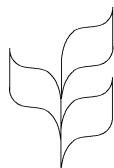




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**CONVENTION ON
BIOLOGICAL DIVERSITY**

Distr.
GENERAL

UNEP/CBD/BSWG/3/4
28 July 1997

ORIGINAL: ENGLISH

OPEN-ENDED AD HOC WORKING
GROUP ON BIOSAFETY
Third Meeting
Montreal, Canada
13 to 17 October 1997

**COMPILATION OF DRAFT TEXT PREPARED
BY THE SECRETARIAT ON SELECTED ITEMS**

Note by the Executive Secretary

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E.1. FINANCIAL ISSUES

Article [E.1.I]. Financial Resources

1. Each Contracting Party to this Protocol undertakes to provide, in accordance with its capabilities, financial support and incentives in respect of those national activities which are intended to achieve the objectives of this Protocol, in accordance with its national plans, priorities and programmes.
2. The developed country Parties shall provide new and additional financial resources to enable developing country Parties to meet the agreed full incremental costs to them of implementing measures which fulfil the obligations of this Protocol and to benefit from its provisions and which costs are agreed between a developing country Party and the financial mechanism, in accordance with policy, strategy, programme priorities and eligibility criteria and an indicative list of incremental costs established by the Meeting of the Parties. Other Parties, including countries undergoing the process of transition to a market economy, may voluntarily assume the obligations of the developed country Parties. For the purpose of this Article, the Meeting of the Parties, shall as soon as practical establish a list of developed country Parties and other Parties which voluntarily assume the obligations of the developed country Parties. The Meeting of the Parties shall periodically review and if necessary amend the list. Contributions from other countries and sources on a voluntary basis would also be encouraged. The implementation of these commitments shall take into account the need for adequacy, predictability and timely flow of funds and the importance of burden-sharing among the contributing Parties included in the list.
3. The developed country Parties may also provide, and developing country Parties avail themselves of, financial resources related to the implementation of this Protocol through bilateral, regional and other multilateral channels.
4. The extent to which developing country Parties will effectively implement their commitments under this Protocol will depend on the effective implementation by developed country Parties of their commitments under this Convention related to financial resources and transfer of technology and will take fully into account the fact that economic and social development and eradication of poverty are the first and overriding priorities of the developing country Parties.
5. The Parties to this Protocol shall take full account of the specific needs and special situation of least developed countries and small island states in their actions with regard to funding and transfer of technology.
6. Parties to this Protocol agree that, according to the specific needs of different regions and sub-regions, regional or sub-regional centres for training and technology transfer regarding the risk assessment and management of LMOs and products thereof should be established. The Parties to this Protocol shall decide on the establishment of appropriate funding mechanism of a voluntary nature.
7. Noting and recognising paragraphs 1(d) & 1(e) of Article 14 of the Convention on Biological Diversity, the Parties to this Protocol shall consider the establishment of a revolving fund to assist on an interim basis in case of emergency situations to minimise damage from accidents arising from accidental/unintentional and/or intentional release and transboundary movements of LMOs and products thereof.

Article [E.1.II]. Financial Mechanism

1. There shall be a mechanism for the provision of financial resources to developing country Parties for purposes of this Protocol on a grant or concessional basis the essential elements of which are described in this Article. The mechanism shall function under the authority and guidance of, and be accountable to, the Meeting of the Parties for purposes of this Protocol. The operations of the mechanism shall be carried out by such institutional structure as may be decided upon by the Meeting of the Parties at its first meeting. For purposes of this Protocol, the Meeting of the Parties shall determine the policy, strategy, programme priorities and eligibility criteria relating to the access to and utilization of such resources. The contributions shall be such as to take into account the need for predictability, adequacy and timely flow of funds referred to in Article [E.1.I] in accordance with the amount of resources needed to be decided periodically by the Meeting of the Parties and the importance of burden-sharing among the contributing Parties included in the list referred to in Article [E.1.I, paragraph 2] of the Protocol. Voluntary contributions may also be made by the developed country Parties and by other countries and sources. The mechanism shall operate within a democratic and transparent system of governance.
2. Pursuant to the objectives of this Protocol, the Meeting of the Parties shall, as soon as practical, determine the policy, strategy and programme priorities, as well as detailed criteria and guidelines for eligibility for access to and utilization of the financial resources including monitoring and evaluation on a regular basis of such utilization. The Meeting of the Parties shall decide on the arrangements to give effect to paragraph 1 above after consultation with the institutional structure entrusted with the operation of the financial mechanism.
3. The Contracting Parties to this Protocol shall consider strengthening existing financial institutions to provide financial resources for the purposes of this Protocol.
4. The Financial Mechanism shall constitute a trust fund, in conformity with the provisions of the Financial Resources and Financial Mechanism Articles of this Protocol.

E.2. INSTITUTIONAL FRAMEWORK

Article [E.2.I] Meetings of the Parties

1. The Parties to the Protocol shall hold meetings at regular intervals. The Secretariat of the Convention shall convene the first Meeting of the Parties to the Protocol not later than one year after the date of the entry into force of this Protocol and in conjunction with a meeting of the Conference of the Parties to the Convention, if the meeting of the latter is scheduled within that period.
2. Subsequent ordinary Meetings of the Parties to the Protocol shall be held, unless the Parties otherwise decide, in conjunction with meetings of the Conference of the Parties to the Convention. Extraordinary Meetings of the Parties shall be held at such other times as may be deemed necessary by a Meeting of the Parties, or at the written request of any Party, provided that within six months of such a request being communicated to them by the Secretariat, it is supported by at least one third of the Parties.
3. The Parties to the Protocol, at their first meeting shall:
 - (a) Adopt rules of procedure for their meetings;
 - (b) Adopt the financial provisions referred to in Article [E.1].
 - (c) The Meeting of the Parties shall, at its first session, adopt its own rules of procedure as well as those of any subsidiary bodies established by the Protocol, which shall include decision-making procedures for matters not already covered by decision-making procedures stipulated in the Protocol. Such procedures may include specified majorities required for the adoption of particular decisions.
 - (d) Designate the Secretariat from amongst those existing competent international organizations which have signified their willingness to carry out the Secretariat functions under this Protocol.
4. The Parties to the Protocol may at their regular or extraordinary meetings review the protocol and its implementation.
5. The functions of the Meetings of the Parties to this Protocol shall be, *inter alia*:
 - (a) to keep under review the implementation of this Protocol and to consider the efficacy of the measures adopted and the advisability of any other measures;
 - (b) Periodically examine the obligations of the Parties and the institutional arrangements under the Protocol, in the light of the objectives of the Protocol, the experience gained in its implementation and the evolution of scientific and technological knowledge;
 - (c) Make recommendations on any matters necessary for the implementation of the Protocol;
 - (d) Promote and facilitate the exchange of information on measures adopted by the Parties to address

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- the transboundary movement of living modified organisms and its potential effects, taking into account the differing circumstances, responsibilities and capabilities of the Parties and their respective commitments under the Protocol;
- (e) Assess, on the basis of all information made available to it in accordance with the provisions of the Protocol, the implementation of the Protocol by the Parties, the overall effects of the measures taken pursuant to the Protocol as well as their cumulative impacts and the extent to which progress towards the objective of the Protocol is being achieved;
 - (f) to formulate and adopt programmes and measures aimed at strengthening the aims and objectives of this Protocol;
 - (g) to adopt, in accordance with the aims and objectives of this Protocol, common guidelines, standards or criteria, in any form decided upon by the Parties;
 - (h) To increase co-operation among the Parties to this Protocol in the establishment and development of the Advance Informed Agreement procedure, and to adopt guidelines to facilitate the establishment and development of that system.
 - (i) Seek to mobilize financial resources in accordance with Article [E1.I];
 - (j) Agree upon and adopt, by consensus, rules of procedure and financial rules for itself and for any subsidiary bodies;
 - (k) consider and adopt the budget for implementing this Protocol;
 - (l) Establish such subsidiary bodies as are deemed necessary for the implementation of the Protocol;
 - (m) Review reports submitted by its subsidiary bodies and provide guidance to them;
 - (n) consider and adopt, as required, proposals for amendment of this Protocol or any annex and for any new annex; and
 - (o) Exercise such authority and other functions as are required for the achievement of the objective of the Protocol.
6. The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State member thereof or observers thereto not Party to the Protocol, may be represented at sessions of the Meeting of the Parties as observers. Any body or agency, whether national or international, governmental or non-governmental, which is qualified in matters covered by the Protocol, and which has informed the secretariat of its wish to be represented at a session of the Meeting of the Parties as an observer, may be so admitted unless at least one third of the Parties present object. The admission and participation of observers shall be subject to the rules of procedure adopted by the Meeting of the Parties.

Article [E.2.II] Secretariat

1. The Secretariat of the Convention referred to in Article 24, paragraph 2, of the Convention on Biological Diversity shall serve as the Secretariat of the Protocol, on an interim basis for the period between the entry into force of this Protocol and the first meeting of the Meeting of the Parties.
2. The functions of the Secretariat of the Protocol, in addition to those functions set out in Article 24 of the Convention on Biological Diversity shall be to:

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- (a) Prepare and transmit reports based upon information derived from the Biosafety Clearing-House Mechanism and from relevant intergovernmental and non-governmental organisations;
- (b) Prepare and distribute reports yearly on its activities carried out in the execution of its functions and present them to the Meeting of the Parties;
- (c) Keeping in regular contact with the competent authorities established by the Parties in accordance with Article [] of this Protocol;
- (d) Receive, compile, and disseminate, in collaboration with the Biosafety Clearing-House Mechanism, information regarding any living modified organisms the export or import of which is banned by any Party;
- (e) Co-operate with Parties and with relevant and competent international organisations and agencies in the facilitation of experts and equipment for emergency assistance;
- (f) Seek and utilize, where appropriate, the services and cooperation of, and information provided by, competent international organizations and intergovernmental and non-governmental bodies;
- (g) To make arrangements for sessions of the Meeting of the Parties and its subsidiary bodies established under the Protocol and to provide them with services as required;
- (h) To ensure the necessary coordination with the secretariats of other relevant international bodies;
- (i) To enter, under the overall guidance of the Meeting of the Parties, into such administrative and contractual arrangements as may be required for the effective discharge of its functions; and
- (j) Perform such other functions relevant for the achievement of the objectives/purposes of this Protocol as may be determined /assigned to it by the meeting of the Parties.

J.1. JURISDICTIONAL SCOPE

Option 1

Article [J.I.I] Jurisdictional Scope

1. Articles 4 of the Convention on Biological Diversity regarding Jurisdictional Scope shall apply to this Protocol.

Option 2

Article [J.I.II]. Jurisdictional Scope

1. Subject to the rights of other States, and except as otherwise expressly provided in this Protocol, the provisions of this Protocol apply, in relation to each Contracting Party:
 - (a) In the case of components of biological diversity, in areas within the limits of its national jurisdiction; and
 - (b) In the case of processes and activities, regardless of where their effects occur, carried out under its jurisdiction or control, within the area of its national jurisdiction or beyond the limits of national jurisdiction.

J.2. RELATIONSHIP WITH OTHER INTERNATIONAL CONVENTIONS

Option 1 *Article [J.2.I] Relationship With Other International Conventions*

1. Article 22 of the Convention on Biological Diversity regarding relationship with other international conventions shall apply to this Protocol.

Option 2 *Article [J.2.II]. Relationship with Other International Conventions*

1. The provisions of this Protocol shall not affect the rights and obligations of any Contracting Party to this Protocol deriving from any existing international agreement, except where the exercise of those rights and obligations would cause a serious damage or threat to biological diversity.
2. Contracting Parties to this Protocol shall implement this Protocol with respect to the marine environment consistently with the rights and obligations of States under the law of the sea.

J.3. SETTLEMENT OF DISPUTES

Option 1

Article [J.3.I] Settlement of Disputes

1. Article 27 and Annex II of the Convention on Biological Diversity regarding Settlement of Disputes shall apply to this Protocol.

Option 2

Article[J.3.II]. Settlement of Disputes

1. In the event of a dispute between Contracting Parties to this Protocol concerning the interpretation or application of this Protocol, the parties concerned shall seek solution by negotiation.
2. If the parties concerned cannot reach agreement by negotiation, they may jointly seek the good offices of, or request mediation by, a third party.
3. When ratifying, accepting, approving or acceding to this Protocol, or at any time thereafter, a State or regional economic integration organization may declare in writing to the Depositary that for a dispute not resolved in accordance with paragraph 1 or paragraph 2 above, it accepts one or both of the following means of dispute settlement as compulsory:
 - (a) Arbitration in accordance with the procedure laid down in Part 1 of Annex II;
 - (b) Submission of the dispute to the International Court of Justice.
4. If the parties to the dispute have not, in accordance with paragraph 3 above, accepted the same or any procedure, the dispute shall be submitted to conciliation in accordance with Part 2 of Annex II unless the parties otherwise agree.
5. The provisions of this Article shall apply with respect to any protocol except as otherwise provided in the protocol concerned.

J.4. REVIEW

Option 1

Article [J.4.I] Review

1. The present Protocol may be amended by any of the procedures specified in the following paragraphs.
2. Amendments after consideration by the Secretariat :
 - (a) any amendment proposed by a Party to the Protocol shall be submitted to the Secretariat and circulated by its Executive Secretary to all Members of the Meeting of the Parties at least six months prior to its consideration;
 - (b) any amendment proposed and circulated as above shall be submitted to an appropriate body by the Secretariat for consideration;
 - (c) Parties to the Protocol, whether or not Members of the Meeting of the Parties, shall [shall not] be entitled to participate in the proceedings of the appropriate body;
 - (d) amendments shall be adopted by a two-thirds majority of only the Parties to the Protocol present and voting;
 - (e) if adopted in accordance with sub-paragraph (d) above, amendments shall be communicated by the Executive Secretary of the Secretariat to all the Parties to the Protocol for acceptance;
 - (f) an amendment shall be deemed to have been accepted in the following circumstances:
 - (i) an amendment to an Article of the Protocol shall be deemed to have been accepted on the date on which it is accepted by two-thirds of the Parties to the Protocol;
 - (ii) an amendment to an Annex to the Protocol shall be deemed to have been accepted in accordance with the procedure specified in sub-paragraph (f)(iii) unless the appropriate body, at the time of its adoption, determines that the amendment shall be deemed to have been accepted on the date on which it is accepted by two-thirds of the Parties. Nevertheless, at any time before the entry into force of an amendment to an Annex to the Protocol, a Party may notify the Executive Secretary of the Secretariat that its express approval will be necessary before the amendment enters into force for it. The latter shall bring such notification and the date of its receipt to the notice of Parties;
 - (iii) an amendment to an Appendix to an Annex to the Protocol shall be deemed to have been accepted at the end of a period to be determined by the appropriate body at the time of its adoption, which period shall be not less than ten months, unless within that period an objection is communicated to the Secretariat by not less than one-third of the Parties.
 - (g) the amendment shall enter into force under the following conditions:
 - (i) in the case of an amendment to an Article of the Protocol, or to an Annex to the Protocol not under the procedure specified in sub-paragraph (f)(iii), the amendment accepted in conformity with the foregoing provisions shall enter into force six months after the date of its acceptance with respect to the Parties to the Protocol which have declared that they have accepted it;
 - (ii) in the case of an amendment to the Protocol or to an Annex to the Protocol under the

procedure specified in sub-paragraph (f)(iii), the amendment deemed to have been accepted in accordance with the foregoing conditions shall enter into force six months after its acceptance for all the Parties with the exception of those which, before that date, have made a declaration that they do not accept it or a declaration under sub-paragraph (f)(ii), that their express approval is necessary.

3. Amendment by a Meeting of the Parties:

- (a) Upon the request of a Party, concurred in by at least one-third of the Parties, the Secretariat shall convene a Meeting of Parties to the Protocol to consider amendments to the present Protocol.
 - (b) Every amendment adopted by such a Meeting by a two-thirds majority of those present and voting of the Parties shall be communicated by the Executive Secretary of the Secretariat to all Contracting Parties for their acceptance.
 - (c) Unless the Meeting decides otherwise, the amendment shall be deemed to have been accepted and to have entered into force in accordance with the procedures specified for that purpose in paragraph (2)(f) and (g) above.
 - (d) Any Party which has declined to accept an amendment to an Annex shall be treated as a non-Party only for the purpose of application of that amendment.
4. The adoption and entry into force of a new Annex shall be subject to the same procedures as for the adoption and entry into force of an amendment to an Article of the Convention/Protocol.
 5. Any amendment to a Protocol or to an Annex shall relate to the substance of that Protocol or Annex and shall be consistent with the Articles of the present Convention/Protocol.
 6. The Executive Secretary of the Secretariat shall inform all Parties of any amendments which enter into force under the present Article, together with the date on which each such amendment enters into force.
 7. Any declaration of acceptance or of objection to an amendment under the present Article shall be notified in writing to the Executive Secretary of the Secretariat. The latter shall bring such notification and the date of its receipt to the notice of the Parties to the Protocol.

Option 2

Article [J.4.II] Review

1. Articles 29 & 30 of the Convention on Biological Diversity regarding Amendments of Protocols and Adoption and Amendment of Annexes shall apply to this Protocol.

K. FINAL CLAUSES

Article [K.1] Signature

1. This Protocol shall be open for signature at [] by all States and any regional economic integration organization from [] 199[] until [] 199[], and at the United Nations Headquarters in New York from [] 199[] to [] 199[].

Article [K.2] Ratification, Acceptance, or Approval

1. (a) In accordance with Article 34 of the Convention, this Protocol shall be subject to ratification, acceptance or approval by States and by regional economic integration organizations. Instruments of ratification, acceptance or approval shall be deposited with the Depositary.

(b) Any organization referred to in paragraph 1 above which becomes a Contracting Party to this Protocol without any of its member States being a Contracting Party shall be bound by all the obligations under the Convention and the Protocol, as the case may be. In the case of such organizations, one or more of whose member States is a Contracting Party to this Protocol, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under the Protocol. In such cases, the organization and the member States shall not be entitled to exercise rights under the Protocol concurrently.

(c) In their instruments of ratification, acceptance or approval, the organizations referred to in paragraph 1 above shall declare the extent of their competence with respect to the matters governed by the Protocol. These organizations shall also inform the Depositary of any relevant modification in the extent of their competence.

Article [K.3] Accession

1. In accordance with Article 35 of the Convention, this Protocol shall be open for accession by States and by regional economic integration organizations from the date on which the Convention or the protocol concerned is closed for signature. The instruments of accession shall be deposited with the Depositary.
2. In their instruments of accession, the organizations referred to in paragraph 1 above shall declare the extent of their competence with respect to the matters governed by the Protocol. These organizations shall also inform the Depositary of any relevant modification in the extent of their competence.
3. The provisions of Article [Ratification,] paragraph (b), shall apply to regional economic integration organizations which accede to this Protocol.

Article [K.4] Entry into Force

1. In accordance with Article 36(2) of the Convention, this Protocol shall enter into force on the ninetieth day after the date of deposit of the [# of ratification] instrument of ratification, acceptance, approval or accession.
2. This Protocol shall enter into force for a Contracting Party that ratifies, accepts or approves this Protocol

or accedes thereto after its entry into force pursuant to paragraph 1 above, on the ninetieth day after the date on which that Contracting Party deposits its instrument of ratification, acceptance, approval or accession, or on the date on which this Protocol enters into force for that Contracting Party, whichever shall be the later.

3. For the purposes of paragraphs 1 and 2 above, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

Article [K.5] Reservations

1. No reservations may be made to this Protocol.

Article [K.6] Withdrawals

1. At any time after the two years from the date on which this Protocol has entered into force for a Contracting Party, that Contracting Party may withdraw from the Protocol by giving written notifications to the Depositary.
2. Any such withdrawal shall take place upon expiry of one year after the date of its receipt by the Depositary, or on such later date as may be specified in the notification of the withdrawal.
3. Any Contracting Party which withdraws from this Protocol shall be considered as also having withdrawn from the Convention.

Article [K.7] Depositary

1. The Secretary-General of the United Nations shall assume the functions of Depositary of this Protocol.

Article [K.8] Authentic Texts

1. The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

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