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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

Ninth meeting
Sharm El-Sheikh, Egypt, 17-29 November 2018
Item 19 of the provisional agenda*

NAGOYA – KUALA LUMPUR SUPPLEMENTARY PROTOCOL ON LIABILITY AND REDRESS

Note by the Executive Secretary

I. INTRODUCTION

1. The Nagoya – Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety (Supplementary Protocol hereinafter) was adopted by the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety at its fifth meeting through decision BS-V/11. The Supplementary Protocol entered into force on 5 March 2018.
2. The present document provides an overview of the number of Parties to the Supplementary Protocol in section II and an update on activities carried out by the Secretariat to raise awareness and understanding of the Supplementary Protocol and to support its implementation in section III. It covers next steps following the entry into force of the Supplementary Protocol in section IV, and contains suggested elements for a draft decision in section V.

II. STATUS OF THE SUPPLEMENTARY PROTOCOL

3. The Supplementary Protocol is an international treaty that, in accordance with its Article 16, paragraph 1, supplements the Cartagena Protocol without modifying or amending the latter. The Supplementary Protocol is open only to Parties to the Cartagena Protocol on Biosafety, pursuant to Article 17 and Article 18, paragraph 1, of the Supplementary Protocol.
4. The Supplementary Protocol was open for signature by Parties to the Cartagena Protocol from 7 March 2011 to 6 March 2012. By the closing date, it had been signed by 51 Parties to the Cartagena Protocol.¹
5. Pursuant to its Article 18, paragraph 1, the Supplementary Protocol entered into force on the ninetieth day after the date of the deposit of the fortieth instrument of ratification, acceptance, approval or accession by Parties to the Cartagena Protocol. Following the deposit of the required number of instruments of ratification, acceptance, approval or accession, the Supplementary Protocol entered into force on 5 March 2018.²

* CBD/CP/MOP/9/1.

¹ An overview of the status of the Supplementary Protocol is available at: <https://bch.cbd.int/protocol/parties/#tab=1>.

² On 5 December 2017, the forty-first instrument of ratification, acceptance, approval or accession was deposited, in the form of an instrument of acceptance by Japan. The deposit of the instrument of approval by the European Union is not counted as additional to those instruments deposited by the member States of the European Union for the purpose of entry into force, pursuant to Article 18, paragraph 3 of the Supplementary Protocol.

6. By the date of preparation of the present note, 42 Parties to the Cartagena Protocol had deposited an instrument of ratification, acceptance, approval or accession to the Supplementary Protocol as follows: *Africa*: Burkina Faso, Central African Republic, Congo, Democratic Republic of the Congo, Eswatini, Guinea-Bissau, Liberia, Mali, Togo, Uganda; *Asia and the Pacific*: Cambodia, India, Japan, Mongolia, Syrian Arab Republic, United Arab Emirates, Viet Nam; *Central and Eastern Europe*: Albania, Bulgaria, Czechia, Estonia, Hungary, Latvia, Lithuania, Republic of Moldova, Romania, Slovakia, Slovenia; *Latin America and the Caribbean*: Cuba, Mexico; *Western European and Others Group*: Denmark, European Union, Finland, Germany, Ireland, Luxembourg, Netherlands, Norway, Spain, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland.

III. ACTIVITIES CARRIED OUT BY THE SECRETARIAT TO RAISE AWARENESS AND SUPPORT IMPLEMENTATION OF THE SUPPLEMENTARY PROTOCOL

7. At its eighth meeting, the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety, in its decision CP-VIII/11, requested the Executive Secretary, subject to the availability of funds, to develop capacity-building materials and undertake further awareness-raising activities in order to expedite the entry into force and implementation of the Supplementary Protocol.

8. The Secretariat organized three workshops, dedicated in part to the Supplementary Protocol, targeting national focal points of the Cartagena Protocol and of the Convention on Biological Diversity (Convention) as well as legal and policy experts of a total of 31 Parties to the Cartagena Protocol.³

9. In addition, an e-learning module was developed to enhance the understanding of and raise awareness about the Supplementary Protocol. The module is available in English, French and Spanish on the Convention's e-learning platform.⁴

10. The activities referred to in paragraphs 8 and 9 above were carried out in the context of the project entitled "Integrated implementation of the Cartagena Protocol on Biosafety, the Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress and the Convention on Biological Diversity at the national level", which was implemented over the 2017-2018 biennium with the support of the Government of Japan, through the Japan Biodiversity Fund.

11. In the summer of 2017, a joint letter by the Executive Secretary and the President of the Conference of the Parties for its thirteenth meeting was sent to each Party to the Cartagena Protocol that had not yet ratified the Supplementary Protocol, calling upon them to facilitate the necessary national processes towards becoming a Party to the Supplementary Protocol and to deposit an instrument of ratification, acceptance, approval or accession to the Supplementary Protocol as soon as possible.

12. Furthermore, the Secretariat provided advice about the procedure for ratifying the Supplementary Protocol and responded to queries from a number of Parties concerning the Supplementary Protocol. In preparation of the entry into force, the Secretariat updated the webpages dedicated to the Supplementary Protocol,⁵ and issued a number of press releases and communication materials.

IV. NEXT STEPS FOLLOWING ENTRY INTO FORCE OF THE SUPPLEMENTARY PROTOCOL

13. As can be seen from its Articles 14, 15 and 16, the Supplementary Protocol remains closely linked to the Cartagena Protocol both in substance and in process. The Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol is to provide the necessary oversight in the implementation of the Supplementary Protocol now that it has entered into force, although decisions on the

³ The Asian subregional workshop was held in Kuala Lumpur from 6 to 10 November 2017. The African regional workshop was held in Lilongwe, Malawi, from 19 to 23 February 2018. The Latin American and Caribbean workshop was held in Mexico City from 16 to 20 April 2018.

⁴ <https://scbd.unssc.org>.

⁵ <http://bch.cbd.int/protocol/supplementary>.

Supplementary Protocol are to be taken only by Parties to the Supplementary Protocol.⁶ This is reflected in the suggested elements for a draft decision presented in section V below.

14. Furthermore, the Secretariat also provides services for the Supplementary Protocol (Article 15). The Supplementary Protocol does not envisage a distinct budget for secretariat services. However, specific funds may need to be allocated for tasks related to the Supplementary Protocol, for example, to cover the cost of the study on financial security described below.

15. The Supplementary Protocol assigns a central role to the “competent authority”. Among other things, Parties are to require operators, in the event of damage and subject to any requirements of the competent authority, to immediately inform the competent authority (Article 5, paragraph 1 (a)). The competent authority is to identify the operator that caused the damage, evaluate the damage and determine which response measures should be taken by the operator (Article 5, paragraph 2). Publishing contact information on the competent authority in the Biosafety Clearing-House would assist operators to fulfil this requirement.

16. Furthermore, the Supplementary Protocol addresses financial security. In its Article 10, paragraph 3, the Supplementary Protocol provides the following: “The first meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol after the entry into force of the Supplementary Protocol shall request the Secretariat to undertake a comprehensive study which shall address, inter alia:

- (a) The modalities of financial security mechanisms;
- (b) An assessment of the environmental, economic and social impacts of such mechanisms, in particular on developing countries; and
- (c) An identification of the appropriate entities to provide financial security.”

17. Consequently, the Conference of the Parties serving as the meeting of the Parties is expected to make a request in accordance with Article 10, paragraph 3.

18. Finally, as indicated in the note by the Executive Secretary on monitoring and reporting (CBD/CP/MOP/9/5), questions on liability and redress have been included in the proposed draft revised reporting format.

V. SUGGESTED ELEMENTS OF A DRAFT DECISION

19. Taking into consideration the information above, the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol may wish to adopt a decision along the following lines:

*The Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety and further serving as the meeting of the Parties to the Nagoya – Kuala Lumpur Supplementary Protocol on Liability and Redress,*⁷

1. *Welcomes* the entry into force of the Nagoya – Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety;
2. *Congratulates* those Parties that have deposited their instrument of ratification, acceptance, approval or accession to the Nagoya – Kuala Lumpur Supplementary Protocol on Liability and Redress and *urges* them to take the necessary steps for its implementation;

⁶ Article 14, paragraph 1, of the Supplementary Protocol provides that the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol shall serve as the meeting of the Parties to the Supplementary Protocol, subject to paragraph 2 of Article 32 of the Convention. Article 32, paragraph 2, of the Convention provides, in turn, that decisions under any protocol shall only be taken by the Parties to the protocol concerned and any Party that has not ratified, accepted or approved a protocol may participate as an observer in any meeting of the Parties to that protocol.

⁷ Consistent with Article 32, paragraph 2, of the Convention on Biological Diversity, which specifies that decisions under any protocol shall be taken only by the parties to the protocol concerned.

3. *Urges* all Parties to the Cartagena Protocol on Biosafety that have not yet done so to deposit their instrument of ratification, acceptance, approval or accession to the Nagoya – Kuala Lumpur Supplementary Protocol on Liability and Redress as soon as possible;

4. *Welcomes* the activities undertaken to facilitate the entry into force and implementation of the Nagoya – Kuala Lumpur Supplementary Protocol on Liability and Redress and the support provided by donors in this regard;

5. *Requests* the Executive Secretary, subject to the availability of funds, to continue undertaking further awareness-raising activities and to provide support to Parties in implementing the Supplementary Protocol at the domestic level;

6. *Requests* Parties to the Supplementary Protocol to designate a competent authority to perform the functions set out in the Nagoya – Kuala Lumpur Supplementary Protocol on Liability and Redress (Article 5), and to make the contact information of its competent authority available on the Biosafety Clearing-House;

7. *Requests* Parties to the Supplementary Protocol and *invites* other Governments to report on their measures to implement the Supplementary Protocol by responding to the questions related to the Supplementary Protocol in the format for the fourth national report under the Cartagena Protocol as contained in the annex to decision CP-IX/--;

8. *Requests* the Executive Secretary to undertake a comprehensive study, for consideration by the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety at its tenth meeting, addressing:

- (a) The modalities of financial security mechanisms;
- (b) An assessment of the environmental, economic and social impacts of such mechanisms, in particular on developing countries;
- (c) An identification of the appropriate entities to provide financial security;

9. *Also requests* the Executive Secretary to create the appropriate common format in the Biosafety Clearing-House to enable Parties to share the contact information of their competent authorities pursuant to Article 5 of the Nagoya – Kuala Lumpur Supplementary Protocol on Liability and Redress.
