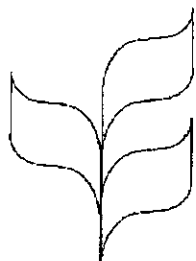




CBD



CONVENTION ON BIOLOGICAL DIVERSITY

Distr.
GENERAL

UNEP/CBD/BSWG/4/INF/8*
2 February 1998

ORIGINAL: ENGLISH

OPEN-ENDED AD HOC WORKING
GROUP ON BIOSAFETY
Fourth meeting
Montreal, 5-13 February 1998

Chairman's Note On Articles 28 -43

Please find enclosed a note in which items dealt with by Contact group II of the Open Ended ad hoc Working Group on Biosafety have been reviewed with the intention of trying to assist the sub-working group by providing an improved basis for the group's discussions and negotiations.

The documents used for the preparation of the note are the Consolidated Text of Draft Articles annexed to the report of the last meeting Ad Hoc Working Group, draft articles 28- 43, and the new submissions from Governments on these draft articles received after the third meeting of the Ad Hoc Working Group.

The criteria used in the preparation of this note have been to reduce the number of options without excluding any differences in intent or of substance. Where it seems that the only differences between options are in the phrasing, these options have been reduced to a single text with in some cases text in parenthesis to reflect alternatives. Where it seems logical, options have in some cases been organised in a different way than in the Consolidated Text. However, no attempts have been made to combine different options into "compromise options".

"Sub-headings" in italics in front of a line of options should be considered only as an aid to the reader and not as part of the text.

Standard terminology from draft article 2 of the Consolidated Text such as "Party of Import" or "Party of Export" has been introduced in parenthesis where such very frequently used concepts have been phrased differently in the various options.

Delegations will notice that the whole text of the note is placed in square brackets.

* This document is reproduced as it was received by the United Nations Office at Nairobi Conference Services and has not been formally edited.

Na.98-2045

020298

/...

For reasons of economy, this document is printed in a limited number. Delegates are kindly requested to bring their copies to meetings and not to request additional copies.

In spite of the efforts made, the text is still rather cumbersome and complicated. Aside the inherent complexity of the issues involved, this is mainly due to the fact that the overall principle used for the preparation of the note has been not deliberately to exclude any option differing in substance from any other option.

Veit Koester, Chairman of the ad hoc Working Group on Biosafety

ARTICLE 28

Option 1

1. The financial mechanism defined in Article 21 of the Convention, as well as the institutional structure carrying out its operation, shall serve as the financial mechanism and institutional structure of this Protocol.
2. The developed country Parties shall, in a predictable and timely manner, provide [new and] additional financial resources to the financial mechanism [to enable developing countries to meet the agreed full incremental costs to them of implementing measures which will fulfil the obligations of this Protocol].
3. On matters related to activities under the provisions of this Protocol, the financial mechanism shall function under the authority and guidance of, and be accountable to, the Conference of the Parties serving as the meeting of the Parties to this Protocol [Meeting of the Parties].
4. The guidance to the financial mechanism of the Convention in relevant decisions of the Conference of the Parties, including those agreed before the adoption of this Protocol, shall apply *mutatis mutandis* to the provisions of this Article.
5. The developed country Parties may also provide, and developing country Parties avail themselves of, financial and technological resources for the implementation of the provisions of this Protocol through bilateral, regional and multilateral channels.

Option 2

The developed country Parties may provide, and developing country Parties avail themselves of, financial and technological resources for the implementation of the provisions of this Protocol through bilateral, regional and multilateral channels.

ARTICLE 29

Option 1

1. The Conference of the Parties to the Convention shall serve as the meeting of the Parties to this Protocol.
2. Parties to the Convention that are not Parties to this Protocol may participate as observers in the proceedings of any session of the Conference of the Parties serving as the meeting of the Parties to this Protocol. When the Conference of the Parties serves as the meeting of the Parties to this Protocol, decisions under this Protocol shall be taken only by those that are Party to it.

3. When the Conference of the Parties serves as the meeting of the Parties to this Protocol, any member of the Bureau of the Conference of the Parties representing a Party to the Convention but, as that time, not a Party to this Protocol, shall be substituted by an additional member to be elected by and from amongst the Parties to this Protocol.

4. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall keep under review the implementation of this Protocol, and, for this purpose shall exercise the functions assigned to it under this Protocol, and such other functions as shall be decided by the Conference of the Parties serving as the meeting of the Parties to this Protocol.

5. The rules of procedure of the Conference of the Parties and financial procedures of the Convention 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 the Parties to this Protocol.

6. The first session of the Conference of the Parties serving as the meeting of the Parties to this Protocol shall be convened by the secretariat in conjunction with the first session of the Conference of the Parties that is scheduled after the date of the entry into force of this Protocol. Subsequent ordinary sessions of the Conference of the Parties serving as the meeting of the Parties to this Protocol shall be held every year and in conjunction with ordinary sessions of the Conference of the Parties unless otherwise decided by the Conference of the Parties serving as the meeting of the Parties to this Protocol.

7. Extraordinary sessions of the Conference of the Parties serving as the meeting of the Parties to this Protocol shall be held at such other times as may be deemed necessary by the Conference of the Parties serving as the meeting of the Parties to this Protocol, or at the written request of any Party, provided that, within six months of the request being communicated to the Parties by the secretariat, it is supported by at least one third of the Parties.

8. 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 Convention, may be represented at sessions of the Conference of the Parties serving as the meeting of the Parties to this Protocol as observers. Any body or agency, whether national or international, governmental or non-governmental, which is qualified in matters covered by this Protocol and which has informed the secretariat of its wish to be represented at a session of the Conference of the Parties serving as the meeting of the Parties to this Protocol as an observer, may be so admitted unless at least one third of the Parties present object. Except as otherwise provided in this article, the admission and participation of observers shall be subject to the rules of procedure, as referred to in paragraph 5 above.

Option 2

1. A Meeting of the Parties to this Protocol is hereby established.

2. The Meeting of the Parties shall keep under review the implementation of this Protocol, and, for this purpose shall exercise the functions assigned to it under this Protocol, and such other functions it decides may be required for the achievement of the purposes of this Protocol in light of experience gained in its operation.

3. The Meeting of the Parties shall by consensus agree upon and adopt rules of procedure for itself and for any subsidiary body it may establish, as well as financial rules governing the funding of the Secretariat.

/...

4. The first session of the Meeting of the Parties shall be convened by the secretariat in conjunction with the first meeting of the Conference of the Parties that is scheduled after the date of the entry into force of this Protocol. Subsequent ordinary sessions of the Meeting of the Parties shall be held every year and in conjunction with ordinary meetings of the Conference of the Parties unless otherwise decided by the Meeting of the Parties.

5. Extraordinary sessions of the Meeting of the Parties shall be held at such other times as may be deemed necessary by the Meeting of the Parties, or at the written request of any Party, provided that, within six months of the request being communicated to the Parties by the secretariat, it is supported by at least one third of the Parties.

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 Convention or to this 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 this Protocol and which has informed the secretariat of its wish to be represented at a session of the Conference of the Parties serving as the meeting of the Parties to this Protocol 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, as referred to in paragraph 3 above.

ARTICLE 30

Option 1:

1. The Subsidiary Body on Scientific, Technical and Technological Advice established by Article 25 of the Convention shall serve as the Subsidiary Body on Scientific, Technical and Technological Advice of this Protocol. The provisions relating to the functioning of this body under the Convention shall apply *mutatis mutandis* to this Protocol. Sessions of meetings of the Subsidiary Body on Scientific, Technical and Technological Advice of this Protocol shall be held in conjunction with the meetings of the Subsidiary Body on Scientific, Technical and Technological Advice of the Convention.

2. [Non-parties to the Convention and] Parties to the Convention that are not Parties to this Protocol may participate as observers in the proceedings of any session of the Subsidiary Body on Scientific, Technical and Technological Advice of this Protocol. When the Subsidiary Body on Scientific, Technical and Technological Advice of the Convention serves as the Subsidiary Body on Scientific, Technical and Technological Advice of this Protocol, decisions under this Protocol shall be taken only by the Parties to this Protocol.

3. When the Subsidiary Body on Scientific, Technical and Technological Advice of the Convention exercises its functions as the Subsidiary Body on Scientific, Technical and Technological Advice of this Protocol, any member of the Bureaux of the Subsidiary Body on Scientific, Technical and Technological Advice of the Convention representing a Party to the Convention but, at that time, not a party to this Protocol, shall be substituted by an additional member to be elected by and from amongst the Parties to this Protocol.

Option 2:

The Meeting of the Parties may, at its first session, consider the establishment of a Subsidiary Body on Scientific, Technical and Technological Advice.

/...

ARTICLE 31

Option 1:

1. The secretariat established by Article 24, paragraph 1, of the Convention shall serve as the secretariat to this Protocol.
2. Article 24, paragraph 1, of the Convention on the functioning of the secretariat, shall apply *mutatis mutandis* to this Protocol. The secretariat shall, in addition, exercise the functions assigned to it under this Protocol.
3. To the extent that the costs of secretariat services to this Protocol are distinct from the costs of those services to the Convention, they shall be met [on a voluntary basis] by the Parties to this Protocol. The Parties to this Protocol shall establish a separate Trust Fund for this purpose.

Option 2:

1. An independent unit working within the secretariat established by Article 24, paragraph 1, of the Convention shall serve as the secretariat to this Protocol.
2. Article 24, paragraph 1, of the Convention on the functioning of the secretariat, shall apply *mutatis mutandis* to this Protocol. The secretariat shall, in addition, exercise the functions assigned to it under this Protocol.
2. The costs of secretariat services to this Protocol that are distinct from the costs of those services to the Convention, they shall be met [on a voluntary basis] by the Parties to this Protocol. The Parties to this Protocol shall establish a separate Trust Fund for this purpose.

ARTICLE 32

Article 4 of the Convention shall apply, *mutatis mutandis*, to this Protocol.

ARTICLE 33

Except as otherwise provided in this Protocol, the provisions of the Convention relating to its protocols shall apply to this Protocol.

ARTICLE 34

The provisions of this Protocol shall not affect the rights and obligations of any Party to this Protocol deriving from any existing international agreement to which it is also a Party at the time that this Protocol enters into force for that Party [except where the exercise of those rights and obligations would cause serious damage or threat to biological diversity].

ARTICLE 35

Option 1:

The Parties to this Protocol shall, at their first meeting, determine [how] [whether] to establish procedures and institutional mechanisms for determining non-compliance with the provisions of this Protocol and for the treatment of Parties found in non-compliance.

Option 2:

1. Parties shall introduce, as necessary, implement and enforce national compliance and monitoring systems, taking into account, as appropriate, recognized international standards and guidelines.
2. Parties shall provide information on national monitoring and compliance systems to the Clearing-house.
3. Parties should provide information on any significant incidents of illegal traffic to the Clearing-house.

Option 3:

1. Each Party shall report annually to the Secretariat and the Clearing-house on the steps taken to implement this Protocol. Reports shall, in particular, include information on the status of living modified organisms released deliberately or accidentally, and on the operation of the advance informed agreement system.
2. Each Party shall ensure that monitoring of activities and products involving living modified organisms is undertaken at regular intervals by the user and the same is reported to the competent authority.

ARTICLE 36

Beginning in [], and at least every five years thereafter, the Parties shall assess the procedures and annexes provided in this Protocol on the basis of available scientific, environmental and technical information. At least one year before each assessment, the Parties shall convene appropriate panel of experts and determine its composition and terms of reference. Within one year of being convened, the panels will report their conclusions, through the secretariat, to the Parties.

ARTICLE 37

This Protocol shall be open for signature at [] by all States and any regional economic integration organizations [which are Parties to the Convention] from [] until [] , and at the United Nations Headquarters in New York from [] to [] .

ARTICLE 38

1. 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.
2. Any organization referred to in paragraph 1 above which becomes a Party to this Protocol without any of its member States being a Party hereto shall be bound by all the obligations under the Protocol. In the case of such organizations, one or more of whose member States is a 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.

3. 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 39

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 Protocol 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 38, paragraph 2, shall apply to regional economic integration organizations which accede to this Protocol.

ARTICLE 40

1. In accordance with Article 36, paragraph 2, of the Convention, this Protocol shall enter into force on the ninetieth day after the date of deposit of the [] instrument of ratification, acceptance, approval or accession.

2. This Protocol shall enter into force for a Party that ratifies, accepts or approves this Protocol or accedes thereto after the entry into force of this Protocol pursuant to paragraph (1) above, on the ninetieth day after the date on which that Party deposits its instrument of ratification, acceptance, approval or accession, or on the date on which this Protocol enters into force for that 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 41

[No] reservations may be made to this Protocol.

ARTICLE 42 - WITHDRAWAL

1. At any time after two years from the date on which this Protocol has entered into force for a Party, that 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 Party which withdraws from the Convention shall be considered as also having withdrawn from this Protocol.

ARTICLE 43 - AUTHENTIC TEXT

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.
