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COMMITTEE FOR THE NAGOYA PROTOCOL ON
ACCESS TO GENETIC RESOURCES AND THE FAIR
AND EQUITABLE SHARING OF BENEFITS
ARISING FROM THEIR UTILIZATION

Second meeting

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Item 3.4 of the provisional agenda*

RULES OF PROCEDURE FOR MEETINGS OF THE CONFERENCE OF THE PARTIES SERVING AS THE MEETING OF THE PARTIES TO THE NAGOYA PROTOCOL

Note by the Executive Secretary

INTRODUCTION

1. According to the work plan of the Intergovernmental Committee for the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (the Intergovernmental Committee), adopted by the Conference of the Parties (COP) at its tenth meeting, rules of procedure for meetings of the Parties to the Nagoya Protocol is one of the issues to be addressed by the Intergovernmental Committee at its second meeting (decision X/1, annex II, section B, item 8). The Executive Secretary has prepared the present note to assist the Intergovernmental Committee in considering the issue.

2. Section I provides an overview of the rules of procedure of the Conference of the Parties and their application under the Protocol. Section II examines the outstanding issue concerning decision-making on substantive matters. Section III makes a recommendation for the consideration of the Intergovernmental Committee.

I. THE RULES OF PROCEDURE OF THE CONFERENCE OF THE PARTIES AND THEIR APPLICATION UNDER THE NAGOYA PROTOCOL

A. Background

3. Article 26, paragraph 1, of the Protocol provides that the Conference of the Parties to the Convention shall serve as the meeting of the Parties to the Protocol.

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4. Article 26, paragraph 5, reflects the desire to apply, as far as possible, the rules and procedures for meetings of the Conference of the Parties to the Convention to meetings of the Parties to the Protocol, providing that:

“The rules of procedure of the Conference of the Parties (...) shall be applied, *mutatis mutandis*, under this Protocol, except as may be otherwise decided by consensus by the Conference of the Parties serving as the meeting of Parties to this Protocol.”.

A similar approach was taken for the Cartagena Protocol on Biosafety.

5. As with the Cartagena Protocol on Biosafety, in order to respond to the distinct nature of the Nagoya Protocol, and as further indicated by Article 26, paragraph 5, some flexibility was deemed appropriate in the application of the rules of procedure for meetings of the Conference of the Parties to the Convention to meetings of the Parties to the Nagoya Protocol. Consequently, and as highlighted in the section B below, a number of Protocol provisions either derogate expressly from the rules of procedure, or give the Parties discretion to deviate from them.

B. The rules of procedure for meetings of the Conference of the Parties to the Convention and their intersection with the provisions of the Protocol

6. Article 23, paragraph 3, of the Convention provides that the Conference of the Parties shall by consensus agree upon and adopt rules of procedure for itself and for any subsidiary body it may establish. Accordingly, by decision I/1, the Conference of the Parties adopted its rules of procedure. Subsequently, in decision V/20, the Conference of the Parties amended three of the rules of procedure. The amendments concerned the periodicity of its ordinary meetings (rule 4, paragraph 1), and the election and the terms of office of the Bureau (rules 21 and 25).

7. The rules of procedure provide the normative framework for meetings of the Conference of the Parties and its subsidiary bodies. The rules of procedure address a number of issues:

- (a) The purposes of the rules (rule 1);
- (b) Definitions (rule 2);
- (c) Place and dates of meetings (rules 3 and 4);
- (d) Observers (rules 6 and 7);
- (e) Agenda (rules 8-15);
- (f) Representation and credentials (rules 16-20);
- (g) Officers (rules 17-25);
- (h) Subsidiary bodies (rule 26);
- (i) Secretariat (rules 27 and 28);
- (j) Conduct of business (rules 29-38);
- (k) Voting (rules 39-51);

- (l) Languages (rules 52-54);
- (m) Sound records of the meetings (rule 55);
- (n) Amendments to rules of procedure (rule 56); and
- (o) The overriding authority of the Convention (rule 57).

8. As noted in paragraph 4 above, Article 26, paragraph 5, of the Protocol states that the rules of procedure for meetings of the Conference of the Parties to the Convention shall be applied *mutatis mutandis* under the Protocol except as may be otherwise decided by consensus by the Conference of the Parties serving as the meeting of Parties to the Protocol. The Parties to the Protocol may by consensus amend the rules of procedure for their meetings. They may also decide on the applicability to their meetings of amendments to the rules of procedure adopted by the Conference of the Parties to the Convention.¹

9. An important consideration in understanding the applicability of the COP rules of procedure under the Protocol is that the Protocol already has specific provisions regarding a number of items addressed by the rules of procedure. Therefore, the rules of procedure need to be read in conjunction with the provisions of the Protocol. In cases of conflict, the Protocol provisions would prevail over the rules of procedure (rule 57).

10. There are four key areas where the rules of procedure and the provisions of the Protocol intersect. These relate to (a) officers; (b) ordinary and extraordinary meetings of the Conference of the Parties to the Convention serving as the meeting of the Parties to the Protocol; (c) observers; and (d) subsidiary bodies. What follows is a brief overview of each of the four areas and the resulting interplay between the rules of procedure and the provisions of the Protocol.

11. **Officers:** Rule 21 provides that the Bureau of the Conference of the Parties to the Convention shall be elected from among the representatives of the Parties to the Convention. On the other hand, Article 26, paragraph 3, of the Protocol provides that when the Conference of the Parties to the Convention serves as the meeting of the Parties to the Protocol, any member of the Bureau representing a Party to the Convention that, at that time, is not a Party to the Protocol, shall be substituted by a member to be elected by and from among Parties to the Protocol. In effect, rule 21 is to be applied so that only Parties to the Protocol may be represented on the Bureau for their meetings.

12. The overall approach described above mirrors that in the Cartagena Protocol on Biosafety. However, in decision BS-I/1, the Parties to the Biosafety Protocol decided by consensus that a supplemental paragraph on the term of office of substitute Bureau members, to be read in conjunction with rule 21, was desirable.²

13. **Ordinary and extraordinary meetings:** The periodicity of ordinary meetings of the Conference of the Parties to the Convention is currently set at two-year intervals by rule 4. Article 26, paragraph 6,

¹ By way of comparison, at their first meeting the Parties to the Cartagena Protocol on Biosafety in decision BS-I/1 decided by consensus: "When the rules of procedure of the Conference of the Parties to the Convention are amended by the Conference of the Parties to the Convention, those amendments shall not apply to the Conference of the Parties serving as the meeting of the Parties to the Protocol, unless otherwise decided by the [Conference of the Parties to the Convention serving as the meeting of the Parties to the Protocol]."

² It reads: "Where a member of the Bureau of the Conference of the Parties to the Convention representing a Party to the Convention but, at that time, not a Party to the Protocol, is substituted by a member elected by and from among the Parties to the Protocol, the term of office of the substitute member shall expire at the same time as the term of office of the member of the Bureau he or she substitutes."

of the Protocol provides that the first meeting of the Parties shall be held concurrently with the first meeting of the Conference of the Parties to the Convention that is scheduled after entry into force of the Protocol. Paragraph 6 further provides that subsequent ordinary meetings of the Parties to the Protocol shall be held concurrently with ordinary meetings of Conference of the Parties to the Convention, unless otherwise decided by the Conference of the Parties serving as the meeting of the Parties to the Protocol.

14. As regards extraordinary meetings, rule 4, paragraph 3, of the rules of procedure and Article 26, paragraph 7, of the Protocol are largely identical. They both provide that extraordinary meetings shall be held at such times as either the Conference of the Parties to the Convention or the meeting of the Parties to the Protocol, as the case may be, shall deem necessary, or at the written request of any Party “provided that, within six months of the request being communicated to them by the Secretariat, it is supported by at least one third of the Parties”. Rule 4, paragraph 4, further clarifies that an extraordinary meeting convened at the written request of a Party “shall be convened not more than ninety days after the date at which the request is supported by at least one third of the Parties in accordance with paragraph 3”.

15. The entities enumerated in rules 6 and 7 of the rules of procedure are the same as provided for in the Protocol. However, Article 26, paragraph 2, of the Protocol clarifies that Parties to the Convention that are not at the same time Parties to the Protocol may participate as observers in the proceedings of any meetings of the Conference of the Parties serving as the meeting of the Parties to the Protocol, but decisions under the Protocol can be taken only by Parties to the Protocol.

16. **Subsidiary bodies:** Rule 26 provides for: (i) the establishment by the Conference of the Parties of other subsidiary bodies, committees and working groups in addition to the Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA);³ (ii) meetings of subsidiary bodies; (iii) election of officers; and (iv) decision-making. It further provides that, unless the Conference of the Parties decides otherwise, “these rules of procedure shall apply, *mutatis mutandis*, to the proceedings of subsidiary bodies”.

17. Article 27, paragraph 1, of the Protocol provides that subsidiary bodies established by or under the Convention may serve the Protocol, including upon a decision of the Conference of the Parties serving as the meeting of the Parties to the Protocol.⁴ In such cases, two procedural clarifications are provided by the Protocol in Article 27, paragraphs 2 and 3. First, Article 27, paragraph 2, clarifies that Convention Parties that are not Protocol Parties may participate as observers in the proceedings of any meeting of any such subsidiary bodies, but decisions under the Protocol can be taken only by Parties to the Protocol. Secondly, Article 27, paragraph 3, clarifies that a bureau member of the subsidiary body representing a Party to the Convention that is not a Party to the Protocol is to be replaced by a member to be elected by and from among Parties to the Protocol.

II. DECISION-MAKING ON SUBSTANTIVE MATTERS

³ For SBSTTA, the Conference of the Parties adopted in decision VIII/10, Annex III, a consolidated *modus operandi*, including a section on rules of procedure. The consolidated *modus operandi* was further elaborated in decision IX/29. The section of the *modus operandi* on rules of procedure clarifies that the rules of procedure for meetings of the Conference of the Parties shall apply, *mutatis mutandis*, to meetings of with the exception of rule 18 on credentials. The section addresses other issues such as: (i) working languages; (ii) requests to the Executive Secretary; (iii) recommendations to the Conference of the Parties; (iv) terms of office of SBSTTA Bureau members; and, the (v) term of office of the SBSTTA Chair.

⁴ Article 30, paragraph 1, of the Biosafety Protocol is slightly different, reading: “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 this Protocol, serve the Protocol, in which case the meeting of the Parties shall specify which functions that body shall exercise. It empowers the Conference of the Parties serving as the meeting of the Parties to the Biosafety Protocol to decide that any subsidiary body established by or under the Convention may serve the Biosafety Protocol.

18. Rule 40 of the rules of procedure defines the means for decision-making under the Convention and the types of majority vote required for such decision-making in cases where consensus cannot be achieved. The Conference of the Parties adopted its rules of procedure leaving in square brackets paragraph 1 of rule 40⁵ relating to decision-making on matters of substance. The text of rule 40, paragraph 1, has been considered by the Conference of the Parties at subsequent meetings. To date, no agreement has been reached.

19. The failure to reach an agreement on rule 40, paragraph 1, in effect means that currently all decisions by the Conference of the Parties on substantive matters must by default be adopted by consensus. By extension, this means that the Conference of the Parties serving as the meeting of the Parties to the Protocol will also adopt its substantive decisions by consensus, unless Parties to the Protocol agree by consensus to amend the rules on voting in the rules of procedure.

III. RECOMMENDATION

20. The Intergovernmental Committee may wish to consider whether additional refinements are needed with regard to the rules of procedure as they would be applied under the Nagoya Protocol, and make appropriate recommendations to the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol.

⁵ As it currently stands, paragraph 1 of rule 40 reads as follows: “[The Parties shall make every effort to reach agreement on all matters of substance by consensus. If all efforts to reach consensus have been exhausted and no agreement reached, the decision [, except for a decision under paragraph 1 or 2 of Article 21 of the Convention] shall, as a last resort, be taken by a two-thirds majority vote of the Parties present and voting, unless otherwise provided by the Convention, the financial rules referred to in paragraph 3 of Article 23 of the Convention, or the present rules of procedure. [Decisions of the Parties under paragraphs 1 and 2 of Article 21 of the Convention shall be taken by consensus.]”