



CONVENTION ON BIOLOGICAL DIVERSITY

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CONFERENCE OF THE PARTIES TO THE CONVENTION ON BIOLOGICAL DIVERSITY

Seventh meeting

Kuala Lumpur, 9-20 and 27 February 2004

Agenda item 22

BUDGET FOR THE PROGRAMME OF WORK FOR THE BIENNIUM 2005-2006

Outline of decision-making for the adoption of the budget for the Convention and the Protocol

Note by the Executive Secretary

A. Background

1. A number of the provisions of the Protocol demonstrate that the Parties to the Convention, who would subsequently be Parties to the Protocol, were determined to avoid the creation of new institutions within the framework of the Convention and to promote institutional unity and coherence. Among the justifications was the desire to minimize the operational costs that would be associated with a new treaty and the need to ensure linkages and synergies between various work programmes of the Convention and the Protocol. This resulted, *inter alia*, in the decision to utilize the Conference of the Parties to the Convention to serve as the meeting of the Parties to the Protocol; the use of the Convention's Secretariat to serve as the secretariat of the Protocol; the use of the financial mechanism of the Convention as the financial mechanism of the Protocol; and the establishment of the Biosafety Clearing-House as part of the clearing-house mechanism of the Convention.

B. The Secretariat

2. The provisions of the Protocol relating to the Secretariat, its functions, and related budgetary considerations underscore the objective of institutional unity. For example:

(a) Article 31, paragraph 1, provides that the Secretariat of the Convention "shall serve as the secretariat of the Protocol";

(b) Article 31, paragraph 2, provides that paragraph 1 of Article 24 of the Convention governing the functions of the Secretariat shall apply, *mutatis mutandis*, to the Protocol;

(c) Article 20, paragraph 1, establishes the Biosafety Clearing-House as part of the clearing-house mechanism under Article 18 of the Convention;

(d) Article 31, paragraph 3, provides that to the extent that they are distinct the costs of secretariat services for the Protocol shall be met by Parties thereto.

C. Budgetary matters

3. Article 31, paragraph 3, of the Protocol acknowledges the distinct nature of some of the costs of secretariat services for the Protocol. In this regard, it is the Conference of the Parties serving as the meeting of the Parties to the Protocol that would decide on the necessary budgetary arrangements and such costs are to be met solely by Parties to the Protocol. It is also clear from the wording of

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paragraph 3 of Article 31 that where the costs of secretariat services are not distinct they are to be met by Parties to the Convention rather than by Parties to the Protocol.

4. All this, however, assumes that it is possible to distinguish the costs related to the Protocol from those of the Convention. Given the important overlaps in secretariat functions, services and programmes of work (for example, management and administration, review of national reports, etc) such a distinction may not be as easy or as clear as might appear at first glance. It may, therefore, be necessary that both Parties consult in order to reach a common understanding of shared and distinct costs.

D. Adoption of the budget: procedural issues

5. The Conference of the Parties as a sovereign entity is at liberty to adopt the budget of the Convention pursuant to paragraph 3 of Article 23 of the Convention and rule 7 (b) of the Financial Rules, including shared (non-distinct) costs for secretariat services, based on its own assessment of such shared costs. In this regard, there is nothing in paragraph 3 of Article 31 of the Protocol that would suggest that the budgets for the Convention and the Protocol have to be decided upon in tandem. The Conference of the Parties could therefore adopt its budget on 20 February 2004.

6. The procedure for the adoption of the budget for the Convention would be as follows: A draft decision on the budget would be prepared by the Contact Group on the Budget consisting of the distinct costs of secretariat services and activities under the Convention and shared costs of secretariat services for both the Convention and the Protocol. This budget would be adopted on 20 February 2004.

7. According to rule 7 (b) of the Financial Rules, the budget once approved by the Conference of the Parties may be revised at a subsequent ordinary or extraordinary meeting of the Parties. On the other hand, reconsideration at the same meeting of the budget proposal once adopted would be governed by rule 38 of the rules of procedure. This rule provides that when a proposal has been adopted, it may not be reconsidered at the same meeting, unless the Conference of the Parties, by a two-thirds majority of the Parties present and voting, decides in favour of reconsideration. However, the adoption of the reconsidered budget proposal will have to be by consensus in accordance with the rules of procedure. Rule 38 of the rules of procedure would apply to any motion for reconsideration of the budget at its resumed session on 27 February 2004.

8. As regards the Protocol budget, the Conference of the Parties serving as the meeting of the Parties to the Protocol would adopt the budget, including distinct costs of secretariat services for the Protocol, on 27 February 2004, in accordance with paragraph 3 of Article 31 of the Protocol.

9. It should be emphasized that since Parties to the Protocol are also Parties to the Convention, there should be an opportunity for consultations regarding shared and distinct costs between Parties to the two instruments including during budget discussions by the Contact Group on the Budget. Moreover, representatives of Parties are normally given instructions by their Governments regarding the budget and, consequently, there would be some understanding regarding budgetary matters for both instruments.

E. The resumed session of the seventh ordinary meeting of the Conference of the Parties

10. The Conference of the Parties, after adopting its decisions, will adjourn on 20 February and resume on the 27 February to consider relevant recommendations of the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol, in particular, recommendations related to guidance to the financial mechanism.

11. The designation of the financial mechanism of the Convention as the financial mechanism for the Protocol has important implications for decision-making under the Protocol with respect to financial resources necessary for its implementation. Article 21 of the Convention provides that the financial mechanism shall function under the guidance and authority of, and be accountable to, the Conference of the Parties. Moreover, paragraphs 6 and 26 of the GEF Instrument (1994) provide (with respect to those international environmental conventions for which the GEF operates a financial mechanism) that the GEF shall function under the guidance of, and be accountable to, the conferences of the parties which shall decide on the policies, programme priorities and eligibility criteria for the purposes of the conventions.

12. In terms of these provisions, it is only the Conference of the Parties to the Convention that has the competence to provide guidance to the financial mechanism. Article 28, paragraph 3, of the Protocol consequently provides that the Conference of the Parties serving as the meeting of the Parties to the Protocol shall provide guidance with respect to the financial mechanism “for the consideration of the Conference of the Parties”. It is clear that whereas the Conference of the Parties serving as the meeting of the Parties to the Protocol may recommend guidance relating to the financial mechanism, the Conference of the Parties to the Convention remains the final authority regarding the provision of such guidance to the financial mechanism.
