



## CONVENTION ON BIOLOGICAL DIVERSITY

Distr.  
GENERAL

UNEP/CBD/ICCP/2/7  
25 July 2001

ORIGINAL: ENGLISH

INTERGOVERNMENTAL COMMITTEE FOR THE  
CARTAGENA PROTOCOL ON BIOSAFETY  
Second meeting  
Nairobi, 1-5 October 2001  
Item 4.6 of the provisional agenda\*

### CONSIDERATION OF OTHER ISSUES NECESSARY FOR THE EFFECTIVE IMPLEMENTATION OF THE PROTOCOL (E.G., ARTICLE 29, PARAGRAPH 4)

*Note by the Executive Secretary*

#### I. INTRODUCTION

1. In adopting the work plan for the Intergovernmental Committee for the Cartagena Protocol (ICCP) (decision V/1, annex), the Conference of the Parties to the Convention on Biological Diversity decided that, at its second meeting, ICCP should consider “other issues necessary for the effective implementation of the Protocol (e.g., Article 29, paragraph 4)”. Article 29, paragraph 4, gives the Conference of the Parties to the Convention serving as the meeting of the Parties to the Protocol with the responsibility of regularly reviewing the implementation of the Protocol and taking the necessary decisions to promote its effective implementation.

2. In the present document, “other” is defined as issues not specifically identified in the work plan for the ICCP. Drawing from the experience of the mechanisms, institutions and processes established by the Conference of the Parties to promote implementation of the Convention, the present note highlights “other” or complementary and additional approaches that ICCP may wish to consider to promote the implementation of the Protocol. It should be noted at the outset that the most pressing issues with respect to the timely entry into force of the Protocol and preparations for the first meeting of the Conference of the Parties to the Convention serving as the meeting of the Parties to the Protocol are the subject of specific attention of the ICCP at either its first or second meeting. Essentially, the note focuses on how the work of the Convention can support this process and issues that are more directly relevant to the work of the process immediately after the first meeting of the Conference of the Parties to the Convention serving as the meeting of the Parties to the Protocol.

3. Section II of the note summarizes the experience of the operations of the Convention and highlights issues of relevance to the operations of the Protocol. Section III lists issues that the Conference

---

\* UNEP/CBD/ICCP/2/1.

of the Parties to the Convention serving as the meeting of the Parties to the Protocol may need to consider after its first meeting, in order to begin to identify the elements of a future programme of work for the Conference of the Parties to the Convention serving as the meeting of the Parties to the Protocol. Section IV provides an update of the strategic planning process of the Convention and briefly describes its relevance for the work of the ICCP and the Conference of the Parties to the Convention serving as the meeting of the Parties to the Protocol. Based on the foregoing, section V provides the draft elements of a recommendation by the ICCP.

## **II. REVIEW OF THE OPERATIONS OF THE CONVENTION**

4. As with paragraph 4 of Article 34 of the Protocol, Article 23 of the Convention on Biological Diversity gives the Conference of the Parties the responsibility for reviewing the implementation of the Convention. As a result, the Conference of the Parties and its subsidiary bodies have been evaluating the implementation of the Convention since the text of the Convention was adopted in May 1992. Indeed, many decisions of the Conference of the Parties are taken only after an assessment or review of the relevant activities of the Convention and other bodies and organizations.

5. Based on this experience the following steps have made an important contribution to the implementation of the Convention:

(a) The effective operations of the institutions of the Convention (namely the Conference of the Parties, the Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA), the Secretariat, the financial mechanism and subsidiary bodies of the above);

(b) The development of national biodiversity strategies and action plans and the support provided by the financial mechanism for these activities; and

(c) Development of cooperative activities with other organizations.

6. Despite the progress that has been made regarding implementation of the Convention, it is widely recognized that there is room for improvement and there remain key aspects of the Convention where progress has been much more difficult. For example, many Parties still feel that preparations for meetings, the level of participation in the meetings and implementation of the decisions of the Conference of the Parties require further attention, as evidenced by the need for an item on this matter on the agenda of the forthcoming Open-ended Inter-Sessional Meeting on the Strategic Plan, National Reports and Implementation of the Convention on Biological Diversity, to be held in Montreal in November 2001.

6. Implementing the national biodiversity strategies and action plans is another critical challenge facing Parties. The principal role of the Convention will be to provide support to allow Parties to implement their action plans. In this regard, even though the financial mechanism has provided an unprecedented level of resources, mobilizing resources from other sources, in particular private sources, remains a key challenge. Periodic reviews and feedback through the reporting process of the Convention will also be vital element in promoting implementation. Finally, cooperation with other organizations also needs to move beyond the agreement of memorandums of understanding of a general nature if real synergies and effective mainstreaming are to be achieved.

7. A recent comprehensive review of these achievements and challenges can be found in the documentation for the Open-ended Inter-Sessional Meeting on the Strategic Plan, National Reports and

Implementation of the Convention and the strategic planning process of the Convention (see, in particular, UNEP/CBD/MSP/2 and UNEP/CBD/MSP/4).

8. Many of these same issues can be expected to pose challenges in implementing the Protocol. The most immediate are reflected in specific items in the work plan of ICCP as annexed to decision V/1. Based on the experience of the Convention, some “other issues” are highlighted below.

**A. *Programme of work of the Conference of the Parties to the Convention serving as the meeting of the Parties to the Protocol and subsidiary bodies***

9. Reviews of the implementation of the Convention and the work of the Conference of the Parties and the Intergovernmental Committee for the Convention on Biological Diversity or Intergovernmental Committee on the Convention on Biological Diversity (which performed the equivalent role of the ICCP for the Convention) have proceeded within the framework of a plan. Initially, resolution 2 of the Nairobi Final Act of the Conference of Plenipotentiaries for the Adoption of the Agreed Text of the Convention on Biological Diversity governed the work of the process from adoption of the Convention to first meeting of the Conference of the Parties. This was followed by the medium-term programme of work that guided the process until the fourth meeting of the Conference of the Parties. This was in turn followed by the programme of work adopted at that meeting in decision IV/16, which currently governs the work of the process. At its fifth meeting, the Conference of the Parties decided to take the planning process a step further with the development and adoption of a Strategic Plan for the period 2002-2010, which would not only indicate when topics were to be taken up by the Conference of the Parties, but also contain expected outcomes. This planning process has proven to be a valuable tool for promoting participation, preparation and transparency in the Convention. In light of the experience of the Convention, the ICCP may wish to consider developing a medium-term programme of work for the Conference of the Parties to the Convention serving as the meeting of the Parties to the Protocol.

**B. *Preparatory meetings for Conference of the Parties to the Convention serving as the meeting of the Parties to the Protocol***

10. An issue that has received considerable attention within the framework of the review of the operations of the Convention at the fourth and fifth meetings of the Conference of the Parties was preparations for such meetings. In the course of these reviews, some Parties have suggested that one of the factors hampering the preparations for meetings of the Conference of the Parties is the absence of a standing mechanism for reviewing implementation. Various types of mechanism have been proposed to address this issue. These include a subsidiary body for implementation; an executive inter-sessional body; extended mandate for the bureaux; an open-ended working group of the Parties on implementation; and various compliance mechanisms. To date, the Conference of the Parties has decided to consider incremental improvements to the operations of the Convention, rather than establishing a new body to specifically address implementation. Article 35 of the Protocol, which has no equivalent in the Convention, requires the Conference of the Parties to the Convention serving as the meeting of the Parties to the Protocol to undertake an evaluation of the effectiveness of the Protocol, including an assessment of its procedures and annexes, at least every five years. In light of this difference, the Conference of the Parties to the Convention serving as the meeting of the Parties to the Protocol may wish to consider this issue specifically in terms of the Protocol.

11. The role of regional activities in preparing for meetings and implementing decisions has made an important contribution to preparations for meeting. Active regions within the Convention process include the European Union, the Pacific Island Countries (assisted by South Pacific Regional Environment Programme (SPREP)) and Central and Eastern Europe (assisted by the Pan-European Biological and

Landscape Diversity Strategy (PEBLDS)). Regional networks have the potential to make a similar contribution to the implementation of the Protocol. For example, a lack of some capacities in some regions may be overcome through pooling resources on a regional basis (i.e. risk management procedures could be developed and implemented regional). The Ramsar Convention on Wetlands, the Basel Convention on the Transboundary Movement of Hazardous Wastes and Their Disposal, and the Convention on Desertification rely on regional networks for implementation as well. Regional networks, based on centres of excellence or regional partners, could play a number of other roles that would promote implementation and are not covered in the other items of the programme of work for ICCP. Such roles could include:

- (a) Preparing for meetings of the Protocol;
- (b) Promoting more effective participation of small delegations at meetings; and
- (c) Promoting ownership of the Protocol. Promoting the role of regional networks and partners is being considered by the COP within the strategic planning process.

12. However, even though regional networks could in theory make a similar contribution to implementing the Protocol, the actual partners or networks that could play such a role may be quite different given the different types of skills required to implement the Protocol compared to the Convention. Accordingly, the Conference of the Parties to the Convention serving as the meeting of the Parties to the Protocol may wish to consider identifying regional partners or networks through a separate or distinct process to that of the Convention.

### ***C. Developing capacities of Parties to participate in the Protocol processes effectively***

13. Developing a wide range of capacities amongst a wide range of actors will be crucial for the effective implementation of the Protocol. Indeed, developing mechanisms to address this issue has been identified by the ICCP as the most important priority for the foreseeable future and is considered in detail in the ICCP deliberations on Articles 10, paragraph 7, 22 and 28. The draft Action Plan for Building Capacity for the Effective Implementation of the Protocol that emerged from the Open-ended Expert Meeting on Capacity-building for the Cartagena Protocol on Biosafety (see UNEP/CBD/ICCP/2/10, annex) provides the basis for addressing these issues, by the ICCP, the Conference of the Parties to the Convention serving as the meeting of the Parties to the Protocol, other organizations, including non-governmental organizations and the private sector, and the Secretariat (principally to provide a harmonizing framework for the other actors).

14. In addition to the need for general capacity-building for implementation at the domestic level (the focus of Articles 10, paragraph 7, 22 and 28), is a need to support developing country Parties to participate properly in the relevant international processes of the Protocol. Adequately meeting this type of capacity-building has proven to be a challenge within the Convention process. For example, participation in many meetings of the Convention has been negatively affected by the voluntary nature of the financial support provided for delegates. In addition, many Parties have not nominated focal points or experts for the rosters. In some cases, these limitations affect whole regions. Ensuring that all Parties have established the basic institutional structure to participate in the Protocol process is vitally important for the legitimacy of the Protocol and its effective implementation. Accordingly, the ICCP may wish to recommend that the Conference of the Parties to the Convention serving as the meeting of the Parties to the Protocol take up this issue, either separately or within the overall framework of the draft Action Plan for Building Capacity.

15. An important and simple aspect of this capacity to participate in the Protocol process effectively is the nomination of national focal points and competent national authorities under Article 19 of the Protocol.

Notwithstanding repeated invitations by the ICCP and the Conference of the Parties and notifications by the Secretariat to Governments, as of 15 July 2001, the Secretariat had received nominations for 75 focal points for the ICCP and notifications from 17 Parties concerning specifically competent national authorities pursuant to paragraph 2 of Article 19\*. Moreover, for many of these focal points, it is not clear whether their mandate extends beyond the entry into force of the Protocol (and hence whether they will be the focal point for the Conference of the Parties to the Convention serving as the meeting of the Parties to the Protocol). Rectifying this problem does not require detailed action and, accordingly, the Executive Secretary has included in section V below draft elements of a recommendation by ICCP calling upon Parties to provide the appropriate designations to the Secretariat.

### **III. FURTHER ASPECTS OF THE PROTOCOL NOT SPECIFICALLY INCLUDED IN THE ICCP MANDATE THAT MAY REQUIRE ATTENTION OF THE CONFERENCE OF THE PARTIES TO THE CONVENTION SERVING AS THE MEETING OF THE PARTIES TO THE PROTOCOL**

16. Many of the issues that have been identified by the Conference of the Parties in decision V/1 will require continuing attention of the process after entry into force of the Protocol. For example, the following may require further decisions by the Conference of the Parties to the Convention serving as the meeting of the Parties to the Protocol once the Protocol enters into force: decision-making (Article 10, paragraph 7); information-sharing (Articles 19 and 20); capacity-building (Articles 22 and 28); handling, transport, packaging and identification (Article 18); compliance (article 34); liability and redress (Article 27); monitoring and reporting (Article 33); Secretariat (Article 31); and guidance to the financial mechanism (Articles 22 and 28, paragraph 5).

17. Once the Protocol enters into force, further issues will also require attention, for example:

(a) The need, under Article 35, for a review of the Protocol five years after entry into force and at least every five years afterwards;

(b) Promoting awareness of the Protocol among the public and their participation in accordance with Article 23 will, given the experience of the Convention, require a concerted initiative by the Conference of the Parties to the Convention serving as the meeting of the Parties to the Protocol, the Secretariat and other relevant organizations;

(c) In order to encourage the cooperation called for in paragraph 2 of Article 26 on the socio-economic impacts of LMOs, the Conference of the Parties to the Convention serving as the meeting of the Parties to the Protocol may wish to consider mechanism and/or guidelines on socio-economic considerations;

(d) Given the importance of the provisions on risk assessment and risk management the Conference of the Parties to the Convention serving as the meeting of the Parties to the Protocol may wish to consider developing guidelines to assist Parties;

(e) The development of cooperation with other relevant bodies and organizations has, within the Convention process, required a separate item in the agenda of meetings of the Conference of the Parties and based on this experience may also require separate attention within the agenda of meetings of the Conference of the Parties to the Convention serving as the meeting of the Parties to the Protocol.

---

\* For details, see the report of Executive Secretary on inter-sessional work pursuant to decisions EM-I/3 and V/1 of the Conference of the Parties and the recommendations of the first meeting of the ICCP (UNEP/CBD/ICCP/2/7)

18. There are a number of provisions in the Protocol that may require clarification in order to promote ratification and implementation (see, for example Articles 7, para. 1, 10, para. 3 (d), 12, para. 4, and 14, para. 4). The definition of contained use may also need to be clarified.

19. Addressing all these issues in a timely and transparent manner can be supported through the adoption of some programme of work for the Protocol that at least indicates when the Conference of the Parties to the Convention serving as the meeting of the Parties to the Protocol will take up a particular issue. As mentioned before, the Conference of the Parties found such a programme was a useful tool in its reviewing implementation of the Convention. In particular, it:

- (a) Promoted the efficiency of the work of subsidiary bodies;
- (b) Facilitated the support of other organisations; and
- (c) Allowed Parties to organise their internal preparatory procedures more effectively.

20. Indeed, the Bureau of the ICCP has suggested that the Conference of the Parties to the Convention serving as the meeting of the Parties to the Protocol consider a medium term programme of work at its first meeting (see item 8 of the provisional agenda for the first meeting of the Conference of the Parties to the Convention serving as the meeting of the Parties to the Protocol).

#### IV. STRATEGIC PLAN FOR THE CONVENTION

21. In its decision V/20, the Conference of the Parties decided to develop and prepare a Strategic Plan for the Convention with a view to considering and adopting it at its sixth meeting, to be held in April 2002. In decision V/20, it also indicated that the Strategic Plan should not only provide guidance about when a particular issue is to be considered by COP, as had been the case in the past, but also the timing of expected products, the role of actors, and the type of activities expected of such actors. In other words it is expecting to take the planning process to a further level of detail.

22. Decision V/20 sets out a process for developing this Plan during the period leading up to sixth meeting of the Conference of the Parties. The central preparatory step is the convening of an open-ended Meeting on the Strategic Plan, National Reports and Implementation of the Convention on Biological Diversity, to be held straight after the seventh meeting of the Subsidiary Body on Scientific, Technical and Technological Advice, from 19–21 November 2001. Details of the process are described in the note by the Executive Secretary on the Strategic Plan prepared for that meeting (UNEP/CBD/MSP/2), which is available from the Secretariat.

23. At the time of preparing the present note a basic structure and some draft elements were emerging from the consultations that the Secretariat has carried out so far. This structure and draft elements can be described as follows:

24. *A mission statement.* This states an eternal truth, a goal that all stakeholders are working towards always. It should be based on the objectives of the Convention as provided in Article 1.

25. *A vision.* Composed of three elements (one for each objective of the Convention) that were considered to be a realistic but visionary level of achievement by 2010.

26. *Operational goals.* A series of operational goals were developed for each element of the vision.

27. *Action plans to achieve the operational goals.* Each operational goal contains a number of action plans, which are activities undertaken to achieve the relevant operational goal. These plans will contain the detailed elements required by decision V/20 (namely, the expected products; the timing of each of these activities and products; the actors carrying out these activities and cooperation with relevant organizations; the mechanisms used to realize and/or support the goals and activities, or to generate the expected products; and financial, human-resource and other capacity requirements).

28. *Monitoring, reporting, assessment and review, and communication.* The Plan needs to provide a process for ensuring implementation and this will be structured around the above basic elements.

29. Although Parties have provided suggestions with respect to the each of the above elements (i.e., specific operational goals and action plans) these have not been considered in a collective way by the Parties and are only illustrative. It is hoped that agreed draft elements will come from the Meeting on the Strategic Plan, National Reports and Implementation of the Convention on Biological Diversity.

30. Several Parties have indicated that the Strategic Plan should include the Protocol within its ambit, and the Chairman of ICCP has indicated that the documents for the Meeting on the Strategic Plan will be made available to participants in the second meeting of the ICCP. In his initial draft of the Plan, the Executive Secretary also proposed certain goals within the Strategic Plan that related specifically to the Protocol. For example, he suggested that it contain a specific date for entry into force, various milestones for the number of Parties and specific dates for further guidance on Article 18.

31. Parties have mentioned biosafety in one of the operational goals under the second vision dealing with identifying uses at the national and regional levels (see operational goal 2.1 of document UNEP/CBD/WS-StratPlan/5). There are also a number operational goals and action plans that would contribute to the implementation of the Convention and the Protocol (i.e., those dealing with cross-cutting issues such as those dealing with: the provision of financial resources, national plans, capacity-building and technology transfer).

32. Parties have not considered in any comprehensive manner how the Strategic Plan might reflect the aims of Parties with respect to the Protocol. The process for developing the Plan does however provide several opportunities for providing such an input. In the absence of a specific consideration of the matter by the ICCP, it may wish encourage Parties to make written submissions to the Secretariat on this matter.

## **V. RECOMMENDATIONS**

33. The most important priority for the foreseeable future to promote implementation of the Protocol, as for any new instrument, is the development of relevant capacities. This is being addressed within the ICCP process for Article 22 (see UNEP/CBD/ICCP/2/10) and the enabling activities for biosafety frameworks (see the UNEP/GEF National Biosafety Frameworks Project document). Further important issues have been identified in decision V/1 of the Conference of the Parties and are being considered by the ICCP at its first and second meetings.

34. Although this note highlights a number of important “other” or additional issues, these are mainly issues that will only become important after the Protocol enters into force. The most pressing of these issues is the development and adoption of a medium-term programme of work. The following text provides the draft elements of a recommendation on the establishment of a medium-term programme of work to guide the work of the process for the next four meetings of the Conference of the Parties to the Convention serving as the meeting of the Parties to the Protocol. It also includes elements concerning the

/...

designation of national focal points and competent national authorities, as well the ratification of the Protocol, matters that have been touched on in the present note and are discussed in more detail in the report of the Executive Secretary on inter-sessional work pursuant to decisions EM-I/3 and V/1 of the Conference of the Parties and the recommendations of the ICCP at its first meeting (UNEP/CBD/ICCP/2/2):

*The Intergovernmental Committee for the Cartagena Protocol on Biosafety*

1. *Requests* the Executive Secretary to prepare a draft medium-term programme of work for the Conference of the Parties to the Convention serving as the meeting of the Parties to the Protocol and its relevant subsidiary bodies that is based on the following criteria:

(a) It should cover the period from the second meeting of the Conference of the Parties to the Convention serving as the meeting of the Parties to the Protocol to the fifth meeting of the Conference of the Parties to the Convention serving as the meeting of the Parties to the Protocol;

(b) It should be based on the provisions of paragraph 4 of Article 29;

(c) It should rely upon the existing activities of other bodies and organizations to the greatest extent possible; and

(d) It should address the following issues in a timely manner:

- (i) Decision-making (Article 10, paragraph 7);
- (ii) Information-sharing (Articles 19 and 20);
- (iii) Capacity-building (Articles 22 and 28);
- (iv) Handling, transport, packaging and identification (Article 18);
- (v) Compliance (Article 34);
- (vi) Liability and redress (Article 27);
- (vii) Monitoring and reporting (Article 33);
- (viii) Secretariat (Article 31);
- (ix) Guidance to the financial mechanism (Article 22 and 28, paragraph 5);
- (x) Review of the Protocol five years after entry into force (Article 35);
- (xi) Cooperation with other relevant bodies and organisations;
- (xii) Promoting public awareness (Article 23);
- (xiii) Guidance on socio-economic impacts of living modified organisms (Article 26, paragraph 2), and
- (xiv) Guidance on risk assessment and risk management (Articles 15 and 16);



2. *Requests* Parties to the Convention and other States to provide the Executive Secretary, by 31 December 2001, with their views on the items to be included in a medium-term programme of work;

3. *Invites* Parties to the Convention and other States that have not yet done so to submit to the Secretariat information on national focal points and competent national authorities as soon as possible, pursuant to Article 19, paragraph 1, of the Protocol;

4. *Noting* that the information provided to the Secretariat with respect to national focal points for the ICCP may or may not apply to the requirements of Article 19, paragraph 1, further *invites* Parties to clarify this matter for the Secretariat, no later than the date of entry into force of the Protocol for each Party, in line with the provisions of paragraph 2 of Article 19 of the Protocol;

5. *Reiterates* the call of the Conference of the Parties to the Convention to deposit instruments of ratification, acceptance or approval or instruments of accession, as appropriate, at the earliest opportunity to enable the Protocol to enter into force as soon as possible, with a view to allowing the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol to be convened in conjunction with the sixth ordinary meeting of the Conference of the Parties in April 2002 in The Hague, Netherlands;

6. *Reiterates also* the call of the Conference of the Parties to States that are not Parties to the Convention to ratify, accept, approve or accede to it, as appropriate, without delay, thereby enabling them also to become Parties to the Protocol.

35. A further issue that the ICCP may wish to consider is providing an input to development of the strategic plan of the Convention. In particular, whether there should be draft elements relating to the Protocol and what they might be (i.e. entry into force, membership numbers, etc). In light of the separate process for the strategic plan, the ICCP may wish to encourage Parties to provide their comments relating to these draft elements directly to the Secretariat.

-----