

**Convention on
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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

Sixth meeting
Hyderabad, India, 1-5 October 2012
Item 18 of the provisional agenda*

**REPORT OF THE AD HOC TECHNICAL EXPERT GROUP MEETING ON
THE SECOND ASSESSMENT AND REVIEW OF THE CARTAGENA
PROTOCOL ON BIOSAFETY**

INTRODUCTION

1. The Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety (COP-MOP) is required, under Article 35 of the Cartagena Protocol on Biosafety, to undertake an evaluation of the effectiveness of the Protocol, including an assessment of its procedures and annexes, at least every five years. The Protocol entered into force on 11 September 2003 and its first review was conducted in 2008 by the fourth meeting of the Parties to the Protocol. In this first review, it was noted that due to the limited operational experience gained by Parties in the implementation of the Protocol, there was insufficient basis for effective assessment and review of the Protocol.

2. At their fifth meeting, the Parties to the Protocol decided that the second assessment and review would focus primarily on evaluating the status of implementation of core elements of the Protocol. It also decided that the evaluation would be based on information gathered through the second national reports, the Biosafety Clearing-House, the Compliance Committee, the capacity-building coordination mechanism and other relevant processes and organizations. The Executive Secretary was requested to collect and compile information on the implementation of the Protocol and to commission the analysis of the information with a view to facilitating the second assessment and review of the Protocol (decision BS-V/15). The Parties to the Protocol also decided, in paragraph 3 of decision BS-V/15, to establish a regionally balanced ad hoc technical expert group, subject to the availability of funds, to: (i) review the analysis of information; and (ii) submit its recommendations to the sixth meeting of the Conference of the Parties serving as the meeting of the Parties.

3. With the generous financial support of the Government of Japan and the offer of the Government of Austria to host the meeting, the Ad Hoc Technical Expert Group (AHTEG) on the Second Assessment and Review of the Cartagena Protocol on Biosafety held its meeting in Vienna, from 14 to 16 May 2012.

* UNEP/CBD/BS/COP-MOP/6/1.

4. Among other things, the AHTEG considered the report on the analysis of the status of implementation of the Protocol prepared by the consultant, who was engaged by the Secretariat in accordance with decision BS-V/14, with a view to providing technical advice on the second assessment and review of the effectiveness of the Protocol, and made recommendations to the sixth meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol for its consideration.

5. The meeting was attended by fifteen experts, nominated by Governments from 13 Parties, namely Antigua and Barbuda, Belarus, Burkina Faso, Denmark, Ecuador, India, Japan, Liberia, Malaysia, Mexico, Norway, Slovenia and Uganda. The chairpersons of two subsidiary bodies under the Protocol, namely the AHTEG on Risk Assessment and Risk Management and the Compliance Committee, also attended the meeting. Observers from the United States of America, the United Nations Environment Programme, Asociación Desarrollo Medio Ambiental Sustentable, Public Research and Regulation Initiative and Third World Network also attended. The list of participants is annexed below.

ITEM 1. OPENING OF THE MEETING

6. The meeting was opened by Mr. Günther Liebel, the General Director of Environment Affairs, Austrian Ministry of Agriculture, Forestry, Environment and Water Management, at 9 a.m. on Monday, 14 May 2012. Opening remarks were also made by the representative of the COP-MOP President, Mr. Masamichi Saigou from the Japan Ministry of Agriculture, Forestry and Fisheries, and Mr. Braulio Dias, the Executive Secretary of the Convention on Biological Diversity.

7. In his opening remarks, Mr. Liebel stated that Austria had been engaged in the elaboration and the implementation of the Cartagena Protocol from the time the Protocol came into force, and had played a very active role in leading international discussions on various topics. He further stated that Austria's engagement at the international level was consistent with its policy at the national level. He noted that due to the country's small structured agriculture which concentrates on high quality production and takes into account the views and choices of its citizens and consumers, the government of Austria had taken the decision to prohibit the cultivation of genetically modified (GM) crops and to champion organic farming. Mr. Liebel also noted that the Cartagena Protocol provided the multilateral framework for national measures and that with the adoption of the Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress the legal framework was now complete and the focus needed to be on implementation. He ended by welcoming the participants to Vienna and wished them fruitful deliberations.

8. In his remarks, Mr. Masamichi Saigou noted that assessment and review was an important process in the implementation of the Protocol. He expressed the hope that the meeting would come up with useful recommendations for consideration by the Parties to the Protocol at their sixth meeting in Hyderabad, India.

9. The Executive Secretary of the Convention on Biological Diversity, Mr. Braulio Dias, expressed his gratitude to the Government of Austria for hosting the meeting and the Government of Japan for providing the financial support that enabled the participation of the experts from developing countries. He noted that the work of the AHTEG in reviewing the analysis of the status of implementation and providing technical advice to the Parties to the Protocol was central to the success of the Protocol. He expressed his appreciation to the Global Environment Facility (GEF) for providing the necessary funds through the United Nations Environment Programme (UNEP) to many developing country Parties for the preparation of their second national reports, which were used as the primary and important sources of information for the assessment and review.

ITEM 2. ORGANIZATIONAL MATTERS

2.1 Election of officers

10. Members of the AHTEG elected Mr. Casper Linnestad from Norway to serve as the Chair of the meeting and Ms. Ranjini Warriar from India to serve as the Rapporteur. After short introductory remarks, the Chair invited the participants and observers to introduce themselves.

2.2 Adoption of the agenda

11. The provisional agenda for the meeting (UNEP/CBD/BS/A&R/1/1) was adopted without amendment.

2.3 Organization of work

12. The organization of work as proposed in the annex to the annotations to the provisional agenda of the meeting (UNEP/CBD/BS/A&R/1/1/Add.1) was also adopted without amendment.

ITEM 3. THE REQUIREMENTS OF ARTICLE 35 OF THE PROTOCOL ON ASSESSMENT AND REVIEW AND FOLLOW-UP PROCESSES

13. Under this agenda item, the Secretariat gave a presentation on the requirements under Article 35 of the Protocol and the conclusions of the first assessment and review. The presentation also outlined the process for the second assessment and review as specified in decision BS-V/15.

ITEM 4. INFORMATION ON THE STATUS OF IMPLEMENTATION OF THE CARTAGENA PROTOCOL ON BIOSAFETY

14. Under this agenda item, the Secretariat gave a presentation on the information compiled from the 143 second national reports on the implementation of the Protocol which were submitted to the Secretariat by 31 December 2011. The presentation included an overview of the status and trends in the implementation of various provisions of the Protocol. The Secretariat also made a presentation on the Compliance Committee and its supportive role to Parties in the implementation of the Protocol. Following the presentations, members of the AHTEG sought clarifications with regard to some details.

15. During the discussions on the results of the second national reports, members of the AHTEG welcomed the high response of Parties in submitting their reports. It was noted that the information from the national reports provided a good baseline upon which progress in the implementation of the Protocol can be measured in the future. Some members, however, noted that there were inconsistencies in some of the responses provided by some Parties, which in part could have been due to different interpretations of certain questions in the reporting format. Some members also noted the need to include in future reporting formats specific questions that would help to evaluate the effectiveness of the Protocol.

16. In the discussions following the presentation on the compliance procedures and mechanisms, some members of the AHTEG noted that the compliance procedures that required submissions to be made by a Party with respect to itself or with respect to another restricted the Compliance Committee from addressing any specific cases of non-compliance. They expressed their hope that the situation might change for the better since the adoption of decision BS-V/1, which allowed the activation of the compliance procedures whenever information from national reports or the Biosafety Clearing-House (BCH) showed difficulties faced by Parties in complying with their obligations under the Protocol. Some

members also expressed their concern that any further delay in resolving Parties' differences on Rule 18 of the rules of procedure for the meetings of the Compliance Committee, regarding voting in the event that the Committee failed to reach agreement by consensus, might affect the work of the Committee in the future.

ITEM 5. ASSESSMENT AND REVIEW OF THE EFFECTIVENESS OF THE PROTOCOL BASED ON THE ANALYSIS OF INFORMATION ON ITS IMPLEMENTATION

17. Under this item, the consultant presented an analysis of the status of implementation of the various components of the Protocol as specified in decision BS-V/15. The consultant noted that the primary source of information for the analysis was second national reports submitted by Parties to the Protocol. She noted the other sources of information as the Biosafety Clearing-house, reports of the Compliance Committee, capacity-building coordination mechanism and other processes. The report of the analysis, document UNEP/CBD/BS/A&R/1/2, covered primarily the coverage of the Protocol, domestic implementation of core procedures and annexes, and international level procedures and mechanisms, with their corresponding indicators.

18. In presenting the analysis of the status of implementation of the Protocol, the consultant noted the following issues in relation to the data analysis:

(a) The variation in the details of information provided by Parties in their second national reports; for example, some Parties provided quite detailed information on current or evolving national laws and regulations, or on particular regulatory decisions, while others did not respond to specific questions or provide details in the text entry field;

(b) Parties may have adopted differing interpretations to questions posed in the second national report questionnaire, and used different processes to gather the information provided in the reports. It was noted, however, that the purpose of analysis is not to verify information contained in national reports, and in that sense the report can only be as accurate as the data upon which it is based;

(c) The report is based on the assumption that the information provided in national reports is accurate and up to date;

(d) There appear to be some inconsistencies between information made available in national reports and the corresponding information available in the BCH or through other sources. Of the 143 Parties that have submitted second national reports, 67 reported that the information they had submitted to the BCH was not complete or up to date. Some apparent discrepancies are highlighted in general terms in the analysis report, where appropriate;

(e) The second national reports do not expressly address all of the specific elements and indicators listed set out in the annex to decision BS-V/15. Where this was the case, an attempt was made as much as possible to interpret the data provided in the context of the specific element or indicator concerned, or to find relevant information through the BCH or another source;

(f) In a number of respects, the national reports tend to focus on measures developed or under development by Parties for the purpose of implementing the Protocol rather than on the implementation and enforcement of these measures in practice, and/or their impact and success in terms of outcomes. To a significant extent, this is due to the fact that many Parties remain at an early stage of implementing their national biosafety frameworks;

(g) No additional formal surveys, interviews and consultations were conducted specifically for the purposes of preparing the report on the analysis of the status of implementation of the Protocol.

19. In the ensuing discussions, members of the AHTEG highlighted the following general points:

(a) The need for a mechanism to enable Parties to cross-check the accuracy, currency and completeness of the information assembled in the data-gathering process before it is submitted in the national report;

(b) The need for Parties to ensure completeness and accuracy in their responses to the questions in national reporting format in order to enable the assessment and review process to piece together the overall global picture of implementation of obligations under the Protocol;

(c) The need for Parties to ensure consistency in their responses to related questions in the reporting format. In this regard, a possible solution proposed was to provide, in the future, a guide to any reporting format which would help bring clarity to the question, and a glossary to ensure common understanding of the terminology used;

(d) The need to include in the format for the third national reports specific questions that would help to generate more qualitative information to better clarify the situation on the status of implementation at the national level. It was noted that the text entry field provided in the reporting format at the end of the set of questions pertinent to each Article of the Protocol was too open-ended;

(e) The importance of raising awareness of the Protocol among various stakeholders at the national level to foster support for implementation. It was noted that in some countries key stakeholders, including policymakers and officials in relevant government institutions, such as ministries of finance or planning, are not conversant with biosafety and as a result the issue tends to be given low priority, for example in national budgetary allocations and in requests for bilateral and multilateral funding support, including GEF funding. In this regard, the need for conducting surveys to gauge the level of awareness and the need for sustained awareness-raising programmes were also highlighted;

(f) The need for a mechanism at national level linking BCH focal points and competent national authorities and authorised users in relevant institutions to facilitate the data-gathering process;

(g) The need for Parties to embark on the process of gathering data for their national reports as early as possible during the year of reporting to allow enough time for national consultations and verification of the data gathered;

(h) It may be useful for developing country Parties that have made progress in developing their national biosafety systems to share their experiences and lessons learned with the other developing country Parties that are still in the process of doing so.

20. The AHTEG also considered and made recommendations on item D of the annex to decision BS-V/15, regarding impacts of transboundary movements of living modified organisms (LMOs) on biological diversity, taking also into account risks to human health.

ITEM 6. CONCLUSIONS AND RECOMMENDATIONS TO THE SIXTH MEETING OF THE CONFERENCE OF THE PARTIES SERVING AS THE MEETING OF THE PARTIES TO THE PROTOCOL

21. The ad hoc technical expert group, having reviewed the information contained in the second national reports, the synthesis in document UNEP/CBD/BS/COP-MOP/6/16, the analysis on the status of implementation as contained in document UNEP/CBD/BS/A&R/1/2 and information provided through the presentations by the Secretariat, compiled the following conclusions, and made recommendations for consideration by the Parties to the Protocol at their sixth meeting.

CONCLUSIONS

A. Coverage

(a) The Protocol has been ratified by 161 out of the 193 Parties to the Convention on Biological Diversity, as of 31 December 2011;

(b) A number of States involved in the transboundary movement of LMOs are non-Parties to the Protocol. Thirty-seven Parties reported importing LMOs from non-Parties, while seven reported exporting LMOs to non-Parties;

(c) All Parties have designated national focal points for the Protocol. All non-Parties have also done so;

(d) The level of timely submission of national reports on the implementation of the Protocol is high and this is partly attributable to the user-friendly reporting format and the support provided by the Global Environment Facility (GEF);

(e) The information provided in the second national reports establishes the baseline for measuring progress of implementation of the Protocol for subsequent assessment and review processes, and for review of the implementation of the Strategic Plan.

B. Domestic implementation of core procedures and annexes

(a) Significant progress has been made in the implementation of the core procedures and annexes of the Protocol since its entry into force;

(b) 108 Parties reported that they have taken steps towards establishing legal, administrative and other measures for the implementation of the Protocol. However, 91 Parties indicated that they have yet to put in place fully functional biosafety regulatory frameworks that meet the requirements of the Protocol. Also, 59 Parties reported that they do not yet have a mechanism in place for handling requests and procedures for decision-making, and 9 Parties have not designated any competent national authority;

(c) 102 Parties reported that they have not received any notifications or applications concerning LMOs for introduction into the environment and therefore have limited practical experience in decision-making regarding the release and use of LMOs;

(d) Major challenges remain for many Parties in implementing the Protocol. These include:

(i) Inadequate human, financial and technical resources;

- (ii) Inadequate capacity to review applications, including capacity to undertake or review risk assessments prior to making a decision;
- (iii) Lack of sampling, detection and identification capacity;
- (iv) Low priority given to biosafety at the domestic level;
- (v) High staff turnover;
- (vi) Changing sectoral responsibilities in government; and
- (vii) Lack of resources for translation of biosafety information into non-United Nations languages, which is a major barrier to promoting public awareness, education and participation.

(e) Some of the above challenges are likely to continue to affect progress in implementation of the Protocol in the foreseeable future;

(f) Public awareness concerning the safe transfer, handling and use of LMOs is of central importance to improving the implementation of the Protocol. There is a continued need to promote such awareness among policymakers and the public, including through the programme of work adopted in decision BS-V/13.

C. International level procedures and mechanisms

(a) The Global Environment Facility (GEF) support has been, and will continue to be, instrumental in the progress of implementation of the Protocol;

(b) Funding for capacity-building has decreased over the last few years. In the context of GEF, under the current System for Transparent Allocation of Resources (STAR) in the allocation of funds, biosafety activities compete with other biodiversity-related activities and this has resulted in a decrease in the number of GEF-funded biosafety projects and the overall level of GEF funding for biosafety;

(c) There is a need to mobilize new and additional financial resources from other sources, including relevant international and regional organizations, to support implementation of the Protocol, and a need for Parties to provide for adequate budgetary allocations for biosafety at the domestic level;

(d) The capacity-building Action Plan has been effective to varying degrees in guiding, catalysing and leveraging at national, regional and international level;

(e) There is a continuing need for capacity-building to assist developing country Parties to fulfil their obligations under the Protocol;

(f) There is a need to address sustainability in building capacities for domestic implementation of the Protocol;

(g) While it is obvious that a number of Parties are not in full compliance with their obligations (for example, fulfilment of national reporting obligations), no specific case of non-compliance has been brought to the attention of the Compliance Committee;

(h) The BCH is fully operational and accessible. However it does not as yet contain comprehensive and up-to-date information from Parties, in particular the mandatory information on national biosafety laws, risk assessment summaries and decisions taken on LMOs;

(i) Information-sharing through the BCH is of critical importance to the effective implementation of the Protocol. Thus Parties need to consider how to improve information exchange through the BCH;

(j) Regional cooperation may form a useful component of the strategy for the effective implementation of the Protocol for many Parties, particularly in relation to risk assessment and risk management, LMO sampling and detection, public awareness, and training of inspectors and custom officials.

D. Impacts of transboundary movements of LMOs on biological diversity, taking also into account risks to human health

(a) This indicator did not have corresponding questions in the format for second national reports, and has not been specifically addressed in the second assessment and review;

(b) The Protocol is intended to contribute to the achievement of the objectives of the Convention on Biological Diversity. Specific linkages between the assessment and review of effectiveness of the Protocol and relevant processes under the Convention have not yet been drawn. If the scope of future assessments and reviews is to encompass the effectiveness of the Protocol in meeting its objective, it may be necessary to explore synergies with relevant work on indicators under the Convention.

RECOMMENDATIONS

22. The Ad Hoc Technical Expert Group on the Second Assessment and Review of the Cartagena Protocol on Biosafety recommends that the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety, at its sixth meeting:

A. Coverage

(a) Welcome the valuable information concerning the status of implementation contained in the second national reports;

(b) Request the Executive Secretary to seek information from Parties to the Convention on Biological Diversity that are non-Parties to the Protocol to identify constraints to ratification of or accession to the Protocol, with a view to increasing the geographic coverage of the Protocol;

(c) Remind Parties that under Article 24 of the Protocol, transboundary movements of living modified organisms between Parties and non-Parties are required to be consistent with the objective of the Protocol;

B. Domestic implementation of core procedures and annexes

(a) Encourage Parties to address biosafety as part of the national development agenda and prioritize biosafety activities at the national level;

(b) Urge Parties to continue promoting public awareness concerning the safe transfer, handling and use of living modified organisms among policymakers and the public, including through the programme of work adopted in decision BS-V/13;

(c) Urge those Parties that have not yet done so to designate competent national authorities and make the information available to the Biosafety Clearing-House as soon as possible in accordance with Article 19 of the Protocol;

C. Capacity-building and resource mobilization

(a) Request the Conference of the Parties to the Convention on Biological Diversity in its guidance to the financial mechanism to request the Global Environment Facility (GEF) to:

- (i) Provide support to all eligible Parties that have not yet done so to initiate implementation of their legal, administrative and other measures for the implementation of the Protocol;
- (ii) Define specific quotas for biosafety for each country during the GEF 6 programming period;
- (iii) Set aside more resources for thematic and regional capacity-building projects;
- (iv) Allow for more flexibility in the utilization of funds provided for capacity-building to address emerging needs within the overall framework of the approved projects;
- (v) Provide support to eligible Parties for preparation of their national reports on a regular basis.

(b) Urge Parties to mobilize new financial resources from other sources, including relevant international and regional organizations, to support implementation of the Protocol, and to provide for budgetary allocations for biosafety at the domestic level;

(c) Encourage Parties to address sustainability in building capacities for domestic implementation of the Protocol;

D. Regional approaches

(a) Encourage Parties to explore and utilize, as appropriate, existing regional and subregional arrangements and initiatives for information-sharing and for cooperation in facilitating the implementation of the Protocol in areas such as risk assessment; risk management; promoting public awareness; and sampling, detection and identification of living modified organisms;

E. Information sharing and the Biosafety Clearing-House

(a) Request the Executive Secretary to draw the attention of relevant Parties to any missing or incomplete information in the Biosafety Clearing-House;

(b) Reiterate the need for Parties to cooperate fully with the Secretariat in the effort to maintain complete, accurate and up-to-date information in the Biosafety Clearing-House;

(c) Remind Parties of their obligations and invite Governments to include in the Biosafety Clearing-House information on domestic approvals of small and large-scale field trials, if such trials involve any introduction of LMOs into the environment, in accordance with paragraphs 3 (c) and (d) of Article 20 of the Protocol and paragraph 1(a) of decision BS-V/2;

(d) Encourage Parties to establish or maintain effective coordination mechanisms between the Biosafety Clearing-House national focal points and competent national authorities to ensure that relevant information is made available to the Biosafety Clearing-House in a timely manner, for example by appointing national authorized users in all competent national authorities;

(e) Request the Executive Secretary to continue to explore and establish, as appropriate, linkages between the Biosafety Clearing-House and other international and national databases containing information relevant to biosafety and biotechnology;

F. Compliance mechanisms and procedures

(a) Request the Compliance Committee to support implementation in the manner envisaged in decision BS-V/1, and to encourage Parties to make submissions to, and to cooperate with, the Compliance Committee where they face difficulties complying with their obligations;

G. Subsequent assessment and review of the Cartagena Protocol on Biosafety

(a) Consider putting in place, at its sixth meeting, a process to prepare for the third assessment and review of effectiveness of the Protocol and the mid-term evaluation of the Strategic Plan, which will take place at the eighth meeting of the Parties, in light of experience gained through the process of conducting the second assessment and review of the effectiveness of the Protocol, particularly regarding the availability and coherence of data. In this context, the Parties to the Protocol, at their sixth meeting, may wish to consider, *inter alia*, the following elements:

- (i) Whether, in addition to evaluating the status of implementation of the Protocol, the scope of the third assessment and review of effectiveness of the Protocol should include evaluation of its effectiveness in meeting the objective of the Protocol;
- (ii) The identification, development or consolidation of indicators for the third assessment and review and the mid-term evaluation of the Strategic Plan;
- (iii) The types of information required as the basis for the third assessment and review of effectiveness of the Protocol and the mid-term review of the Strategic Plan, and the corresponding arrangements and format for the third national reports;
- (iv) The need for a mechanism for the preparation and conduct of the third assessment and review of effectiveness of the Protocol and the mid-term evaluation of the Strategic Plan, including the possible establishment of an ad hoc technical expert group on the Strategic Plan and assessment and review of effectiveness of the Protocol to prepare recommendations.

ITEM 7. OTHER MATTERS

23. The AHTEG considered document UNEP/CBD/BS/A&R/1/3, which outlines elements of a process for conducting the mid-term evaluation of the Strategic Plan in conjunction with the third assessment and review of effectiveness of the Protocol, which are both scheduled for the eighth meeting of the Parties; the AHTEG's recommendations are specified above (Item 6) under the sub-item on "Subsequent assessment and review of the Cartagena Protocol on Biosafety".

ITEM 8. ADOPTION OF THE REPORT

24. The participants adopted the draft report of the meeting with few amendments. The Secretariat was requested, in consultation with the Chair and Rapporteur, to incorporate the proceedings of the last session. The present report has been finalized on that basis.

ITEM 9. CLOSURE OF THE MEETING

25. Brief closing remarks were made by Ms. Elfriede A. More, Director, International Environmental Affairs, Austrian Ministry of Agriculture, Forestry, Environment and Water Management, and by Mr. Charles Gbedemah, of the Secretariat of the Convention on Biological Diversity; the Chair, Mr. Casper Linnestad, declared the meeting closed at 5 p.m. on Wednesday, 16 May 2012.

Annex

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