



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 CARTAGENA
PROTOCOL ON BIOSAFETY

Fourth meeting

Bonn, 12-16 May 2008

Item 13 of the provisional agenda*

**SUBSIDIARY BODIES: POTENTIAL MECHANISMS FOR THE PROVISION OF SCIENTIFIC
AND TECHNICAL ADVICE**

Note by the Executive Secretary

I. INTRODUCTION

1. The question of establishing a subsidiary body for the purpose of examining scientific and technical issues emerging under the Biosafety Protocol and advising the Conference of the Parties serving as the meeting of the Parties to the Protocol, or assigning the functions to one of the existing subsidiary bodies under the Convention or the Protocol has been under consideration since the adoption of the Protocol. The Intergovernmental Committee on the Cartagena Protocol on Biosafety, the interim arrangement that undertook the preparations necessary for the entry into force of the Protocol and the first meeting of the Parties, considered this item at its last two meetings.

2. The Conference of the Parties serving as the meeting of the Parties to the Protocol, at its first meeting, adopted decision BS-I/12 regarding a medium-term programme of work, and decided that its third meeting should consider subsidiary bodies, specifically: (i) the need for designating one or the other subsidiary body of the Convention to serve the Protocol and specifying the functions which that body should handle, in accordance with Article 30, paragraph 1, of the Protocol; and (ii) whether there is a need to establish further subsidiary bodies to enhance the implementation of the Protocol.

3. Also at the same meeting, the Parties decided, in paragraph 2 of decision BS-I/11 (in the context of its agenda item on consideration of other issues necessary for the effective implementation of the Protocol), to consider, at its third meeting, the need for designating or establishing a permanent subsidiary body that provides the Conference of the Parties serving as the meeting of the Parties to the Protocol with timely advice on scientific and technical issues arising in relation to the implementation of the Protocol.

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4. At their second meeting, the Parties to the Protocol, in decision BS-I/14, regarding other scientific and technical issues that may be necessary for the effective implementation of the Protocol, invited Parties and other Governments to submit views to the Executive Secretary, in conjunction with the interim national reports, regarding the need to designate or establish a permanent subsidiary body to provide the Conference of the Parties serving as the meeting of the Parties to the Protocol with timely advice on scientific and technical issues arising in relation to the implementation of the Protocol including risk assessment and risk management, and also views regarding the nature of any such body should it be established and particular issues that it could address, such as issues related to paragraph 5 of Article 16, for inclusion in a synthesis report to be considered by the third meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol.

5. In response to the invitation, submissions were received from some Parties, other Governments and relevant international organizations. All the submissions except for one expressed the view that there was, at that stage, no justification for the establishment of such a subsidiary body.

6. The Parties to the Protocol noted, at their third meeting, the views expressed in the submissions. They further noted, in decision BS-III/13, the availability of various mechanisms by which scientific and technical advice may be provided. The Parties decided to consider those potential mechanisms at their fourth meeting, including, *inter alia*, the potential designation or establishment of a permanent subsidiary body, or the use of subsidiary bodies or mechanisms that may be created on ad hoc basis. In this regard, the Parties requested the Executive Secretary to prepare a pre-sessional paper that included cost estimates for various potential mechanisms for the provision of scientific and technical advice and also took into account and relevant findings of the Ad Hoc Open-ended Working Group on Review of Implementation of the Convention, and any associated decisions by the eighth meeting of the Conference of the Parties, concerning the review of impacts and effectiveness of existing processes under the Convention.

7. Accordingly, the present document will, in section II, recap the provisions of the Protocol on subsidiary bodies as well as the views expressed in relation to the matter earlier in the submissions made to the third meeting of the Intergovernmental Committee on the Cartagena Protocol on Biosafety, and latter to the third meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol, with a view to providing some background that could give some guidance to the present deliberations and consideration of elements for a decision. In section III, some potential mechanisms have been outlined and corresponding operational cost estimates provided. The last section of the document attempts to provide some elements of a decision for consideration by the Conference of the Parties serving as the meeting of the Parties to the Protocol.

II. SUBSIDIARY BODY FOR SCIENTIFIC AND TECHNICAL ADVICE UNDER THE BIOSAFETY PROTOCOL

8. Article 30 of the Biosafety Protocol addresses the question of subsidiary bodies and states, under paragraph 1, that any subsidiary body established by or under the Convention may, upon a decision by the Conference of the Parties serving as the meeting of the Parties to the Protocol, serve the Protocol, in which case the meeting of the Parties shall specify which functions that body shall exercise. This Article provides for the possibility of assigning functions in relation to the Protocol to subsidiary bodies under the Convention. At present, there is one standing subsidiary body under the Convention established for the purpose of providing advice for the Conference of the Parties on scientific, technical and technological matters—the Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA). It is possible to ask SBSTTA to provide scientific, technical and technological advice to the Conference of the Parties serving as the meeting of the Parties to the Protocol also. Generally, assigning functions of the Protocol to the existing bodies of the Convention is believed to help achieving greater coherence and efficiency between the two processes and minimizes operational costs.

9. However, the assignment by the Parties to Protocol of additional tasks to SBSTTA would not only pose operational difficulties, taking into account Article 25 of the Convention and the *modus operandi* of SBSTTA (as consolidated in annex III to decision VIII/10 of the eighth meeting of the Conference of the Parties to the Convention), which do not envisage allocation of tasks in relation to any protocol, but also any such request or arrangement could overstretch SBSTTA and thus reduce its effectiveness, and increase its operational costs. In the wording of paragraph 2, in particular subparagraph (e) of Article 25 of the Convention, it seems that SBSTTA is responsible to respond to scientific, technical and technological questions put to it by only the Conference of the Parties and its subsidiary bodies. The Conference of the Parties serving as the meeting of the Parties to the Protocol is not a subsidiary body to the Conference of the Parties of the Convention nor can it play a role of a governing body over SBSTTA.

10. The Conference of the Parties serving as the meeting of the Parties to the Protocol can, on the other hand, establish “such subsidiary bodies as are deemed necessary for the implementation of the Protocol” (paragraph 4(b), Article 29). Accordingly, a standing compliance committee and other ad hoc working groups have been established since the entry into force of the Protocol.

11. As mentioned in the introduction section above, the question of a subsidiary body for scientific and technical advice has been considered since the adoption of the Protocol. The submissions made to the third meeting of the Intergovernmental Committee on the Cartagena Protocol on Biosafety, for example, include suggestions to establish a subsidiary body that considers technical and scientific issues already identified by Parties to the Protocol and that develops recommendations and draft guidance or clarification materials for the consideration of the Conference of the Parties serving as the meeting of the Parties to the Protocol.

12. According to the respective submissions, the subsidiary body could take the form of either an open-ended implementation body or an advisory board with a limited membership of experts representing the five United Nations regions. A submission in favour of an open-ended implementation body further proposed that the subsidiary body may be known as the “Protocol Committee” that should meet inter-sessionally or in conjunction with the Conference of the Parties serving as the meeting of the Parties to the Protocol. It was further argued that such a mechanism would provide an opportunity to deal with practical issues related with the implementation of the Protocol, and resolve various concerns of Parties at the earliest possible and, to the extent possible, outside the Conference of the Parties serving as the meeting of the Parties to the Protocol. According to the submission, this option would also reduce the need for convening several inter-sessional working groups or expert meetings to deal with specific items, and allows the participation of all Parties, in particular developing countries, and other stakeholders.

13. The other submission made in favour of a small advisory body proposed the establishment of a standing advisory board, which would receive, through the Secretariat, a written request for the clarification of technical and scientific issues identified by Parties and Governments, and exchange views and provide draft guidance for consideration by the Conference of the Parties serving as the meeting of the Parties to the Protocol. Unlike the “Protocol Committee”, which was suggested to be an open-ended, the advisory body was proposed to be composed of 15 distinguished experts selected from the five United Nations regions; each region nominating three experts. It was also suggested that members of the advisory board to act in their personal capacity and serve in the board for a period of two years with a possibility of extension for one more term.

14. Further submissions were received by the Secretariat on this item and synthesized and made available for the third meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol. As mentioned in paragraph 5 above, all submissions except for one expressed the view that there is not, at this stage, justification for establishment of a subsidiary body to provide the Conference of

the Parties serving as the meeting of the Parties to the Protocol with advice on scientific and technical issues.

15. The points that were raised in support of that view include: (a) each Party can create its own scientific body for the purpose of assessment and management of the risks of living modified organisms; (b) there are already existing organizations which are examining scientific and technical issues relevant to living modified organisms; (c) it is better to set up ad hoc time-limited bodies to address specific scientific and technical issues as they arise; and (d) a standing subsidiary body could have significant resource implications and may not be as cost-effective as the current practice of designating more specific groups to address specific issues

16. The submission made in favour of having a subsidiary body argued, on the other hand, that a scientific committee or subsidiary body should be appointed with the task of providing advice on a range of scientific and technical issues that have a bearing on the effective implementation of the Protocol.

17. Some issues which were believed to require consideration and further clarification by a competent body were identified.^{1/} These include: (a) categorization of living modified organisms on the basis of, for example, their intended use; (b) approaches for risk assessment and risk management and the need for harmonized guidance on risk assessment; (c) the implications of antibiotic-resistance-marker genes in living modified organisms; (d) the need for and modalities of developing further rules and standards in the context of the Protocol such as those indicated pursuant to paragraph 3 of Article 18 on rules and standards for identification, packaging, handling and transport of living modified organisms.

18. It was further noted that the scientific committee could be appointed to fulfil specific tasks from time to time and funding for the committee should come from the core budget. It was also suggested that each Party should be entitled to appoint one expert to participate in the meetings of the committee, which could be held annually or biannually as the need arises.

19. The Secretariat reviewed the decisions of the eighth meeting of the Conference of the Parties that concern evaluating the impacts and improving the effectiveness of existing processes under the Convention. Decision VIII/10 on the operations of the Convention is of relevance in this respect. In particular, the consolidated *modus operandi* of SBSTTA contained in annex III of the decision presents some important elements that may provide guidance, as appropriate, to the consideration of some of the potential mechanisms for the provision of scientific and technical advice under the Protocol, described below in section III. The Secretariat also reviewed the results of the second meeting of the Ad Hoc Open-ended Working Group on Review of Implementation of the Convention held in Paris from 9 to 13 July 2007, and found no information of direct relevance that could have assisted, in some ways, the consideration of the item on a subsidiary body or a mechanism for scientific and technical advice under the Protocol.

III. POTENTIAL MECHANISMS FOR THE PROVISION OF SCIENTIFIC AND TECHNICAL ADVICE AND ASSOCIATED COST ESTIMATES

20. The following options of potential mechanisms could be considered for the provision of scientific and technical advice under the Protocol.

Option 1

Subsidiary Body on Scientific, Technical and Technological Advice of the Convention (SBSTTA)

21. The Conference of the Parties serving as the meeting of the Parties to the Protocol may, under paragraph 1 of Article 30 of the Protocol, assign functions related to the Protocol to SBSTTA,

^{1/} See section III of document UNEP/CBD/BS/COP-MOP/1/13.

notwithstanding the procedural hurdles and a possible work overload mentioned above. SBSTTA could carry out this responsibility by deciding to convene a meeting as SBSTTA for the Protocol or by taking up scientific and technical issues referred to it by the Conference of the Parties serving as the meeting of the Parties to the Protocol and adding them as items to its agenda of its regular meetings. The question is whether it is feasible and desirable to use SBSTTA as a subsidiary body also for the Protocol. In this regard, it is important to take note of the conclusion of the eighth meeting Conference of the Parties to the Convention in paragraph 14, section II of decision VIII/10 where it underlined “the need to reduce the number of agenda items for consideration by the Subsidiary Body at each meeting in order to improve the effectiveness of its proceedings”.

22. When SBSTTA performs functions related to the Protocol, Parties to the Convention that are not Parties to the Protocol may participate as observers, and decision should only taken only by Parties to the Protocol in accordance with paragraph 2 of Article 30 of the Protocol. The composition of the SBSTTA Bureau should also be in consistent with paragraph 3 of the same Article.

Option 2

Open-ended subsidiary body for scientific and technical advice under the Protocol

23. One of the specific functions of the Conference of the Parties serving as the meeting of the Parties to the Protocol listed under paragraph 4 of Article 29 of the Protocol is to establish such subsidiary bodies as are deemed necessary for the implementation of the Protocol (subparagraph (b)). Therefore, the Conference of the Parties serving as the meeting of the Parties to the Protocol could consider establishing an open-ended subsidiary body for scientific and technical advice under the Protocol.

Option 3

A permanent scientific and technical advisory body with limited membership

24. The Conference of the Parties could also consider establishing a small permanent advisory body. Members could be nominated by Governments and relevant organizations on the basis of recognized competence in the scientific and technical fields of biosafety, and elected by Parties to the Protocol; and acting in their personal capacity.

Option 4

Ad hoc scientific and technical expert group

25. This option takes the form of an ad hoc technical expert group as described in the consolidated *modus operandi* of SBSTTA (decision VIII/10, annex III, section H). Accordingly, this is an arrangement that may be used, from time to time, to address specific priority issues as required by the Conference of the Parties serving as the meeting of the Parties to the Protocol. Such group is usually composed of no more than 15 experts competent in the relevant field of expertise nominated by Parties and selected by the Executive Secretary in consultation with the Bureau of the Conference of the Parties serving as the meeting of the Parties to the Protocol with due regard to geographical distribution, and gender balance. Alternatively, experts could be selected from the Biosafety Roster of Experts by the Secretariat and approved by the Bureau.

Option 5

Utilizing the services of competent international organizations, and intergovernmental and non-governmental bodies

26. Paragraph 4 (c) of Article 29 of the Protocol requires the Conference of the Parties serving as the meeting of the Parties to the Protocol to seek and utilize, where appropriate, the services and cooperation of, and information provided by, competent international organizations and intergovernmental and non-governmental bodies. Parties may consider this option to fill gaps in any scientific and technical information. They can turn to one or more organizations that have competence in the scientific and

technical issues facing the Protocol process. This could be done through entering a formal or a less formal arrangement with the organizations concerned.

27. Such arrangement(s) may or may not involve any cost. Some organizations had accepted requests from the Secretariat and offered their services, with no cost to the Secretariat, by providing information or expertise. For example, requests for expert presentations at the meetings of the Ad Hoc Open-ended Working Group on Liability and Redress (established by decision BS-I/8) in order to fill the information gaps identified, have received positive response from some organizations. Experts were assigned from these organizations to make technical presentations as requested and the costs were covered by the organizations themselves.

Cost estimates for each option (in US dollars)

	<i>Costs</i>			<i>Assumptions</i>
	<i>Conference services</i>	<i>Travel, including subsistence allowance</i>	<i>Total</i>	
Option 1	300, 000	405, 000	705, 000	<ul style="list-style-type: none"> • A 3-day meeting of SBSTTA serving as the SBSTTA of the Protocol back-to-back with the meeting of SBSTTA of the Convention; • There are conference service costs (calculated on the basis of five days) including interpretation into the six UN languages (plenary only), and costs of translation of documents; • Costs for supporting the participation of eligible representatives (currently about 121) may vary depending on current rates. Travel costs would be shared between the Convention and the Protocol.
Option 2	300, 000	600, 000	900, 000	<ul style="list-style-type: none"> • One 5-day meeting inter-sessionally or sufficiently in advance of each regular meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol; • There are conference-service costs including interpretation into the six UN languages (plenary only), and costs of translation of documents; • Costs for supporting the participation of eligible representatives (currently about 121) may vary depending on current rates.
Option 3	0	75, 000	75, 000	<ul style="list-style-type: none"> • The advisory body may consist of 15 members acting in their personal capacity; • One 5-day meeting inter-sessionally or sufficiently in advance of each regular meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol; • All members of the advisory body are eligible for financial support as long as they serve in their personal capacity; • There is no conference-service cost. Working language will be English only.
Option 4	0	60, 000	60, 000	<ul style="list-style-type: none"> • It may consist of not more than 15 experts; • It should be convened as the need arises with respect to reviewing scientific and technical issues and developing recommendations to the Conference of the Parties serving as the meeting of the Parties to the Protocol arises; • There is no conference-service cost. Working language will be English only; • There are costs for supporting the participation of eligible representatives (about 12 of them).

	<i>Costs</i>			<i>Assumptions</i>
	<i>Conference services</i>	<i>Travel, including subsistence allowance</i>	<i>Total</i>	
Option 5	Depends on the arrangement made with the partner organization			

28. Finally, it should be noted that:

(a) With the exception of options 1 and 2, which are alternative to one another, each option could be combined with the other options;

(b) The consolidated *modus operandi* of the SBSTTA (annex III, decision VIII/10 of the eighth meeting of the Conference of the Parties) applies to the first four options *mutatis mutandis*; and

(c) The first two options entail high cost and allow high representation whereas the last three options feature low cost and low representation.

IV. ELEMENTS OF A DRAFT DECISION

29. The Conference of the Parties serving as the meeting of the Parties to the Protocol may wish to make a decision regarding subsidiary bodies, taking into account the options described above, their cost implications and other factors that may be deemed appropriate.

30. In case the Conference of the Parties serving as the meeting of the Parties to the Protocol takes a decision in favour of one or the other option for a scientific and technical advisory body, a brief description of the possible responsibilities of such a body is provided herewith as annex to this document. The responsibilities are provided in the form of generic terms of reference and draw upon Article 25 of the Convention, which provides for the establishment and functions of SBSTTA.

Annex

**TERMS OF REFERENCE FOR A SCIENTIFIC AND TECHNICAL ADVISORY BODY UNDER
THE CARTAGENA PROTOCOL ON BIOSAFETY**

- 1/ Provide the Conference of the Parties serving as the meeting of the Parties to the Protocol and, as appropriate, its other subsidiary bodies with timely advice relating to the implementation of the Protocol.
- 2/ Provide scientific and technical advice on the safe transboundary movement, transit, handling and use of living modified organisms within the scope of the Protocol.
- 3/ Prepare scientific and technical guidelines for risk assessment and risk management measures taking into consideration, among other things, the development of new technologies, know how and emerging issues in the field of biosafety and biotechnology.
- 4/ Provide advice, upon request, to Parties on the development, adoption and/or operation of scientific and technical infrastructure and capacity at national level for the effective implementation of the Protocol.
- 5/ Assist Parties to the Protocol, upon request, in monitoring the implementation of their obligations under the Protocol, and reporting on measures that they have taken.
- 6/ Assess the status of implementation of the Protocol as well as emerging scientific and technical issues in the field of biosafety with a view to advising the Conference of the Parties serving as the meeting of the Parties to the Protocol in fulfilling its responsibilities to assess and review, at intervals, the effectiveness of the Protocol in accordance with Article 35 of the Protocol.
- 7/ Undertake any other functions that may be assigned to it, from time to time, by the Conference of the Parties serving as the meeting of the Parties to the Protocol.
- 8/ The advisory body shall comprise experts with credible expertise in scientific and technical issues related to biosafety.
