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**INTERGOVERNMENTAL COMMITTEE FOR THE
CARTAGENA PROTOCOL ON BIOSAFETY**

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Item 4.5 of the provisional agenda*

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

Note by the Executive Secretary

INTRODUCTION

1. Paragraph 5, Article 29, of the Cartagena Protocol on Biosafety to the Convention on Biological Diversity provides that “the rules of procedure of the Conference of the Parties and the financial rules 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”. According to the work plan of the Intergovernmental Committee for the Cartagena Protocol on Biosafety (ICCP), adopted by the Conference of the Parties to the Convention at its fifth meeting, rules of procedure for meetings of the Parties is one of the issues to be addressed by the ICCP at its second meeting (decision V/1, annex, section B, item 5). The Executive Secretary has prepared this document to assist the ICCP in its consideration of the issue. The document provides an overview of the rules of procedure of the Conference of the Parties in the context of the specific provisions of the Protocol (section I); examines the outstanding issue concerning decision-making on substantive matters (section II); analyses the case of the Vienna Convention for the Protection of the Ozone Layer and its Montreal Protocol on Substances that Deplete the Ozone Layer (section III); and makes recommendations for the consideration of the ICCP at its second meeting (section IV).

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

A. Background

2. In negotiating the Protocol, the Parties made a deliberate effort to avoid the creation of new institutions. The justification was two-fold: on the one hand there was the desire to minimize operational costs associated with the new treaty and, on the other, the need to avoid a proliferation of legally independent entities. It was therefore decided that the Conference of the Parties of the Convention would serve as the meeting of the Parties to the Protocol. In doing so, the Parties agreed on the desirability to employ, as far as possible, the same rules and procedures for the Conference of the Parties both under the Convention and the Protocol. This approach has a number of advantages: economy of effort; familiarity with the existing rules; and convenience of operating a uniform procedure. However, it was also recognized that a certain amount of flexibility was desirable to respond to the distinct nature of the Protocol as a legal instrument. Consequently, a number of provisions in the Protocol either derogate expressly from the existing rules of procedure or invest the Conference of the Parties serving as the meeting of the Parties to the Protocol with the discretion to deviate from those rules as and when it deems it appropriate.

B. The existing rules of procedure and the Protocol

3. Paragraph 3 of Article 23 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, as well as financial rules governing the funding of the Secretariat. At its first meeting, held in Nassau, Bahamas, the Conference of the Parties, by its decision I/1, adopted its rules of procedure, with the exception of paragraph 1 of rule 40. This paragraph relates to the taking of decisions on matters of substance.

4. At its fifth meeting, by decision V/20, the Conference of the Parties amended a number of its rules of procedure. These amendments concerned the periodicity of ordinary meetings of the Conference of the Parties (rule 4), and the election and the terms of office of the Bureau. (rules 21 and 25).

5. The rules of procedure address a number of issues, including: the purposes of the rules; definitions; place of meetings; dates of meetings; observers; agenda; representation and credentials; officers; subsidiary bodies; conduct of business; voting; languages; sound records of the meetings; amendments to rules of procedure; and overriding authority of the Convention.

6. The wording of paragraph 5 of Article 29 of the Protocol, reproduced in paragraph 1 above, leads to two important inferences regarding the application of these rules under the Protocol. First, appropriate modifications could be made to take into account the specificities of the provisions of the Protocol. Secondly, the Conference of the Parties serving as the meeting of the Parties to the Protocol may, by consensus, decide against the application of a specific rule of procedure to meetings under the Protocol. The Protocol itself has already established specific provisions regarding a number of items regulated by the rules of procedure. It should be noted in this regard that in case of conflict these provisions of the Protocol would override the rules of procedure. The provisions relate to officers; ordinary and extraordinary meetings of the Conference of the Parties serving as the meeting of the Parties to the Protocol; observers; subsidiary bodies; and the secretariat.

(a) *Officers*: Rule 21 of the rules of procedure for meetings of the Conference of the Parties provides that the Bureau of the Conference of the Parties shall be elected from among the representatives

of the Parties to the Convention. On the other hand, paragraph 3 of Article 29 of the Protocol provides that when the Conference of the Parties serves as the meeting of the Parties to the Protocol, any member of the Bureau representing a Party to the Convention but, at that time, 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 of the rules of procedure shall be applied in such a way that only Parties to the Protocol shall constitute the Bureau of the Conference of the Parties serving as the meeting of the Parties to the Protocol. Where all members of the Bureau of the Conference of the Parties also represent Parties to the Protocol, no election of officers would be undertaken when it serves as the meeting of the Parties to the Protocol. However, where some members of the Bureau represent non-Parties to the Protocol, an election would be required. The Conference of the Parties serving as the meeting of the Parties to the Protocol may wish to consider an addition to paragraph 1 of rule 21 to reflect paragraph 3 of Article 29 of the Protocol;

(b) *Ordinary and extraordinary meetings:* Paragraph 6 of Article 29 provides that ordinary meetings of COP/MOP shall be held in conjunction with ordinary meetings of the Conference of the Parties, unless otherwise decided by COP/MOP. The periodicity of ordinary meetings of the Conference of the Parties is already determined by rule 4 of the rules of procedure at two-year intervals. Unless the COP/MOP decides otherwise this will also be the periodicity of its ordinary meetings. As regards extraordinary meetings, paragraph 3 of rule 4 and paragraph 7 of Article 29 of the Protocol are identical. They both provide that such meetings shall be held at such times as either the COP or the COP/MOP, 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”;

(c) *Observers.* The participation of observers in meetings of the Conference of the Parties is regulated by rules 6 and 7 of the rules of procedure. These rules specify the category of entities entitled to be represented in such meetings and the scope of their participation. Paragraphs 2 and 8 of Article 29 of the Protocol specify the entities entitled to participate as observers in meetings of the Conference of the Parties serving as the meeting of the Parties to the Protocol. These entities, with one exception, are the same as those enumerated in rules 6 and 7 of the rules of procedure. The one exception regards those States that are Parties to the Convention but are not at the same time Parties to the Protocol. These States may participate only as observers in proceedings of any meeting of Conference of the Parties serving as the meeting of the Parties to the Protocol. This provision was calculated to avoid the situation where States that were not Parties to the Protocol would be able to participate in decision-making under the Protocol. Paragraph 8 of Article 29 further makes it clear that, save as provided in the Article, the admission and participation of observers shall be subject to the rules of procedure of the Conference of the Parties to the Convention;

(d) *Subsidiary bodies:* Rule 26 of the rules of procedure provides for: the establishment, by the Conference of the Parties, of other subsidiary bodies in addition to SBSTTA; meetings of subsidiary bodies; election of officers; and decision-making. It further underlines that, unless otherwise decided by the Conference of the Parties, “these rules of procedure shall apply, *mutatis mutandis*, to the proceedings of subsidiary bodies”. Article 30 of the Protocol empowers the Conference of the Parties serving as the meeting of the Parties to the Protocol to decide that any subsidiary body established by or under the Convention may serve the Protocol. In such cases, certain procedural issues would naturally arise. Paragraphs 2 and 3 of Article 30 deal with these issues. In the first instance, Parties to the Convention that are not Parties to the Protocol may participate only as observers in the proceedings of any meeting of any such subsidiary bodies. Secondly, it is only Parties to the Protocol that are entitled to make decisions under the Protocol. Lastly, any member of the bureau of the subsidiary body representing a Party to the Convention but, at that time, not a Party to the Protocol is to be replaced by a member to be elected by and from among Parties to the Protocol;

(e) *Secretariat:* Rules 27 and 28 of the rules of procedure make provision regarding the secretariat of the Conference of the Parties and its subsidiary bodies and define its functions. In this respect, the head of the Secretariat of the Convention shall be the Executive Secretary of the Conference of the Parties. The head of the Secretariat or his representative shall act in the capacity of Executive Secretary in all meetings of the Conference of the Parties and of subsidiary bodies. Article 31 of the Protocol constitutes the Secretariat of the Convention, established under Article 24 thereof, into the secretariat of the Protocol. The functions of the Secretariat of the Convention defined in paragraph 1 of Article 24 apply, *mutatis mutandis* to the Protocol. Those functions include arranging for and servicing meetings of the Conference of the Parties. It therefore follows that the head of the Secretariat of the Convention shall also be the Executive Secretary of the Conference of the Parties serving as the meeting of the Parties to the Protocol.

7. The discretion bestowed upon the Conference of the Parties serving as the meeting of the Parties to the Protocol by paragraph 5, Article 29, of the Protocol to decide, by consensus, whether a specific rule of procedure should apply to meetings under the Protocol has two important implications. First, the Conference of the Parties serving as the meeting of the Parties to the Protocol may, by consensus, adopt a different rule of procedure to govern a specific issue. Secondly, the Conference of the Parties serving as the meeting of the Parties to the Protocol may, by consensus, decide that an amendment of the rules of procedure by the Conference of the Parties shall not apply to meetings of the Conference of the Parties serving as the meeting of the Parties to the Protocol. Whereas the latter is of no immediate practical value, the latitude conferred by the former could be used by the Conference of the Parties serving as the meeting of the Parties to the Protocol to fill the current gap regarding decision-making on substantive matters. In effect, the Conference of the Parties serving as the meeting of the Parties to the Protocol may, at its first meeting, adopt a specific rule of procedure for decision-making on matters of substance along the lines of the bracketed paragraph 1 of rule 40 of the rules of procedure.

II. DECISION-MAKING ON SUBSTANTIVE MATTERS

8. Rule 40 of the rules of procedure defines the mechanisms for taking decisions under the Convention and the types of majority vote required for such decision-making in cases where consensus cannot be achieved. As was noted earlier, the Conference of the Parties adopted its rules of procedure with the exception of paragraph 1 of rule 40 relating to the taking of decisions on matters of substance. The following text of paragraph 1 of rule 40, as contained in the annex to decision I/1, was considered at all subsequent meetings, but with no conclusive agreement being reached:

“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.]”

9. Paragraphs 1 and 2 of Article 21 of the Convention deal with the nature and operations of the financial mechanism of the Convention, including Parties' contributions and the determination of the policy, strategy, programme priorities and eligibility criteria relating to access to and utilization of financial resources. It may be noted that according to Article 28 of the Protocol, the financial mechanism established by Article 21 of the Convention shall serve as the financial mechanism for the Protocol.

10. The failure to adopt paragraph 1 of rule 40 in effect means that currently all decisions on substantive matters must be adopted by consensus. The Conference of the Parties serving as the meeting of the Parties to the Protocol has two options with respect to this issue. First, it may elect to follow the current practice under the Convention where decision-making on substantive issues is by consensus, until such time as the Conference of the Parties will reach a conclusive agreement regarding paragraph 1 of rule 40. Secondly, it may wish to adopt a specific rule of procedure on the taking of decisions on matters of substance similar to paragraph 1 of rule 40. In this respect, it may decide that decisions under the Protocol on all matters of substance, except decisions relating to guidance to the financial mechanism under Article 28 of the Protocol for consideration by the Conference of the Parties, shall be taken by a two-thirds majority vote of the Parties present and voting. Naturally, this rule would only apply to decision-making under the Protocol.

III. THE CASE OF THE VIENNA CONVENTION AND ITS MONTREAL PROTOCOL

11. The value of the case of the Vienna Convention and its Montreal Protocol lies in the manner in which the rules of procedure of the two instruments have evolved and their current status. It should, however, be underlined right from the beginning that the framework of the Vienna Convention for the Protection of the Ozone Layer and its Montreal Protocol on Substances that Deplete the Ozone Layer is different from that of the CBD and the Cartagena Protocol in terms of the institutions established and the process which led to the adoption of the rules of procedure. For example, the Montreal Protocol establishes a Meeting of the Parties (MOP) to the Protocol that is distinct and separate from the Conference of the Parties to the Convention. As noted earlier, under the Cartagena Protocol it is the Conference of the Parties to the Convention that serves as the meeting of the Parties to the Protocol. Moreover, the Montreal Protocol expressly provides that the Parties, at their first meeting, shall adopt by consensus rules of procedure for their meetings. On the other hand, it is the rules of procedure of the Conference of the Parties to the CBD that apply, *mutatis mutandis*, under the Cartagena Protocol.

12. Draft rules of procedure for meetings of the Parties to the Montreal Protocol were first issued on 7 February 1989. The draft was subsequently revised on 27 April 1989 in light of the rules of procedure adopted by the first meeting of the Conference of the Parties to the Vienna Convention which took place in Helsinki from 26 to 28 April 1989. The first meeting of the Parties to the Protocol, which took place in Helsinki from 2 to 5 May 1989, adopted, with one amendment, the draft rules of procedure revised in accordance with the rules of procedure of the Vienna Convention. The rules are substantially the same save for rule 1 (Purposes) and rule 2 (Definitions). Thus, although the enabling provisions of the two instruments would have allowed for distinct rules of procedure for Conference of the Parties to the Convention and the Meeting of the Parties to the Protocol, the net effect of these developments was to establish substantially the same rules.

IV. RECOMMENDATIONS

13. The Conference of the Parties serving as the meeting of the Parties to the Protocol can address the issue of the rules of procedure for its meetings in one of two ways:

(a) It can decide that the rules of procedure of the Conference of the Parties apply automatically to meetings under the Protocol by virtue of paragraph 5 of Article 29 of the Protocol and consequently no additional formal act is required on the part of the Conference of the Parties serving as the meeting of the Parties to the Protocol in this regard. In which case, the rules of procedure would be applied under the Protocol but in doing so due account would be taken of all relevant provisions of the Protocol. This approach would be consistent with the current practice under the Convention's Subsidiary

Body on Scientific, Technical and Technological Advice which also operates under the *mutatis mutandis* rule. If this approach is preferred, then the Conference of the Parties serving as the meeting of the Parties to the Protocol may, at its first meeting, only address the issue of decision-making on matters of substance;

(b) Alternatively, the Conference of the Parties serving as the meeting of the Parties to the Protocol may decide that a formal adoption of the rules of procedure is necessary. Further, if this option is adopted, the Conference of the Parties serving as the meeting of the Parties to the Protocol may also, in this respect, wish to modify the text of the rules of procedure to make specific reference to the Protocol and to the Conference of the Parties serving as the meeting of the Parties to the Protocol and to add a provisosal to paragraph 1 of rule 21 . It should be pointed out, however, that whereas such an approach would be consistent with the latitude conferred on the Conference of the Parties serving as the meeting of the Parties to the Protocol by the Protocol, it would slightly undermine the objective and logic behind paragraph 5 of Article 29 of the Protocol, in particular the need to operate a uniform procedural mechanism under both the Convention and the Protocol.

14. The ICCP may wish to further consider the issues raised and proposals contained in this document and make appropriate recommendations to the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol.
