



Convention on Biological Diversity

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CONFERENCE OF THE PARTIES TO THE CONVENTION
ON BIOLOGICAL DIVERSITY SERVING AS THE
MEETING OF THE PARTIES TO THE NAGOYA
PROTOCOL ON ACCESS TO GENETIC RESOURCES
AND THE FAIR AND EQUITABLE SHARING OF THE
BENEFITS ARISING FROM THEIR UTILIZATION

First meeting

Pyeongchang, Republic of Korea, 13–17 October 2014

Item 16 of the provisional agenda^{*}

IMPROVING THE EFFICIENCY OF STRUCTURES AND PROCESSES UNDER THE CONVENTION AND ITS PROTOCOLS

Establishment of a subsidiary body on implementation

Note by the Executive Secretary

I. INTRODUCTION

1. The Conference of the Parties to the Convention on Biological Diversity, in paragraph 2 of its decision XI/10, requested the Executive Secretary, in consultation with the Bureau, to prepare a proposal on improving the efficiency of structures and processes under the Convention and its two Protocols, including the periodicity of meetings until 2020, the organization of intersessional work, and the organization of the meetings of the Conference of the Parties and the COP-MOP of the two Protocols, for consideration by the Ad Hoc Open-ended Working Group on Review of Implementation of the Convention (WGRI) at its fifth meeting. Further, in paragraph 3 of the same decision, the Conference of the Parties requested the Ad Hoc Open-ended Working Group on Review of Implementation of the Convention to consider the proposal and to develop a recommendation for the consideration of the Conference of the Parties at its twelfth meeting.

2. At its fifth meeting, held in Montreal from 16 to 20 June 2014, the Ad Hoc Open-ended Working Group on Review of Implementation of the Convention considered its agenda item on improving efficiency of structures and processes of the Convention and its Protocols on the basis of proposals prepared by the Secretariat. The Working Group, in its consideration of the issue, agreed on an integrated approach in general, while noting that the legal distinction of each instrument and effective participation in processes and structures of both the Cartagena Protocol on Biosafety and the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization, need to be ensured. In that context, it stressed the importance of organizing concurrent meetings of the Convention and its Protocols in a manner that would allow the full and effective participation of all Parties.

^{*} UNEP/CBD/NP/COP-MOP/1/1.

3. Furthermore, the Ad Hoc Open-ended Working Group on Review of Implementation of the Convention also recommended that the Conference of the Parties to the Convention establish a subsidiary body for implementation to replace the Working Group and requested the Executive Secretary to prepare terms of reference for the subsidiary body with a mandate to review the implementation of the Convention and its Protocols for consideration by the twelfth meeting of the Conference of the Parties to the Convention, the seventh meeting of the Parties to the Cartagena Protocol and the first meeting of the Parties to the Nagoya Protocol.

4. In the context of the above, the Executive Secretary prepared and made available document UNEP/CBD/COP/12/25/Add.1 for the consideration of the twelfth meeting of Convention on Biological Diversity, the seventh meeting of the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety and the first meeting of the Nagoya Protocol on Access and Benefit-sharing. The document, UNEP/CBD/COP/12/25/Add.1, is made available to the first meeting of the Parties to the Nagoya Protocol as an annex to the present document. Suggested elements for a draft decision have been prepared on the basis of the information and suggestions contained in document UNEP/CBD/COP/12/25/Add.1, and are being made available in section II below for the consideration of the Parties to the Nagoya Protocol at their first meeting.

II. SUGGESTED ELEMENTS FOR A DRAFT DECISION

In light of the summary above and the detailed information contained in document UNEP/CBD/COP/12/25/Add.1 (annexed to this document), the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol may wish to:

(a) Recall Article 26, paragraph 4, of the Nagoya Protocol which elaborates the measures that the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol is expected to undertake for the purpose of keeping under review the implementation of the Protocol;

(b) Recall also Article 27 of the Nagoya Protocol which stipulates that any subsidiary body established by or under the Convention may serve the Protocol, including upon a decision by the Conference of the Parties serving as the meeting of the Parties to the Protocol, and in which case, the meeting of the Parties to the Protocol is required to specify the tasks the subsidiary body is to undertake;

(c) Consider the terms of reference of a subsidiary body on implementation prepared by the Executive Secretary in accordance with the recommendation of the Ad Hoc Open-ended Working Group on Review of Implementation of the Convention at its fifth meeting;

(d) Recognize the benefits of integrated approaches to the review and support of the implementation of the Convention and its Protocols;

(e) Recognize also the importance of the full and effective participation of all Parties, especially developing country Parties, in particular least developed countries and small island developing States, and Parties with economies in transition in the meetings of the subsidiary body on implementation;

1. Decide to designate the Subsidiary Body on Implementation to also serve the Nagoya Protocol on Access and Benefit-sharing;

2. Agree that the terms of reference of the Subsidiary Body on Implementation proposed in the annex to document UNEP/CBD/COP/12/25/Add.1 should apply *mutatis mutandis* to the functions of the Subsidiary Body under the Nagoya Protocol;

3. Request the Executive Secretary to prepare an indicative list of functions that the Subsidiary Body on Implementation may undertake to review and support implementation under the Nagoya Protocol for consideration by the Subsidiary Body, at its first meeting.

*Annex***ESTABLISHMENT OF A SUBSIDIARY BODY ON IMPLEMENTATION****INTRODUCTION**

1. The Ad Hoc Open-ended Working Group on the Review of Implementation of the Convention (WGRI) considered, at its fifth meeting, proposals by the Executive Secretary in response to paragraph 2 of decision XI/10, on improving the efficiency of structures and processes under the Convention and its two Protocols. WGRI recommended to the Conference of the Parties the establishment of a subsidiary body on implementation.
2. The Ad Hoc Open-ended Working Group on the Review of Implementation of the Convention (WGRI) requested the Executive Secretary to prepare terms of reference for a subsidiary body on implementation (SBI) to replace WGRI, with a mandate to review the implementation of the Convention and its Protocols, for consideration by the twelfth meeting of the Conference of the Parties to the Convention, the seventh meeting of the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol and the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol. The terms of reference should take into consideration the mandate of the other subsidiary bodies of the Convention and propose changes to these mandates, if desirable (recommendation 5/2, paragraph 1 (d)).
3. This document prepared in response to WGRI recommendation 5/2 has three sections and one annex. Section I provides an overview of existing mandates to review the implementation of the Convention. Section II highlights the background to the establishment of a subsidiary body on implementation and the considerations that were taken into account in preparing its terms of reference. Lastly, section III contains a draft decision for the establishment of the Subsidiary Body on Implementation, with its proposed terms of reference contained in annex I.

I. REVIEW OF IMPLEMENTATION OF THE CONVENTION

4. Article 23 of the Convention states that the Conference of the Parties shall keep under review the implementation of this Convention, and, for this purpose, shall, among other things, establish the form and the intervals for transmitting the information to be submitted in accordance with Article 26 and consider such information as well as reports submitted by any subsidiary body; and consider and undertake any additional action that may be required for the achievement of the purposes of the Convention in the light of experience gained in its operation.
5. Article 25 of the Convention established a subsidiary body for the provision of scientific, technical and technological advice to provide the Conference of the Parties and, as appropriate, its other subsidiary bodies with timely advice relating to the implementation of this Convention. Specifically, the subsidiary body is to provide scientific and technical assessments of the status of biological diversity; prepare scientific and technical assessments of the effects of types of measures taken in accordance with the provisions of this Convention; identify innovative, efficient and state-of-the-art technologies and know-how relating to the conservation and sustainable use of biological diversity and advise on the ways and means of promoting development and/or transferring such technologies etc.
6. In 2002, Parties to the Convention on Biological Diversity adopted the Strategic Plan for the Convention (2002-2010), through decision VI/26 and requested the Executive Secretary to provide appropriate information to the Parties at an inter-sessional meeting for consideration of the future evaluation of progress in the implementation of the Convention and the Strategic Plan, in accordance with the relevant provisions of the Convention.
7. This was followed by decision VII/30, paragraph 23, establishing an Ad Hoc Open-ended Working Group on Review of Implementation of the Convention to consider progress in the implementation of the Convention and the Strategic Plan and achievements leading up to the 2010 target in line with the multi-year programme of work for the Conference of the Parties (decision VII/31). The mandate of WGRI included a review of the impacts and effectiveness of existing processes under the

Convention, such as meetings of the Conference of the Parties, the Subsidiary Body on Scientific, Technical and Technological Advice, national focal points and the Secretariat, as part of the overall process for improving the operations of the Convention and implementation of the Strategic Plan, and to consider ways and means of identifying and overcoming obstacles to the effective implementation of the Convention.

8. Through the same decision (VII/30) the Parties to the Convention recognized the need to establish a process for evaluating, reporting and reviewing the Strategic Plan 2002-2010 and decided to allocate adequate time in subsequent meetings of the Conference of the Parties and the Subsidiary Body on Scientific, Technical and Technological Advice, as well as ad hoc open-ended working groups. The national biodiversity strategies and action plans (NBSAPs) were considered by the Parties to be the primary mechanism for implementation of the Convention and the Strategic Plan.

9. Decision VII/30 also decided on a framework to enhance the evaluation of achievements and progress in implementing the Strategic Plan 2002-2010 and, in particular, its mission to achieve a significant reduction in the current rate of biodiversity loss at global, regional and national levels.

10. Following the review of the 2002-2010 Strategic Plan for the Convention in 2010, the Conference of Parties, through decision X/2, adopted a new Strategic Plan for Biodiversity for the period 2011-2020, along with 20 Aichi Biodiversity Targets after noting with concern the conclusions of the third edition of the Global Biodiversity Outlook confirming that the 2010 biodiversity target has not been met in full and identifying the obstacles that prevented it from being met.

11. In decision X/2, the Conference of the Parties, recalling its role to keep the implementation of the Convention under review, decided that future meetings of the Conference of the Parties shall review progress in the implementation of the Strategic Plan for Biodiversity 2011-2020, share experiences relevant for implementation and provide guidance on means to address obstacles encountered. The Parties also decided to consider at their eleventh meeting the need for and possible development of additional mechanisms or enhancements to existing mechanisms such as the Subsidiary Body on Scientific, Technical and Technological Advice and the Ad Hoc Open-ended Working Group on Review of Implementation of the Convention to enable Parties to meet their commitments under the Convention and the implementation of the Strategic Plan for Biodiversity 2011-2020.

12. The Strategic Plan for Biodiversity 2011-2020, in its paragraph 19, provides that the Conference of the Parties, with the support of other Convention bodies, in particular the Ad Hoc Open-ended Working Group on Review of Implementation of the Convention, will keep under review the implementation of this Strategic Plan, and support effective implementation by Parties, ensuring that new guidance is informed by the experience of Parties in implementing the Convention, in line with the principle of adaptive management through active learning. The Conference of the Parties (COP) will review the progress towards the Aichi Biodiversity Targets as set out in the Strategic Plan and make recommendations to overcome any obstacles encountered in meeting those targets, and, as appropriate, to strengthen the mechanisms to support implementation, monitoring and review.

13. The Convention as well as the Strategic Plan for Biodiversity 2011-2020 and other COP decisions have identified and addressed means and mechanisms to support implementation, such as capacity-building, public education and awareness, technical and scientific cooperation, financial resources, financial mechanism, partnerships and initiatives to enhance cooperation, and support mechanisms for research, monitoring and assessment, among others. The review of these mechanisms with a view to strengthening them supports the effective implementation of the Convention and decisions of the Conference of the Parties and the subsidiary body on implementation could play an important role in this regard.

II. SUBSIDIARY BODY ON IMPLEMENTATION AND ITS TERMS OF REFERENCE

14. As indicated in the introduction above, the Ad Hoc Open-ended Working Group on Review of Implementation (WGRI), at its fifth meeting, reviewed proposals on improving the efficiency of structures and processes under the Convention and its Protocols in response to decision X1/10 of the

Conference of the Parties. In that context, WGRI recommended, among other things, that the Conference of the Parties decide, at its twelfth meeting, to establish a subsidiary body on implementation.

15. According to the recommendation,¹ the subsidiary body on implementation is intended to replace WGRI and to also serve the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety and the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol on Access and Benefit-Sharing. In light of that, WGRI requested the Executive Secretary to prepare terms of reference for such a subsidiary body with a mandate of reviewing the implementation of the Convention and its Protocols for consideration by the twelfth meeting of the Conference of the Parties to the Convention, the seventh meeting of the Parties to the Cartagena Protocol and the first meeting of the Parties to the Nagoya Protocol.

16. Accordingly, the Executive Secretary prepared the terms of reference annexed to this document. In preparing the terms of reference, the Executive Secretary reviewed the terms of reference and actual functions of a number of bodies and arrangements within and outside the Convention and their operations, in particular the terms of reference of WGRI, SBSTTA, the Working Group on Article 8(j) and Related Provisions, and SBSTA and SBI of UNFCCC. The provisions of the Cartagena Protocol on Biosafety and the Nagoya Protocol on subsidiary bodies specified in Articles 30 and Article 27, respectively, have also been considered. Article 30 of the Cartagena Protocol stipulates that the Conference of the Parties serving as the meeting of the Parties to the Protocol may decide that any subsidiary body established by or under the Convention could serve the Protocol while Article 29 of the Nagoya Protocol provides that any subsidiary body established by or under the Convention may serve the Nagoya Protocol too.

17. The proposed terms of reference contain few basic and overarching functions that may be appropriate for a subsidiary body on implementation. The terms of reference are formulated in a general way so that they could also be applicable to the two Protocols, *mutatis mutandis*, if accepted by the Conference of the Parties serving as the meeting of the Parties to the respective Protocols.

III. SUGGESTED ELEMENTS FOR A DRAFT DECISION

18. The Ad Hoc Open-ended Working Group on Review of Implementation of the Convention, in recommendation 5/2, prepared an element of a draft decision for the consideration of the Conference of the Parties at its twelfth meeting, reproduced below as the first operative paragraph. Additional elements for incorporation into the draft decision are also suggested for the consideration of the Conference of the Parties:

The Conference of the Parties,

Recalling Article 23, paragraph 4 of the Convention, which elaborates the measures that the Conference of Parties is expected to undertake for the purpose of keeping under review the implementation of the Convention,

Recalling also Article 23, paragraph 4 (g) and rule 26, paragraph 1 of the rules of procedure for the meetings of the Conference of the Parties, which refer to possible establishment, by the Conference of the Parties, of other subsidiary bodies,

Recognizing the benefits of integrated approaches to the review and support of the implementation of the Convention and its Protocols,

Further recognizing the importance of the full and effective participation of all Parties, especially developing country Parties, in particular least developed countries and small island developing States, as well as countries with economies in transition, in the meetings of the subsidiary body on implementation,

Recognizing also the importance of the full and effective participation of representatives of indigenous and local communities in the meetings of a subsidiary body on implementation, in particular during any consideration, by the subsidiary body, of matters relating to the implementation of Article 8(j) and related provisions of the Convention,

¹ WGRI recommendation 5/2.

Decides to establish a subsidiary body on implementation to replace the Ad Hoc Open-ended Working Group on Review of Implementation of the Convention, with the mandate set out in the terms of reference annexed to the present decision;

Requests the Subsidiary Body on Implementation to undertake the tasks outlined in the annex to the present decision, as well as any tasks that fall within the scope of its terms of reference as referred to it by the Conference of the Parties or the Conference of the Parties serving as the meetings of the Parties to the two protocols, and to report on its work;

Requests the Executive Secretary to support the work of the Subsidiary Body on Implementation by, inter alia, organizing its meetings, and preparing documentation necessary for the meetings and reports of the Subsidiary Body;

Requests the Executive Secretary to make arrangements for a meeting of the Subsidiary Body on Implementation to be held prior to the thirteenth meeting of the Conference of the Parties.

19. The Conference of the Parties may also wish to acknowledge any relevant decisions on this matter from the seventh meeting of the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol and the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol, or otherwise recommend that these bodies also designate the Subsidiary Body on Implementation to serve the respective Protocols.

Annex

TERMS OF REFERENCE FOR A SUBSIDIARY BODY ON IMPLEMENTATION

1. Under the guidance of the Conference of the Parties, the Subsidiary Body on Implementation should perform the following functions in order to support the Conference of the Parties in keeping under review the implementation of the Convention pursuant to Article 23, paragraph 4:

(a) Review relevant information on progress in the implementation, including in the provision of support for the implementation of the Convention, any strategic plans and targets adopted under the Convention and other relevant decisions of the Conference of the Parties;

(b) Develop new guidance and assist the Conference of the Parties in preparing decisions on enhancing the implementation of the Convention, as appropriate;

(c) Develop recommendations to overcome obstacles encountered in implementing the Convention, and any strategic plans and targets adopted under the Convention;

(d) Develop recommendations on how to strengthen mechanisms to support implementation;

(e) Identify ways and means that promote integration and efficiencies in the implementation of the Convention and its Protocols, as appropriate;

(f) Perform such other functions as may be determined by the Conference of the Parties.

2. The Subsidiary Body on Implementation should undertake functions as may be referred to it by the Conference of the Parties serving as the meetings of the Parties to the two Protocols;

3. In carrying out its functions, the Subsidiary Body on Implementation should bear in mind the role and functions of the Subsidiary Body on Scientific, Technical and Technological Advice and focus its work accordingly.

4. The Subsidiary Body on Implementation and the Subsidiary Body on Scientific, Technical and Technological Advice should, as appropriate, exchange information in order to ensure complementarity in their work and avoid overlap.