporting under article 13 of the Convention, with the objective of ensuring and improving effective and complete national reporting. The Committee was also requested to undertake specific activities in order to review the implementation of and compliance with obligations under articles 3 (national definition of hazardous wastes), 4 (general obligations), 5 (designation of competent authorities and focal point) and 6 (transboundary movement between Parties) of the Convention.

35. In decision IX/2, the Conference of the Parties further requested the Committee to give priority to dealing with specific submissions regarding Party implementation and compliance. In particular, the Conference of the Parties requested the Committee to address existing shortcomings and limitations in relation to the lack of specific submissions to the Committee.

36. At its meeting on 25–26 June 2009, besides finalizing its 2007–2008 programme of work, the Committee is expected to consider the implementation, by the secretariat, of the Committee's recommendations and requests arising from its sixth session, including the issue of submissions by the secretariat. The Committee is also expected to initiate consideration of its 2009–2011 work programme, which will include, inter alia, reviewing information held by the secretariat under article 13 (transmission of information), reviewing notifications by Parties on national definitions of hazardous wastes and on prohibitions of import or export of hazardous wastes, and reviewing the compliance of Parties with the duty to designate competent authorities and focal points.

37. The report of the seventh session of the Committee will be made publicly available on the website of the Convention at: www.basel.int/legalmatters/compcommittee/index.html. The eighth session of the Committee will take place in 2011 and the Committee will report on its work to the tenth meeting of the Conference of Parties in 2011.

E. The Protocol on Biosafety to the Convention on Biological Diversity

38. The fourth meeting of the Compliance Committee under the Cartagena Protocol on Biosafety took place from 21 to 23 November 2007 in Montreal, Canada. The Committee reviewed general issues of compliance on the basis of the information made available by Parties through their first national reports submitted four years after the entry into force of the Protocol. The Committee also refined further its report on the experiences of other multilateral environmental agreements regarding measures concerning repeated cases of non-compliance. It decided to submit to the upcoming fourth meeting of the Conference of the Parties, serving as the meeting of the Parties to the Protocol (COP-MOP), a report that consolidates the work and recommendations of its third and fourth meetings.

39. COP-MOP 4 considered the report of the Compliance Committee as well as the Committee's document on further information and experience regarding cases of repeated non-compliance under the compliance mechanisms of other multilateral environmental agreements (UNEP/CBD/BS/COP-MOP/4/2/Add.1). COP-MOP integrated many of the recommendations of the Committee into its decision BS-IV/1 as well as other decisions as relevant. Among other things, decision BS-IV/1 reminded each Party of its obligation to adopt domestic measures to address illegal transboundary movements of living modified organisms and to report the occurrence of such movements to the Biosafety Clearing House. The Parties also decided to postpone consideration or, as appropriate, adoption of measures on repeated cases of non-compliance and encouraged the Committee to meet at least twice a year, within the budget adopted in BS-IV/7. The decision on compliance also invited Parties to submit to the secretariat, prior to the fifth meeting of COP-MOP, views on how the supportive role of the Compliance Committee could be improved.

40. The Compliance Committee held its fifth meeting from 19 to 21 November 2008 in Kuala Lumpur. The Committee considered a review prepared by the Chairperson of the Committee on the outcomes of the fourth meeting of COP-MOP regarding compliance (UNEP/CBD/BS/CC/5/INF/2). It reviewed, among other things, the extent to which the recommendations from its two last meetings had been considered and adopted by the Parties to the Protocol at their fourth meeting. The Committee also agreed a work plan for its meetings that may be held prior to COP-MOP 5. It further reviewed general issues of compliance based on a revised analysis of the first national reports conducted by the secretariat three months after COP-MOP 4. The Committee recognized the increase in the number of national reports received by the secretariat. However, it again expressed its concern on the low reporting rate of Parties to the Protocol and requested the secretariat to seek information from Parties that had not yet submitted their first national reports as to why they had not done so and to make that information available at a later stage. Further information on the report of the meeting can be found in UNEP/CBD/BS/CC/5/4.

F. The United Nations Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters

41. The Aarhus Convention compliance mechanism provides that a review of compliance by individual Parties may be triggered by a submission by any Party (about its own compliance or that of another Party), referrals by the secretariat or communications from members of the public (including non-governmental organizations). The Compliance Committee has to date received a total of 38 communications from members of the public since it became eligible to receive communications in October 2003. These communications related to 20 Parties. To date, no Party has opted out of the aspect of the compliance mechanism whereby communications from members of the public may be brought before the Committee. In addition, the Committee has received one submission by a Party regarding the compliance of another Party. No Party has made a submission concerning its own compliance, and no referral has been made by the secretariat.

42. Seven of the communications received have been determined by the Committee to be inadmissible. The Committee has reached conclusions in respect of 16 communications from members of the public and one submission by a Party, and 15 communications are currently in various stages of processing. With respect to the cases that have been concluded, it found there to have been non-compliance by the Parties concerned in respect of the submission by a Party and eight of the communications from members of the public. All the decisions of the Committee to date have been made on the basis of consensus and all of its findings of non-compliance were subsequently endorsed by the Meeting of the Parties.

43. The Committee has noted that the quality of communications submitted by the members of the public has continued to be good and that, overall, representatives of civil society continued to use the mechanism in a responsible way. At its third session, held in Riga in June 2008, the Parties acknowledged that the possibility for members of the public to submit communications has been useful in bringing cases of non-compliance to light.

44. Following the adoption by the Meeting of the Parties at its second and third sessions of decisions endorsing the Committee's findings and recommendations in specific cases of non-compliance, the Committee has had the additional task of reviewing the measures taken by the Parties found to be in non-compliance to implement the recommendations of the Meeting of the Parties. In two cases of persistent non-compliance, the Meeting at its third session issued conditional cautions, due to become effective on 1 May 2009 unless certain measures were taken, and mandated the Committee to determine whether those measures had been taken. In one of the two cases, the Committee judged that the necessary measures had not been taken and thus the caution became effective.

45. In accordance with its mandate, in addition to issues of compliance regarding specific Parties, the Committee also reviews general matters of compliance. For this purpose, it has reviewed the communications forwarded to it as well as the information contained in the national implementation reports and identified a number of more general issues (i.e. not limited to a particular country) that it considered worth bringing to the attention of the Meeting of the Parties. It has continued to oversee the functioning of the Convention reporting mechanism.

46. The Compliance Committee meets four times a year and has to date held 23 meetings. The Committee is expected to report on its work to the fourth session of the Meeting of the Parties in 2011. Further information on the compliance review mechanism under the Convention is available at <www.unece.org/env/pp/compliance.htm>.

G. The Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade

47. The Rotterdam Convention is a vital part of the international toolkit for protecting human health and the natural environment from the harmful effects of hazardous chemicals and pesticides. In this regard and in accordance with article 17 of the Convention, an open-ended ad hoc working group on non-compliance was convened in September 2005 to prepare for and carry forward deliberations on the issue.

48. Non-compliance was further considered and discussed during the second meeting of the Conference of the Parties. Although it made significant progress, the Conference of the Parties did not reach agreement and therefore decided to consider further the procedures and institutional mechanisms on non-compliance at its third meeting in October 2006. The Conference of the Parties at its third agreed that deliberations on the item would continue at the fourth meeting. The draft text of the non-compliance procedures and mechanisms, as it stood at the close of that meeting, was set out in the annex to decision RC-3/4.

49. In 2008, at its fourth meeting, the Conference of the Parties further considered the procedures and institutional mechanisms required on non-compliance and prepared a revised draft. It was argued that the compliance mechanism should take a facilitative and supportive approach rather than a punitive one. Sanctions were not useful and could even be counterproductive. Furthermore, financial and technical assistance are needed to motivate and enable Parties to comply with their obligations under the Convention. The Conference decided to consider this matter further at its fifth meeting for adoption.

H. The Convention on Persistent Organic Pollutants

50. At its first meeting, the Conference of the Parties decided to convene an open-ended ad hoc working group to consider procedures and institutional mechanisms on non-compliance under article 17 of the Convention. At its second meeting, the Conference of the Parties considered the report of the ad hoc working group and decided to convene a second meeting of the group to continue to consider procedures and mechanisms on non-compliance. At the third meeting of the Conference of the Parties it was reported that significant progress had been made by the group on the draft text on proposed non-compliance procedures but certain issues remained unresolved.

51. The Conference of the Parties at its fourth meeting, held in May 2009, further considered the procedures and institutional mechanisms on non-compliance required under article 17 of the Convention. Given that the ad hoc working group was not able to complete the consideration of procedures of non-compliance, the Conference decided to further consider this matter for adoption at its fifth meeting.

IV. Conclusions, recommendations and proposed actions

52. This report shows – as was the case in document ICCD/COP(7)/9 – that the balance of obligations in the multilateral environmental agreements (MEAs) are distinct from each other. This should lead to caution when studying the MEAs and drawing conclusions from experiences and lessons learned. For example, some compliance mechanisms have more than 15 years of experience reviewing cases (Montreal Protocol and LRTAP), whereas another has only reviewed a few cases (Kyoto Protocol) and others have yet to be formally established (Rotterdam Convention and Stockholm Convention). The Basel Convention has not yet examined a specific case of non-compliance even though its procedures have already been established, whereas the Aarhus Convention has considered 18 communications since 2005. Specific penalties are applied to Parties found to be non-compliant with their obligations (Kyoto Protocol). However, some environmental non-compliance mechanisms support more technical assistance and apply more flexible solutions to such cases.

53. As is pointed out in one of the submissions, effective action to combat desertification and mitigate the effects of drought has to be implemented through national, subregional and regional action programmes and taking into account the particularities of the five Regional Implementation Annexes of the UNCCD.

54. Even though the AHGE strongly stressed the need for further submissions on article 27 by the Parties, and interested institutions and organizations, only a few written proposals have been made to progress this matter and facilitate its completion.

55. One of the recommendations in ICCD/COP(8)/7 addressed this situation by proposing an intersessional meeting of the Group in order to allocate enough time and resources to discussion of this matter. This is because numerous formal and informal meetings take place during each COP session, ultimately hampering the legal advisers and other representatives in charge of following this matter from fully participating in the meetings of the AHGE.

56. On consideration of the issues mentioned above, the COP may wish to:

(a) Adopt the draft terms of reference attached as an annex to this report and establish a multilateral consultative committee to assist Parties in the resolution of questions on implementation;

(b) Extend the work of the AHGE and decide that, in order to reduce financial burdens, the Group should meet for a period of three days during the next intersessional session of the subsidiary bodies of the COP. At the meeting of the AHGE, delegations should have enough time to analyse, discuss and review the draft terms of reference on a multilateral consultative committee aimed at resolving questions on implementation. This draft terms of reference could again be reviewed at the tenth session of the COP and adopted to assist Parties in complying with their commitments under the Convention;

(c) Further consider article 27 of the Convention and call for further comments from Parties at the next COP session on the elements mentioned in the present note.

Annex

Draft terms of reference for a multilateral consultative process

A. Establishment

1. Pursuant to article 27 on measures to resolve questions on implementation of the United Nations Convention to Combat Desertification (“the Convention”), the Conference of the Parties hereby establishes a multilateral consultative process (“the process”) in the form of a set of procedures to be served by a standing Multilateral Consultative Committee (“the Committee”).

B. Mandate

2. The Committee shall resolve questions regarding the implementation of the Convention, by:

(a) Providing advice on assistance to Parties to overcome difficulties encountered in their implementation of the Convention;

(b) Promoting understanding of the Convention;

(c) Preventing disputes from arising.

C. Nature of the process

3. The process shall be conducted in a facilitative, flexible, cooperative, non-confrontational, transparent, non-judicial and timely manner, as well as being effective in terms of the use of financial, technological and human resources. Parties concerned shall be entitled to participate fully in the process.

4. The process shall be separate from, and without prejudice to, the provisions of article 28 of the Convention (settlement of disputes).

D. Composition

5. The Committee shall consist of [5][10][15] members. It shall be composed of persons nominated by Parties who are experts in relevant fields, such as science, socio-economics, law and the environment. The Committee may draw on such outside expertise as it deems necessary.

6. The members of the Committee shall be designated by the Conference of the Parties for [one][two][four] years, based on equitable geographical distribution and adequate representation of affected country Parties, particularly those in Africa, while not neglecting affected country Parties in other regions, and shall not serve for more than two consecutive terms. The Chairpersons of the subsidiary bodies of the Convention may participate in the meetings of the Committee as observers.

E. Frequency of sessions and organization of work

7. The Committee shall meet at least [once][twice] a year. Meetings of the Committee shall, whenever practicable, take place in conjunction with sessions of the Conference of the Parties or its subsidiary bodies.

8. [Sessions of the Committee shall be (private/public), unless the Committee decides otherwise][Meetings dealing with specific submissions relating to the obligations 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].

9. The programme of work of the Committee, which should include estimates regarding financial implications, shall be approved by the Conference of the Parties. At the beginning of each of its sessions, the Committee shall adopt its agenda and organization of work for the session.

10. The Committee shall report to each ordinary session of the Conference of the Parties on all aspects of its work, with a view to the Conference of the Parties taking whatever decisions it considers necessary.

11. In consultation with the Chairperson of the Committee, the secretariat shall prepare the provisional agenda of each session.

F. General procedures

12. Questions regarding the implementation of the Convention may be raised, with supporting information, by:

- (a) A Party with respect to its own implementation;
- (b) A group of Parties with respect to their own implementation;
- (c) A Party or a group of Parties with respect to implementation by another Party or group of Parties;
- (d) The Conference of the Parties;
- (e) The secretariat.

13. The Committee shall, on receipt of a question in accordance with paragraph [12] above, consider questions regarding the implementation of the Convention in consultation with the Party or Parties concerned and, in the light of the nature of the question, provide appropriate assistance in relation to the difficulties encountered in the course of implementation, by:

- (a) Clarifying and resolving questions;

- (b) Providing advice and recommendations on the procurement of technical and financial resources for the resolution of these difficulties;
 - (c) Providing advice on the compilation and communication of information.
14. The Committee shall not duplicate activities performed by other Convention bodies.

G. Outcome

15. The conclusions and any recommendations of the Committee shall be sent to the Party or Parties concerned for its, or their, consideration. Such conclusions and recommendations shall be consistent with the mandate as described in paragraph 13 above. They may include:

- (a) Recommendations regarding cooperation between the Party or Parties concerned and other Parties to further the objective of the Convention;

- (b) Measures that the Committee deems suitable to be taken by the Party or Parties concerned for the effective implementation of the Convention.

16. The Party or Parties concerned shall be given an opportunity to comment on the conclusions and recommendations. The Committee shall, in addition, forward its conclusions and recommendations and any written comments of the Party or Parties concerned to the Conference of the Parties in due time before its ordinary sessions.

17. The Committee shall report on its work at each ordinary session of the Conference of the Parties. The report of the Committee shall be submitted to the Conference of the Parties for its consideration and any decision the Conference may wish to take relating to the work of the Committee.

H. Evolution

18. These terms of reference may be amended by the Conference of the Parties to take account of any amendment to the Convention, decisions of the Conference of the Parties or experience gained with the working of the process.

I. Confidentiality

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

J. Overriding authority of the Conference of the Parties

20. In the event of any conflict between the present terms of reference and any provision of the Convention or decision of the Conference of the Parties, the provision of the Convention or decision of the Conference of the Parties shall prevail.

K. Rules of procedure

21. The Committee shall set up its own rules of procedure. The Committee may establish its own internal rules governing matters of a practical nature relating to the tasks of the Committee.
