



Convention on Biological Diversity

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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 15 of the provisional agenda*

SUBSIDIARY BODIES (ARTICLE 30)

Note by the Executive Secretary

I. INTRODUCTION

1. At its first meeting, the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety (COP-MOP) in its consideration of other issues necessary for the effective implementation of the Protocol, decided to consider, at its third meeting, the need for designating or establishing a permanent subsidiary body that would provide the COP-MOP with timely advice on scientific and technical issues arising in relation to the implementation of the Protocol (decision BS-I/11, paragraph 2).

2. At its second meeting, the COP-MOP, following its consideration of other scientific and technical issues that may be necessary for the effective implementation of the Protocol, invited Parties, other Governments and relevant international organizations to submit, for consideration at its third meeting, views regarding the need to designate or establish a permanent subsidiary body to provide the COP-MOP with timely advice on scientific and technical issues arising from the implementation of the Protocol, including risk assessment and risk management, and also views regarding the nature of any such body should it be established and particular issues that it could address (decision BS-II/14, paragraph 3). In response, submissions were received from the European Community and its member States, New Zealand, Norway; Argentina, Canada, the United States of America; and the Global Industry Coalition and all the submissions, except for one, expressed the view that there was, at that stage, no justification for the establishment of such a subsidiary body.

3. At their third meeting, the Parties to the Protocol considered the views expressed in the submissions and noted in their decision that there were various potential mechanisms by which scientific and technical advice may be provided to the COP-MOP. Accordingly, they decided to consider, at their

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fourth meeting, those potential mechanisms, including, *inter alia*, the potential designation or establishment of a permanent subsidiary body, or the use of subsidiary bodies or mechanisms that may be created on *ad hoc* basis (decision BS-III/13). In this regard, the Executive Secretary was requested to prepare, for consideration at that meeting, a pre-sessional paper that would include the cost estimates for the various potential mechanisms and also take into account relevant findings of the Ad Hoc Open ended Working Group on Review of Implementation of the Convention, and any associated decisions by the eighth meeting of the Conference of the Parties, concerning the review of impacts and effectiveness of existing processes under the Convention.

4. At their fourth meeting, the Parties to the Protocol took note of the document prepared by the Executive Secretary (UNEP/CBD/BS/COP-MOP/4/12), identifying options of potential mechanisms for the provision of scientific and technical advice and the estimated costs associated with each of the potential mechanisms. The options included the following:

(a) Assigning functions related to the Protocol to the Subsidiary Body on Scientific, Technical and Technological Advice of the Convention (SBSTTA) of the Convention;

(b) Establishing an open-ended subsidiary body for scientific and technical advice under the Protocol;

(c) Establishing a small permanent scientific and technical advisory body under the Protocol;

(d) Establishing ad hoc scientific and technical expert groups (AHTEGs) from time to time, to address specific priority issues as required; and

(e) Utilizing the services of competent international organizations, and intergovernmental and non governmental bodies.

5. In decision BS-IV/13, the Parties to the Protocol, taking into account the financial implications of the various potential mechanisms decided on the fourth option; to establish, on a need basis, ad hoc technical expert groups with specific mandates to address one or more scientific and technical issues. The Parties further agreed to consider, at their sixth meeting, the need to establish an open-ended subsidiary body for scientific and technical advice under the Protocol.

6. The present note has been prepared to facilitate discussions on this item. Section II provides a brief review of the experience and lessons learned from the ad hoc technical expert groups that have so far been established under the Protocol. Section III analyses on the need for establishing an open-ended subsidiary body for scientific and technical advice under the Protocol, and the last section provides elements of a draft decision.

II. REVIEW OF THE OPERATIONS AND EXPERIENCE OF AD HOC TECHNICAL EXPERT GROUPS ESTABLISHED UNDER THE PROTOCOL

7. To date, the COP-MOP has established two ad hoc technical expert groups (AHTEGs) – the Ad Hoc Technical Expert Group on Risk Assessment and Risk Management (AHTEG-RARM) and the Ad Hoc Technical Expert Group on the Second Assessment and Review of the Cartagena Protocol on Biosafety (AHTEG-AR).

A. *Ad Hoc Technical Expert Group on Risk Assessment and Risk Management of Living Modified Organisms*

8. The Ad Hoc Technical Expert Group on Risk Assessment and Risk Management (AHTEG-RARM) was established by the fourth meeting of the Parties (decision BS-IV/11) together with an open-ended online forum on specific aspects on risk assessment. The Parties to the Protocol also requested the Executive Secretary to convene, prior to each of the meetings of the AHTEG-RARM, *ad hoc* online discussion groups and regional real-time online conferences.

9. The mandate of the AHTEG-RARM, as established in decision BS-IV/11, was to: develop a “roadmap” on the necessary steps to conduct a risk assessment in accordance with annex III to the Protocol, develop guidance documents on specific aspects of risk assessment and risk management identified by Parties and consider possible modalities for cooperation in identifying living modified organisms or specific traits that may have adverse effects on the conservation and sustainable use of biological diversity, taking also into account risks to human health. In the same decision, the AHTEG-RARM was explicitly requested to base its deliberations, *inter alia*, on contribution received through the open-ended online forum, *ad hoc* discussion groups and real-time online regional conferences.

10. At their fifth meeting, the Parties to the Protocol welcomed the “Guidance on Risk Assessment of Living Modified Organisms” developed by the AHTEG-RARM and noted that it required further scientific review and testing to establish its overall utility and applicability to living modified organisms of different taxa introduced into various environments. In this regard, the Parties decided to extend mandate of the AHTEG-RARM, as well as that of the open-ended online forum, to revise and test the first version of the Guidance and to assess its overall applicability and utility across different taxa and receiving environments. The expected outcomes included the following:

- (a) A revised version of the “Guidance on Risk Assessment of Living Modified Organisms”;
- (b) A mechanism, including criteria, for future updates of the lists of background materials;
and
- (c) Further guidance on new specific topics of risk assessment, selected on the basis of the priorities and needs by the Parties and taking into account the topics identified in the previous intersessional period.

11. Participants in the open-ended online expert forum were nominated by Parties, other Governments and relevant organizations, on the basis of their expertise, using the criteria and common format adopted by the Parties for the nomination of biosafety experts to the roster of experts.

12. Members of the AHTEG-RARM were selected by the Secretariat, in consultation with the COP-MOP Bureau, from among those experts that were nominated by Parties to take part in the open-ended online expert forum on the basis of their expertise and active participation in the online forum and in accordance with the consolidated *modus operandi* of the Convention’s Subsidiary Body on Scientific, Technical and Technological Advice (decision VIII/10, annex III), including due regard to geographical representation, gender balance and to the special conditions of developing countries and countries with economies in transition. A limited number of experts from among those nominated by non-Parties and relevant organizations, who actively participated in the open-ended online expert forum, were also selected to participate in the AHTEG-RARM as observers, in accordance with the rules of procedure governing meetings under the Protocol.

13. The AHTEG-RARM worked primarily online and held four face-to-face meetings over the four year period. In the course of its work, the AHTEG-RARM established Sub-Working Groups (SWGs),

which also worked primarily online and held two face-to-face meetings, to further develop the roadmap and the guidance documents on specific aspects of risk assessment and risk management.¹ A portal with dedicated Discussion Groups/Listservers for each SWG was established to assist the AHTEG in carrying out its tasks. Only members of a specific SWG and a few experts invited by the Chair of the SWG could make postings in the respective Discussion Group/Listserver but all AHTEG members could read the postings in the Portal.

14. The work of the AHTEG-RARM benefited from the outcomes of the 32 *ad hoc* online discussion groups on various topics and the 3 rounds of regional real-time online conferences (12 sessions) within the open-ended online expert forum. These online tools offered a broader platform which allowed experts from various institutions to provide input into the work of the AHTEG-RARM.

15. In its report (UNEP/CBD/BS/COP-MOP/6/INF/10), the AHTEG-RARM has recommended, *inter alia*, the endorsement of the “Guidance on Risk Assessment of Living Modified Organisms” and the appointment of a small group of experts to update the list of background materials linked to the Guidance. It has also recommended the continuation of the open-ended online forum and the AHTEG-RARM with new membership and revised terms of reference, to, as appropriate; develop guidance on new topics of risk assessment and risk management selected on the basis of the needs and priorities of Parties.

16. The main experiences and lessons learned, which could be useful for other ad hoc expert groups under the Protocol, include the following:

(a) The open-ended online expert forum, including the ad hoc online discussion groups and the regional real-time online conferences, contributed immensely to the success of the AHTEG. They helped to promote open discussion and input into the AHTEG’s work from a broad range of experts, from Parties, other Governments and relevant organizations. The open-ended online expert forum also increased transparency and the level of ownership of the outcomes from the AHTEG process.

(b) The request for nomination of experts to take part in the open-ended online expert forum and the convening of the ad hoc online discussion groups and regional real-time online conferences prior to the actual meetings of the AHTEG-RARM allowed the Secretariat, in consultation with the COP-MOP Bureau, to identify the most active experts from each region to serve on the AHTEG;

(c) The establishment of Sub-Working Groups, which comprised of members of the AHTEG-RARM and a few specific subject-matter specialists invited to provide their technical input and enrich the work of the AHTEG-RARM, created a platform for division of labour and facilitated focussed discussions that helped to increase efficiency and productivity.

(d) While the bulk of the AHTEG-RARM discussions were successfully carried out online, face-to-face meetings were crucial for seeking compromise among diverging views that proved difficult to achieve online.

17. In general, the AHTEG on Risk Assessment and Risk Management has effectively carried out its mandate. The Parties to the Protocol may wish to take into account its operational experience, good practices and lessons learned in the establishment of other ad hoc technical expert groups in the future.

¹ The six Sub-working Groups (SWGs) on: (i) the Roadmap for Risk Assessment; (ii) LM crops resistant or tolerant to abiotic stress, (iii) LMOs with stacked genes or traits, (iv) LM mosquitoes (v) LM trees; and (vi) and monitoring and long-term effects of LMOs released into the environment.

B. Ad Hoc Technical Expert Group on the Second Assessment and Review of the Cartagena Protocol on Biosafety

18. At their fifth meeting, the Parties to the Protocol decided to establish a regionally balanced ad hoc technical expert group, subject to the availability of funds, to review the analysis of information on the implementation of the Protocol and submit its recommendations to the sixth meeting of the COP-MOP for its consideration, with a view to facilitating the second assessment and review of the effectiveness of the Protocol (decision BS-V/15, paragraph 3).

19. The AHTEG on the Second Assessment and Review of the Cartagena Protocol on Biosafety (AHTEG-AR) met face-to-face once from 14 to 16 May 2012 in Vienna, Austria. It reviewed the analysis of the status and trends in the implementation of various provisions of the Protocol based on the synthesis by the Executive Secretary of the information from the 143 second national reports that were submitted to the Secretariat by 31 December 2011 (UNEP/CBD/BS/COP-MOP/6/16) and the analysis prepared by a Consultant based on information from various sources (UNEP/CBD/BS/COP-MOP/6/17/Add.1).²

20. In its report (UNEP/CBD/BS/COP-MOP/6/INF/21), the AHTEG-AR made a number of recommendations aimed at improving the implementation of the Protocol. It also proposed putting in place, at the sixth meeting of the Parties, a process and mechanism to prepare for the third assessment and review of effectiveness of the Protocol and the mid-term evaluation of the Strategic Plan. In this regard, the note prepared by the Executive Secretary (UNEP/CBD/BS/COP-MOP/6/17) has proposed that an Ad Hoc Technical Expert Group on the Strategic Plan and the Evaluation of the Effectiveness of the Cartagena Protocol be established by the sixth meeting of the Parties to undertake preparatory work necessary for the third assessment and review of the effectiveness of the Protocol and the mid-term evaluation of the Strategic Plan, including determination of the scope of and process for the review and the evaluation, the type of data that would be required and how it would be gathered and analysed, and development or consolidation of the indicators that would be used.

III. CONSIDERATION OF THE NEED FOR ESTABLISHING AN OPEN-ENDED SUBSIDIARY BODY FOR SCIENTIFIC AND TECHNICAL ADVICE UNDER THE PROTOCOL

21. To date, the Parties have identified few scientific and technical issues that would require the COP-MOP to establish a subsidiary body to provide advice. Besides the two ad hoc technical expert groups described in the previous section, the Parties at their last two meetings have considered the possibility of establishing an ad hoc technical expert group for socioeconomic considerations.

22. At their fifth meeting, the Parties considered the recommendations of the sixth Coordination Meeting for Governments and Organizations Implementing or Funding Biosafety Capacity-Building Activities, which included, *inter alia*, a proposal to establish an ad hoc expert group on socio-economic considerations in accordance with the terms of reference annexed to the proposal (UNEP/CBD/BS/COP-MOP/5/4). After a long discussion on this issue, the Parties agreed to request the Executive Secretary to convene regional online conferences to facilitate the exchange of views, information and experiences on socio-economic considerations on a regional basis and to identify possible issues for further consideration. The Executive Secretary was also requested to convene, prior to the sixth meeting of the Parties and subject to the availability of financial resources, a regionally-balanced workshop to analyse

² The sources of information included: the second national reports, the Biosafety Clearing-House, the Compliance Committee in relation to its functions to review general issues of compliance, the capacity-building coordination mechanism and other relevant processes and organizations.

the capacity-building activities, needs and priorities of Parties and other Governments regarding socio-economic considerations and identify options for cooperation in addressing those needs; and to exchange and analyse information on the use of socio-economic considerations in the context of Article 26 of the Protocol. Furthermore, the Executive Secretary was requested to synthesize the outcomes of the online conferences and workshop and submit a report to the sixth meeting of the Parties for consideration of further steps (decision BS-V/3, paragraphs 21-28).

23. In the report prepared by the Executive Secretary for consideration of the COP-MOP at its sixth meeting, it is recommended that an ad hoc technical experts group be established to, *inter alia*:

- (a) Develop conceptual clarity on socio-economic considerations;
- (b) Compile and review information on socio-economic impacts of living modified organisms, including information available on specific cases;
- (c) Develop guidelines on socio-economic considerations in the context of operational objective 1.7 of the Strategic Plan that would, among other things, identify key questions to be answered and provide minimum common elements that could be used in considering socio-economic impacts of living modified organisms.

24. In view of the fact that the Parties have so far identified only the above three as the issues requiring specific scientific and technical advice, and given the limited availability of funds, it may not be necessary to establish an open-ended subsidiary body for scientific and technical advice under the Protocol at this stage. The meeting of the Parties may decide to continue establishing, on a need basis, ad hoc technical expert groups, with specific mandates, to provide advice on one or more scientific and technical issues.

V. ELEMENTS OF A DRAFT DECISION

25. The Conference of the Parties serving as the meeting of the Protocol may wish to consider the following elements of a draft decision:

- (a) Take note of the experience and lessons learned from the Ad Hoc Technical Expert Group on Risk Assessment and Risk Management and the Ad Hoc Technical Expert Group on the Second Assessment and Review of the Cartagena Protocol on Biosafety;
- (b) Decide that at this stage, there is no need for the establishment of an open-ended subsidiary body for scientific and technical advice under the Protocol;
- (c) Decide to continue establishing, on a need basis, ad hoc technical expert groups, with specific mandates, to provide advice on one or more scientific and technical issues as the need arises;
- (d) Decide to take into account the experience and lessons learned from previous ad hoc technical expert groups in the establishment of similar expert groups in the future, including the convening, as appropriate, of open-ended online expert forums prior to any face-to-face meetings of future ad hoc technical expert groups;
- (e) Invite Parties, other Governments and relevant organizations to submit to the Executive Secretary, not later than six months prior to the eighth meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol, views on other issues arising from the implementation of the Protocol on which scientific and technical advice may be required;

(f) Request the Executive Secretary to prepare a synthesis of the views submitted by Parties, other Governments and relevant organizations for consideration by the eighth meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol;

(g) Decide to consider the need to establish an open-ended subsidiary body for scientific and technical advice under the Protocol at its eighth meeting in conjunction with the third assessment and review of the effectiveness of the Protocol and the mid-term evaluation of the Strategic Plan of the Cartagena Protocol on Biosafety.
