



## Convention on Biological Diversity

Distr.  
GENERAL

CBD/SBSTTA/21/8  
31 August 2017

ORIGINAL: ENGLISH

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### SUBSIDIARY BODY ON SCIENTIFIC, TECHNICAL AND TECHNOLOGICAL ADVICE

Twenty-first meeting  
Montreal, Canada, 11-14 December 2017  
Item 9 of the provisional agenda\*

### NEW AND EMERGING ISSUES RELATING TO THE CONSERVATION AND SUSTAINABLE USE OF BIOLOGICAL DIVERSITY

*Note by the Executive Secretary*

#### I. INTRODUCTION

1. In decision IX/29, the Conference of the Parties to the Convention on Biological Diversity provided guidance on the procedure for the identification of new and emerging issues and on the review of proposals, specified the kind of information that should be provided in support of a proposal and specified a list of criteria that should be applied in evaluating the proposals (reproduced in the annex to the present note).

2. According to the procedure specified in decision IX/29, after each meeting of the Conference of the Parties, the Executive Secretary invites Parties and relevant organizations to submit proposals for new and emerging issues and compiles these in the form in which they are received. Parties and relevant organizations are then notified of the opportunity to contribute relevant information and views related to the proposals, taking into account the criteria. Subsequently, the Executive Secretary issues a document compiling the original submissions and the information and views received, and providing draft recommendations, for consideration by the Subsidiary Body on Scientific, Technical and Technological Advice.

3. With a view to facilitating the consideration of the proposals by the Subsidiary Body on Scientific, Technical and Technological Advice, an additional element to the procedure was introduced through decision XI/11, paragraph 5, whereby the Executive Secretary would include, with the compilation of original submissions and the information and views on each proposed new and emerging issue, a review of information applying the criteria contained in decision IX/29, paragraph 12, where this had not otherwise been provided.

4. In line with this procedure, the Executive Secretary invited, through notification 2017-014,<sup>1</sup> the submission of proposals for new and emerging issues relating to the conservation and sustainable use of biodiversity and the fair and equitable sharing of benefits arising from the use of genetic resources. In response, seven submissions were received: four from Parties (Australia, Canada, the European Union and Iraq), two from organizations (Peruvian Society for Environmental Law (SPDA), University of the South Pacific) and one from an individual. The submissions were made available online at <https://www.cbd.int/emerging/> as they were received. Among these responses, three Parties (Australia,

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\* CBD/SBSTTA/21/1.

<sup>1</sup> Ref. No. SCBD/OIC/DC/RH/84326, dated 20 February 2017.

Canada, and the European Union) recommended that no new and emerging issue should be added to the agenda of a meeting of the Subsidiary Body on Scientific, Technical and Technological Advice as a result of this round of submissions, while one Party (Iraq), the two organizations and the individual made proposals for new and emerging issues. In addition, Canada recommended that the process for the identification of new and emerging issues should be reviewed.

5. Through notification 2017-054,<sup>2</sup> the Executive Secretary invited Parties and relevant organizations to contribute relevant information and views related to the submissions received, taking into account the criteria listed in paragraph 12 of decision IX/29. Parties and relevant organizations were also invited to submit views on the process for the identification of new and emerging issues.

6. Six Parties (Australia, Canada, the European Union, Japan, Mexico and New Zealand) and two organizations (Global Industry Coalition and Japan Bioindustry Association) responded to this notification. The submissions are available online at <https://www.cbd.int/emerging/>. In their responses, Australia, Canada, and the European Union reiterated their original recommendation not to add a new and emerging issue to the agenda of a meeting of the Subsidiary Body on Scientific, Technical and Technological Advice as a result of this round of submissions. Upon review of the proposals, this view was also shared by Japan and the Japan Bioindustry Association.

7. Section II of the present note summarizes the proposals for new and emerging issues and provides additional considerations to facilitate a decision on their relevance for the work of the Subsidiary Body on Scientific, Technical and Technological Advice, drawing on the information and views on the proposals received in response to notification 2017-054. Section III discusses views on the process for the identification of new and emerging issues. Suggested recommendations are provided in section IV.

## II. PROPOSALS FOR NEW AND EMERGING ISSUES

8. The four substantive proposals made in response to notification 2017-014 are described below with annotations.

### A. Iraq: Environmental and social consequences of forced migration

9. In its submission, Iraq drew attention to the economic, social, political and environmental impacts of forcibly displaced people on the recipient areas, noting that these included impacts on biodiversity. Accordingly, Iraq called upon the Subsidiary Body to, inter alia, develop tools for the identification and quantification of the environmental consequences of involuntary migration and to compile and share information on adaptation strategies and governance models.

10. The submission did not include detailed information, as called for in decision IX/29, paragraph 11. In considering the criteria from decision IX/29 the following points may be noted:

(a) The Convention has, in its work related to disaster risk reduction and adaptation, focused on natural disasters and their impact on biodiversity. Consideration of the consequences of forced migration on the environment and society requires broader and cross-cutting approaches. The United Nations Environment Programme has tried to address human migration and its impact on the environment in the context of its work on “emerging environmental issues”.<sup>3</sup> Therefore, it is suggested that other United Nations bodies may be better suited to addressing human-induced disasters and the consequences of disasters on human well-being;

(b) The submission is focused on the specific regional context of the Middle East and notes the urgency of addressing the consequences for biodiversity as part of the need to address a broader suite of issues. It is therefore unlikely that the impacts on biodiversity could be meaningfully considered without first considering the broader political, social, economic and other environmental ramifications;

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<sup>2</sup> Ref. No. SCBD/OES/DC/RH/84326, dated 20 June 2017.

<sup>3</sup> See for example: United Nations Environment Programme, [21 Issues for the 21st Century: Results of the UNEP Foresight Process on Emerging Environmental Issues](#).

(c) In decision XI/2 (para. 27) the Conference of the Parties requested the Executive Secretary to undertake, subject to the availability of resources, a review of the impact of disasters and conflicts on biodiversity and of ways and means to take action to implement the Strategic Plan for Biodiversity 2011-2020 and achieve the Aichi Biodiversity Targets under such conditions and invited the Executive Director of the United Nations Environment Programme to integrate the Strategic Plan for Biodiversity 2011-2020, as far as feasible, into the initiatives of the programme of work on conflicts and disasters of the United Nations Environment Programme and to report to the Subsidiary Body on Scientific, Technical and Technological Advice. In its ensuing work, the Subsidiary Body focused on ecosystem-based approaches to climate-change adaptation and disaster-risk reduction;

(d) In considering its future work programme, the Subsidiary Body should take into account activities of, and avoid duplication with, inter alia, the UN Environment Disasters and Conflicts programme, the United Nations Office for the Coordination of Humanitarian Affairs, and the Office of the United Nations High Commissioner for Refugees, as well as the 2016 New York Declaration for Refugees and Migrants<sup>4</sup> and the 2030 Agenda for Sustainable Development.<sup>5</sup>

11. In their responses to notification 2017-054, Parties recognized the importance of considering the interrelationships between migration, security and biodiversity but did not consider that this issue should be considered by the Subsidiary Body as a new and emerging issue.

#### **B. SPDA: jurisdiction shopping and selection of non-genetic-material media for transmission**

12. The Peruvian Society for Environmental Law (SPDA) recommended adding an item relating to “jurisdiction shopping and selection of non-genetic-material media for transmission”. They suggest that these two methods – jurisdiction shopping and non-genetic material – are used as legal means of access that circumvent the access and benefit-sharing (ABS) provisions of the Convention and undermine the conservation and sustainable use of biodiversity. SPDA examines the issue following the categories of information called for in paragraph 11 of decision IX/29 as well as in the light of the criteria to be used for identifying new and emerging issues related to the conservation and sustainable use of biodiversity as set out in paragraph 12 of decision IX/29.

13. SPDA argues that the terminology “genetic material” and “genetic resources” as used in the Convention on Biological Diversity and now “digital sequence information” as introduced in decision XIII/16 is incorrect and contributes to the problem of being able to use non-genetic-material media for transmission as a way to avoid ABS obligations: “Whenever genetic material is not the medium of transmission, any activity which adds value to natural information and seeks any type of intellectual property protection, will lie outside of the scope of the [Convention] and the [Nagoya Protocol]. This new and emerging issue effectively eviscerates ABS, the third objective of the [Convention], and thereby erodes conservation and sustainable use, the first two objectives of the [Convention].” Instead, they suggest that ABS requirements should be built on the concept of “natural information”.

14. The description of jurisdiction shopping as a new and emerging issue similarly argues that the concepts of “genetic material” and “genetic resources” as used in the Convention facilitate jurisdiction shopping by users seeking access. They suggest that understanding genetic resources as “natural information” rather than physical material would better acknowledge the diffuse and transboundary nature of this information and would enable the Parties to take appropriate measures.<sup>6</sup>

15. Mexico agrees that jurisdiction shopping is an important issue and warrants further consideration. However, Mexico does not share the proposal of refocusing the discussion on genetic resources to the

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<sup>4</sup> [General Assembly resolution 71/1](#).

<sup>5</sup> [General Assembly resolution 70/1](#), annex.

<sup>6</sup> The portions of the submission on jurisdiction shopping reiterate much of the information that was provided in the SPDA submission on this issue during the consideration of potential new and emerging issues by the Subsidiary Body on Scientific, Technical and Technological Advice in 2015. The 2015 submission is available online at <https://www.cbd.int/emerging/>. See also [UNEP/CBD/SBSTTA/20/14](#).

notion of “natural information”. Mexico emphasizes the respect for existing processes and ongoing discussions in other forums, in particular the World Intellectual Property Organization, and also taking into account Article 4 of the Nagoya Protocol, which specifies the relationship that the Protocol should have with other international instruments and arrangements with a view to maintaining mutual supportiveness.

16. As noted in the submission, many of the arguments it raises are related to other ongoing discussions under the Convention and the Nagoya Protocol, particularly the cross-cutting issue of digital sequence information on genetic resources as well as Article 10 of the Nagoya Protocol. This view was generally shared in the responses to notification 2017-054.

17. Accordingly, it is recommended that this issue not be added to the agenda of the Subsidiary Body.

### **C. University of the South Pacific: legislative and regulatory frameworks to govern bioprospecting and use of digital sequence information**

18. The Center for Drug Discovery and Conservation of the University of the South Pacific called for a number of activities of particular relevance to Pacific island States, including the development of related legislative and regulatory frameworks to govern bioprospecting and the use of digital sequence information in support of national activities in the context of the sustainable management of marine and terrestrial genetic resources, and additional efforts on the review of implementation of selected Aichi Biodiversity Targets.

19. The submission did not include detailed information as called for in paragraph 11 of decision IX/29. In considering the criteria from decision IX/29, the following points may be noted:

(a) The submission focuses on ongoing processes at the regional level to advance the ability of Pacific countries to operate effectively within the framework provided by the Nagoya Protocol and other relevant international agreements;

(b) The possible role of the Subsidiary Body in the development of legislative and regulatory frameworks related to access and benefit-sharing is not clearly established.

20. In the responses to notification 2017-054, the regional nature of the proposal was highlighted, and it was noted that existing agenda items under the Convention and its Protocols already support the discussions and activities addressed in the submission. Accordingly, it is recommended that this issue not be considered by the Subsidiary Body as a new and emerging issue.

### **D. Babagana Abubakar: marine dust from the Sahara desert in Africa nourishing the mighty Amazon Rainforest of South America**

21. The submission from an individual scholar drew attention to the geo-ecological process of intercontinental transportation of nutrient-rich dust from Central Africa to the Amazon Basin.

22. The submission did not include detailed information, as called for in paragraph 11 of decision IX/29. In considering the criteria from decision IX/29, it may be noted that the possible role of the Subsidiary Body in discussing such a natural phenomenon is not clearly established.

23. This observation was shared in responses to notification 2017-054, and it was also noted that the mandate of the Executive Secretary, as specified in decision IX/29, section II, paragraph 8, is to notify and receive proposals from Parties and organizations, not from individuals. Accordingly, it is recommended that this issue not be considered by the Subsidiary Body as a new and emerging issue.

## **III. VIEWS ON THE PROCESS FOR THE IDENTIFICATION OF NEW AND EMERGING ISSUES**

24. In providing views on the process for the identification of new and emerging issues, Parties and relevant organizations provided the following responses to the questions listed in notification 2017-054:

(a) *Should paragraph 12 of decision IX/29 be understood as implying that an issue qualifies only if all seven criteria are fulfilled or can it qualify if some of these criteria are fulfilled?*

25. In their responses, Parties and organizations recognized the importance of examining proposals in relation to each of the seven criteria and emphasized the need for a robust process. However, different views were expressed with regard to the need for a proposal to fulfil all seven criteria in order to qualify for placement on the agenda of the Subsidiary Body on Scientific, Technical and Technological Advice.

*(b) Should paragraph 12 of decision IX/29 be understood as implying that an issue qualifies only if it has potential negative consequences for the conservation and sustainable use of biodiversity (risk, impact) or can it qualify if it focuses on opportunities to advance the conservation and sustainable use of biodiversity?*

26. Submissions generally agreed that a proposal could qualify if it focused on opportunities to advance the conservation and sustainable use of biodiversity.

*(c) Are there adjustments to the criteria that should be considered?*

27. No adjustments to the criteria were proposed.

*(d) Are there additional criteria that should be added to the ones listed in paragraph 12 of decision IX/29?*

28. No additional criteria were proposed.

29. Taking into account these submissions, the following observations may be made:

(a) The submissions indicate that proposals which address issues that may have positive as well as negative impacts on the conservation and sustainable use of biodiversity could be considered as new and emerging issues. Thus, it is foreseeable that an issue might be considered even in the absence of negative impacts;

(b) Issues focused on opportunities to advance the conservation and sustainable use of biodiversity might not, however, fulfil criteria on risk caused by the issue (decision IX/29, para. 12 (c)) or regarding tools to limit or mitigate the negative impacts of the identified issue (decision IX/29, para. 12 (e));

(c) Decisions on fulfilment of the criteria require a qualitative assessment. There is no clear threshold above which each individual criterion can be considered “fulfilled” and below which it would be “not fulfilled”. It may therefore be appropriate to discuss the extent to which each criterion applies individually while considering the fulfilment of the criteria as a package;

(d) In addition to the criteria listed in its paragraph 12, decision IX/29, also provides, in paragraph 11, a list of information that should accompany proposals for new and emerging issues.

30. Given the above, it is clear that the Subsidiary Body should take all available information, including information beyond the criteria for new and emerging issues, into account when deciding on whether or not to recommend to the Conference of the Parties to place a proposed issue on the agenda of one of its future meetings.

#### **IV. SUGGESTED RECOMMENDATIONS**

31. The Subsidiary Body on Scientific, Technical and Technological Advice may wish to adopt a recommendation along the following lines:

*The Subsidiary Body on Scientific, Technical and Technological Advice*

1. *Takes note* of the proposals for new and emerging issues and the related information and views submitted by Parties and observers, summarized in the note by the Executive Secretary on new and emerging issues;<sup>7</sup>

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<sup>7</sup> CBD/SBSTTA/21/8.

2. *Recommends* that the Conference of the Parties decide not to add to the agenda of the Subsidiary Body in the coming biennium a new and emerging issue pursuant to the procedure established through decision IX/29;

3. *Reaffirms* the relevance of all seven criteria listed in paragraph 12 of decision IX/29, as well as the categories of information listed in paragraph 11, for informing recommendations of the Subsidiary Body, noting that the extent to which each criterion applies may be considered on a case-by-case basis, taking into account all the relevant information.

*Annex***INFORMATION TO ACCOMPANY PROPOSALS FOR CRITERIA TO BE USED FOR NEW AND EMERGING ISSUES RELATED TO THE CONSERVATION AND SUSTAINABLE USE OF BIODIVERSITY AND CRITERIA FOR IDENTIFYING THEM****(Decision XI/29, Paras. 11 and 12)****Information to accompany proposals for new and emerging issues (para. 11)**

- (a) Why the issue needs urgent attention by the Subsidiary Body on Scientific, Technical and Technological Advice (including how it impacts biodiversity);
- (b) How it affects the attainment of the objectives of the Convention (citing relevant articles);
- (c) Thematic programmes of work and/or cross-cutting issues that could contribute to the resolution of the issue;
- (d) Work already under way by relevant organizations addressing the issue;
- (e) Credible sources of information, preferably from peer-reviewed articles.

**Criteria to be used for identifying new and emerging issues (decision XI/29, para. 12)**

- (a) Relevance of the issue to the implementation of the objectives of the Convention and its existing programmes of work;
  - (b) New evidence of unexpected and significant impacts on biodiversity;
  - (c) Urgency of addressing the issue/imminence of the risk caused by the issue to the effective implementation of the Convention as well as the magnitude of actual and potential impact on biodiversity;
  - (d) Actual geographic coverage and potential spread, including rate of spread, of the identified issue relating to the conservation and sustainable use of biodiversity;
  - (e) Evidence of the absence or limited availability of tools to limit or mitigate the negative impacts of the identified issue on the conservation and sustainable use of biodiversity;
  - (f) Magnitude of actual and potential impact of the identified issue on human well-being;
  - (g) Magnitude of actual and potential impact of the identified issue on productive sectors and economic well-being as related to the conservation and sustainable use of biodiversity.
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