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REPORT ON THE STATUS OF THE BIOSAFETY PROTOCOL

Addendum

PROPOSED WORK PLAN FOR THE INTERGOVERNMENTAL COMMITTEE FOR THE
CARTAGENA PROTOCOL ON BIOSAFETY (ICCP)

Note by the Executive Secretary

I. INTRODUCTION

1. On 29 January 2000, the Conference of the Parties to the Convention on Biological Diversity adopted the Cartagena Protocol on Biosafety at its first extraordinary meeting. It also adopted decision EM-I/3, which, inter alia, established an open-ended ad hoc Intergovernmental Committee for the Cartagena Protocol (ICCP). The mandate of the ICCP is "to undertake, with the support of the Executive Secretary, the preparations necessary for the first meeting of the Parties, at which time it will cease to exist, taking into account the budgetary provisions adopted by the Conference of the Parties" (decision EM-I/3, para. 6).

2. In paragraph 10 of decision EM-1/3, the Conference of the Parties requested the Executive Secretary to develop, in consultation with the Bureau of the Intergovernmental Committee, a work plan for the Committee for consideration and approval by the Conference of the Parties at its fifth meeting. This work plan has been developed taking into account the input of the ICCP Bureau expressed at its meeting held on 13-14 March 2000 in Paris at the kind invitation of the Government of France.

3. It was the view of the Bureau that, while it is essential to consider all articles of the Protocol and their provisions for effectively implementing the Protocol, the work of the ICCP clearly has to address primarily the issues which the Protocol stipulates are to be considered at the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol (MOP-1), namely: Article 10 (Decision procedure), Article 20

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(Information-sharing and the biosafety clearing-house), Article 27 (Liability and redress), Article 31 (Secretariat) and Article 34 (Compliance). These elements are presented in section II of the present note.

4. However, a careful analysis of the text of the Protocol shows that, in order to plan the effective implementation of the Protocol, MOP-1 will also have to address other provisions, particularly those that relate to activities that have been identified as central to the operation of the Protocol and would promote the ratification process, such as those falling under: Article 18 (Handling, transport, packaging and identification), Article 22 (Capacity-building), Article 28 (Guidance to the financial mechanism), Article 29 (Conference of the Parties serving as the meeting of the Parties to this Protocol), and Article 33 (Monitoring and reporting). These elements are elaborated upon in section III below.

5. The proposed work plan for the ICCP therefore covers:

(a) Issues that the Protocol stipulates must be considered at MOP-1; and

(b) Issues that have been identified as central to the operation of the Protocol and would promote ratification of the Protocol by preparing all the mechanisms required for the effective operation of the Protocol and by clarifying some of the pivotal requirements for implementation.

6. The proposed work plan is based on the following assumptions:

(a) There will be two meetings of the ICCP before MOP-1, i.e., one meeting in late 2000 and one meeting in 2001;

(b) That each meeting of the ICCP will have a duration of five working days;

(c) That the ICCP will organize its work in two working groups operating simultaneously; and

(d) The Protocol will enter into force in time for MOP-1 to be held in conjunction with the sixth meeting of the Conference of the Parties some time in the year 2002.

7. Taken together, these considerations have been used as a basis for developing the proposed work plan of the ICCP annexed to the present note. The proposed work plan is also reflected in the proposed budget for the programme of work of the Convention for the biennium 2001-2002 (UNEP/CBD/COP/5/18 and Add.1).

II. ISSUES FOR CONSIDERATION AT MOP-1 AS STIPULATED BY THE PROVISIONS OF THE PROTOCOL

8. The ICCP is requested to consider a number of issues as stipulated by the provisions of the Protocol in preparation for the first meeting of the Parties. The relevant provisions of the Protocol and anticipated outputs are presented below. Emphasis has been added to the Protocol text in order to highlight the stipulation that the issue should be taken up at MOP-1.

A. Decision procedure

Relevant provision

Article 10, para. 7: "The Conference of the Parties serving as the meeting of the Parties shall, **at its first meeting**, decide upon appropriate procedures and mechanisms to facilitate decision-making by Parties of import."

Anticipated output

Appropriate procedures and mechanisms to facilitate decision-making by Parties of import.

B. Information-sharing and the Biosafety Clearing-House

Relevant provision

Article 20, para. 4: "The modalities of the operation of the Biosafety Clearing-House, including reports on its activities, shall be considered and decided upon by the Conference of the Parties serving as the meeting of the Parties to this Protocol **at its first meeting**, and kept under review thereafter."

Anticipated output

Modalities of the operation of the Biosafety Clearing-House.

C. Liability and redress

Relevant provision

Article 27: "The Conference of the Parties serving as the meeting of the Parties shall, **at its first meeting**, adopt a process with respect to the appropriate elaboration of international rules and procedures in the field of liability and redress for damage resulting from transboundary movements of living modified organisms, analysing and taking due account of the ongoing processes in international law on these matters, and shall endeavour to complete this process within four years."

Anticipated output

A process to elaborate international rules and procedures for liability and redress for damage resulting from transboundary movements of living modified organisms.

D. Secretariat

Relevant provision

Article 31, para. 3: "To the extent that they are distinct, the costs of the secretariat services for this Protocol shall be met by the Parties hereto. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, **at its first meeting**, decide on the necessary budgetary arrangements to this end."

Anticipated output

A programme budget proposal for the biennium following the entry into force of the Protocol.

E. Compliance

Relevant provision

Article 34: "The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, **at its first meeting**, consider and approve cooperative procedures and institutional mechanisms to promote compliance with the provisions of this Protocol and to address cases of non-compliance. These procedures and mechanisms shall include provisions to offer advice or assistance, where appropriate. They shall be separate from, and without prejudice to, the dispute settlement procedures and mechanisms established by Article 27 of the Convention."

Anticipated output

Procedures and institutional mechanisms to promote compliance and to address cases of non-compliance.

III. OTHER ISSUES FOR CONSIDERATION AT MOP-1 THAT ARE RELEVANT FOR PLANNING THE IMPLEMENTATION OF THE PROTOCOL

9. As stated in section I, there are other elements in the Protocol that should be addressed in a timely fashion to promote ratification and effective implementation of the Protocol. The following elements are considered as particularly relevant:

A. Handling, transport, packaging and identification

Relevant provisions

Article 18, para. 2: "Each Party shall take measures to require that documentation accompanying:

(a) Living modified organisms that are intended for direct use as food or feed, or for processing, clearly identifies that they "may contain" living modified organisms and are not intended for direct introduction into the environment, as well as a contact point for further information. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall take a decision on the detailed requirements for this purpose, including specification of their identity and any unique identification, no later than two years after the entry into force of this Protocol".

Article 18, para. 3: "The Conference of the Parties serving as the meeting of the Parties to this Protocol shall consider the need for and modalities of developing standards with regard to identification, handling, packaging and transport practices, in consultation with other relevant international bodies."

Anticipated outputs

Detailed requirements regarding documentation accompanying living modified organisms intended for direct use as food, or feed or for processing.

Need for and modalities of developing standards established.

B. Capacity-building

A fundamental requirement for the effective implementation and operation of the Protocol once it enters into force is the development and/or strengthening of human resources and institutional capacities in biosafety in developing countries, particularly the least developed and small island States among them, and countries with economies in transition. The Protocol builds on existing national, regional and international initiatives and recognizes that other international agencies and the private sector do have expertise in the many aspects of the field of biosafety. It will therefore be important that during the interim period, due consideration be given to the identification of a mechanism to promote capacity-building and the participation of all relevant institutions and entities, including the private sector.

Relevant provisions: Articles 22 and 28.

Anticipated output

Mechanisms and means for promoting and implementing capacity-building.

C. Financial mechanism and resourcesRelevant provision

Article 28, para. 5: "The guidance to the financial mechanism of the Convention in relevant decisions of the Conference of the Parties, including those agreed before the adoption of the Protocol, shall apply, mutatis mutandis, to the provisions of this Article."

Anticipated output

Guidance to the financial mechanism to support relevant activities.

D. Implementation of the ProtocolRelevant provision

Article 29, para. 4: "The Conference of the Parties serving as the meeting of the Parties to this Protocol shall keep under regular review the implementation of this Protocol and shall make, within its mandate, the decisions necessary to promote its effective implementation. It shall perform the functions assigned to it by this Protocol and shall:

(a) Make recommendations on any matters necessary for the implementation of this Protocol;

(b) Establish such subsidiary bodies as are deemed necessary for the implementation of this Protocol;

(c) Seek and utilize, where appropriate, the services and cooperation of, and information provided by, competent international organizations and intergovernmental and non-governmental bodies;

(...)

(f) Exercise such other functions as may be required for the implementation of this Protocol.

Anticipated output

Decisions necessary to promote the effective implementation of the Protocol, including: recommendations on any matters necessary; the establishment of such subsidiary bodies as are deemed necessary; the identification of where the services and cooperation of, and information provided by, competent international organizations and non-governmental bodies is appropriate to be sought and utilized; and the identification of the exercise of any other functions that may be required.

E. Rules of procedure

Relevant provision

Article 29, para. 5: "The rules of procedure of the Conference of the Parties and 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."

Anticipated output

Rules of procedure for the Conference of the Parties serving as the meeting of the Parties.

F. Monitoring and reporting

Relevant provision

Article 33: "Each Party shall monitor the implementation of its obligations under this Protocol, and shall, at intervals to be determined by the Conference of the Parties serving as the meeting of the Parties to this Protocol, report to the Conference of the Parties serving as the meeting of the Parties to this Protocol on measures that it has taken to implement the Protocol."

Anticipated output

Format and timing for reporting.

IV. RECOMMENDATIONS

10. The Conference of the Parties may wish to:

/...

- (a) Endorse the proposed work plan for the Intergovernmental Committee for the Cartagena Protocol on Biosafety;
- (b) Request the Executive Secretary to invite the private sector to contribute to the development and/or strengthening of human resources and institutional capacities in biosafety for the purpose of the effective implementation of the Protocol, in particular in developing country Parties, and to report on progress made to the first meeting of the Parties;
- (c) Consider ways and means to ensure that the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol is held no later than 12 months after the entry into force of the Protocol;
- (d) Request the Executive Secretary to convene a meeting of technical experts on the Biosafety Clearing-House prior to the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol to explore some of the issues identified under item 2 of the work programme for the first meeting of the Intergovernmental Committee for the Cartagena Protocol (see section A of the annex to the present note).

Annex

A. Issues for consideration by the ICCP at its first meeting

1. Decision-making procedures (Article 10, para. 7, Article 5, Article 6)

Issue: Identification of basic elements for appropriate procedures and mechanisms to facilitate decision-making by Parties of import.

2. Information-sharing (Article 20, Article 19)

Issues:

- ?? Determination of needs of Parties
- ?? Overview of existing activities/systems and possibilities for cooperation
- ?? Design of data input systems
- ?? Development of common formats for reporting, e.g: decisions, national legislations, points of contact, focal points, summaries of risk assessments etc.
- ?? Development of operational systems, information management policies and procedures for receiving and making information available, including quality-insurance procedures
- ?? Establishment of a mechanism to ensure confidentiality of information.
- ?? Financial and technological resources requirements

3. Capacity-building (Article 22, Article 28)

Issues:

- ?? Identification of the needs of Parties
- ?? Establishment and role of the roster of experts
- ?? Overview of completed activities in the field of biosafety (e.g. capacity-building workshop in Mexico)
- ?? Overview of existing programmes/projects/activities and possibilities for cooperation (e.g. UNEP activities and possible role)
- ?? Multilateral, regional and bilateral cooperation and the need for common understanding and harmonisation
- ?? Involvement of private sector
- ?? Elements of capacity-building with respect to risk assessment and management in accordance with Article 15, Article 16 and Annex III of the Protocol
- ?? Role of the Secretariat of the Convention
- ?? Financial and technological resources requirements.

4. Handling, transport packaging and identification (Article 18)Issues:

- ?? Requirements regarding documentation accompanying living modified organisms intended for direct use as food, feed or for processing.
- ?? Need for and modalities of developing standards with regard to identification, handling, packaging and transport practices.

5. Effective implementation of the Protocol (Article 29, para. 4)

Issue: Identification and determination of the needs and mechanisms necessary for complete and effective implementation of the Protocol (i.e., with regard to the procedures), not foreseen by its provisions, and, in particular, the identification of any other decision necessary, including:

- ?? Recommendations on any matters necessary;
- ?? The establishment of such subsidiary bodies as are deemed necessary;
- ?? The identification of where the services and cooperation of, and information provided by, competent international organizations and intergovernmental and non-governmental bodies is appropriate to be sought and utilized; and
- ?? The identification of the exercise of any other function that may be required.

6. Compliance (Article 34)Issues:

- ?? Elements for compliance regime
- ?? Options for a compliance mechanism

B. Issues for consideration by the ICCP at its second meeting1. Liability and redress (Article 27)

Issue: Elaboration of a draft recommendation on the process for elaboration of a liability and redress regime including, inter alia:

- ?? Review of existing relevant instruments (Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, North American Free Trade Agreement, European Union agreements, the Lugano Convention on Civil Liability for Damage resulting from Activities Dangerous to the Environment, etc.)
- ?? Preparation of draft elements for a liability and redress regime.

2. Monitoring and reporting (Article 33)

Issue: Format and timing for reporting.

3. Secretariat (Article 31)

Issue: Development of a programme budget for the biennium following the entry into force of the Protocol.

4. Guidance to the financial mechanism (Article 28, para. 5)

Issue: Elaboration of guidance for the financial mechanism.

5. Rules of procedure for the meeting of the Parties (Article 29, para. 5)

Issue: Adoption of rules of procedure.

6. Elaboration of a draft provisional agenda for MOP-1

Items for continued consideration from the first meeting of the ICCP

7. Decision-making procedures (Article 10, para. 7, Article 5, Article 6)

Issue: draft minimum requirements for appropriate procedures and mechanisms to facilitate decision-making by Parties of import.

8. Information-sharing (Article 20)

9. Handling, transport, packaging and identification (Article 18)

10. Compliance (Article 34)

11. Capacity-building (Article 22, Article 28, para. 3)
