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AD HOC OPEN-ENDED WORKING GROUP ON REVIEW OF IMPLEMENTATION OF THE CONVENTION

Second meeting

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Item 11 of the provisional agenda*

OPERATIONS OF THE CONVENTION: MATTERS ARISING FROM DECISION VIII/10

Note by the Executive Secretary

SUMMARY

In paragraph 35 of its decision VIII/10, on operations of the Convention, the Conference of the Parties requested the Ad Hoc Open-ended Working Group on Review of Implementation of the Convention to develop guidance for the future review and retirement of decisions of the Conference of the Parties. In paragraph 30 of the same decision, it requested the Working Group to consider procedures of admission of bodies and agencies, whether governmental or non-governmental.

On the basis of past practice and in line with recent decisions of the Conference of the Parties on the matter, it is proposed that the interval between adoption of a decision and its review for possible retirement be eight years. Except for the time interval, no changes in the criteria and approach for review appear to be necessary.

A procedure for admission of observer bodies and agencies is outlined, drawing upon practice in other Conventions. The procedure requires such bodies and agencies to provide relevant information to the Executive Secretary, and for the Executive Secretary to submit lists to the Conference of the Parties.

SUGGESTED RECOMMENDATIONS

The Working Group on Review of Implementation of the Convention may wish to recommend that the Conference of the Parties adopt decisions along the following lines:

"A. Review and retirement of the decisions of the Conference of the Parties

"The Conference of the Parties,

"Recalling paragraph 35 and 36 of its decision VIII/10 and paragraph 3 of its decision VII/33,

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“1. *Decides* to review and retire decisions and elements of decisions at an interval of eight years following their adoption, so that decisions adopted at the sixth meeting will be reviewed at the tenth meeting of the Conference of the Parties, the decisions of the seventh meeting will be reviewed at the eleventh meeting, and so on;

“2. *Decides also* that with regard to criteria for the review and retirement of decisions and elements of decision, the Executive Secretary, shall proceed with the previous format adopted on the basis of the pilot review and following reviews;

“3. *Further decides* to retire the decisions and elements of decisions adopted at its fifth meeting listed in the annex to the present decision; 1/

“4. *Requests* the Executive Secretary to make proposals to the Conference of the Parties at its tenth meeting regarding the retirement of decisions and elements of decisions taken at its sixth meeting and to communicate such proposals to Parties, Governments and relevant international organizations at least six months prior to its tenth meeting.”

“B. *Admission of bodies and agencies, whether governmental or non-governmental*

“The Conference of the Parties,

“Recalling Article 23 of the Convention and rule 7 of the rules of procedure for meetings of the Conference of the Parties to the Convention on Biological Diversity,

“1. *Decides* to adopt the policy for the admission of any body or agency, whether governmental or non-governmental, to meetings of the Convention on Biological Diversity annexed to the present decision; 2/

“2. *Recalls* that such admission shall apply to subsequent meetings of the Conference of the Parties as well as meetings of its subsidiary bodies subject to rule 7 of the rules of procedure;

“3. *Affirms* that the bodies or agencies, whether governmental or non-governmental, listed in the annex to the present decision are admitted to the ninth meeting of the Conference of the Parties;

“4. *Requests* the Executive Secretary to prepare lists of new applicant bodies and agencies, whether governmental or non-governmental, for the consideration of the Conference of the Parties at subsequent meetings.”

1/ This annex would be prepared by the Conference of the Parties on the basis of proposals made by the Executive Secretary (see paras. 11-12 of the present note).

2/ This annex could be based on the procedure outlined in paragraphs 20-28 of the present note.

I. INTRODUCTION

1. In paragraph 35 of decision VIII/10 on operations of the Convention, the Conference of the Parties requested the Ad Hoc Open-ended Working Group on Review of Implementation of the Convention to develop guidance for the future review and retirement of decisions of the Conference of the Parties. In paragraph 30 of the same decision, it requested the Working Group to consider procedures for the admission of bodies and agencies, whether governmental or non-governmental.

2. The present note has been prepared by the Executive Secretary to assist the Ad Hoc Open-ended Working Group on Review of Implementation of the Convention with respect to the above-mentioned tasks. Section II provides an overview of the evolution of the Convention process with regard to review and retirement of decisions of the Conference of the Parties and guidance for the future review and retirement of decisions. Section III suggests a draft policy for procedures of admission of bodies and agencies, whether governmental or non-governmental, for the consideration of the Working Group.

II. REVIEW AND RETIREMENT OF THE DECISIONS OF THE CONFERENCE OF THE PARTIES

A. *Evolution of the Convention's process with regard to review and retirement of decisions of the Conference of the Parties*

3. The Conference of the Parties addressed the issue of review of its decisions for the first time in paragraph 4 of decision V/20. In that decision, the Conference of the Parties decided to review its previous decisions periodically in order to assess their status of implementation. In 2001, the Open-ended Inter-Sessional Meeting on the Strategic Plan, National Reports and Implementation of the Convention on Biological Diversity requested the Executive Secretary, in consultation with and under the guidance of the Bureau of the Conference of the Parties, to carry out a pilot review of the status of implementation and continued relevance of the decisions of the Conference of the Parties and:

(a) Propose a preliminary list of decisions and elements of decisions that could be retired, and those on which no progress on implementation has been made; and

(b) Identify issues on which the Conference of the Parties has commenced work but which it has not considered sufficiently to allow for implementation to start;

and submit a report to the Conference of the Parties for its consideration at its sixth meeting.

4. The Open-ended Inter-Sessional Meeting further requested the Executive Secretary to prepare a proposal for submission to the Conference of the Parties at its sixth meeting, on the basis of the pilot review, outlining the manner in which the Conference of the Parties may wish to proceed with the review of the status of its decisions.

5. At its sixth meeting, the Conference of the Parties decided in paragraph 3 of its decision VI/27 B, on operations of the Convention, to retire specified decisions and elements of decisions adopted at its first and second meetings. In paragraph 4 of the same decision, it requested the Executive Secretary to make proposals to the seventh meeting of the Conference of the Parties regarding, *inter alia*, the retirement of decisions and elements of decisions taken at the third and fourth meetings of the Conference of the Parties and to communicate such proposals to Parties, Governments and relevant international organizations at least six months prior to its seventh meeting.

6. At its seventh meeting, the Conference of the Parties decided, in paragraph 1 of its decision VII/33, to retire specified decisions and elements of decisions adopted at its third and fourth meetings. In paragraph 3 of the same decision, the Conference of the Parties also identified a number of issues to be considered at its eighth meeting: *inter alia*, the review and retirement of decisions and elements of decisions taken at its fifth and sixth meetings.

7. However, at its eighth meeting, the Conference of the Parties decided not to review and retire decisions or elements of decisions taken at its fifth and sixth meeting. Instead, the Conference of the

Parties requested the Executive Secretary, in paragraph 36 of decision VIII/30, to make proposals to its ninth meeting regarding the retirement of decisions and elements of decisions at its fifth meeting.

8. Finally, in paragraph 35 of decision VIII/30, the Conference of the Parties requested the Ad Hoc Open-ended Working Group on Review of Implementation of the Convention to develop guidance for the future review and retirement of the decisions of the Conference of the Parties.

B. Guidance for the future review and retirement of decisions of the Conference of the Parties

1. Time period between adoption and review and retirement

9. As shown above, thus far, the Conference of the Parties reviewed and retired decisions and elements of decisions taken at its first, second, third and fourth meetings: Decisions and elements of decisions taken at its first and second meetings were retired at its sixth meeting. Decisions and elements of decisions taken at its third and fourth meetings were retired at its seventh meeting. However, at its eighth meeting the Conference of the Parties decided that the review and retirement of decisions and elements of decisions taken at its fifth and sixth meeting was premature since not enough time had elapsed since their adoption. The Conference of the Parties only took note of the proposals prepared by the Executive Secretary and, instead, requested the Executive Secretary to make proposals to its ninth meeting regarding the retirement of decisions and elements of decisions taken at its fifth meeting only.

10. Decisions and elements of decisions of the different Conferences of the Parties have been reviewed and retired in an interval of a maximum of 8 years and a minimum of 6 years from their adoption. Taking into consideration the latest decision of the Conference of the Parties (decision VIII/10, paragraph 36) reaffirming an interval of eight years, an apparent consensus has emerged that a minimum of eight years should elapse between the adoption of a decision and its review. Therefore, it would seem appropriate to propose as a matter of practice a period of eight years between the adoption of a decision and review for the purpose of retirement. Experience has shown that such a period of time is sufficiently long to implement decisions, as well as judge their further relevance for the Convention's process. Thus, taking into account the present interval between meetings of the Conference of the Parties (every two years), it is recommended that proposals be prepared to retire decisions of Conference of the Parties in the following way:

(a) Decisions adopted at the fifth meeting of the Conference of the Parties should be reviewed at the ninth meeting of the Conference of the Parties;

(b) Decisions adopted at the sixth meeting of the Conference of the Parties should be reviewed at the tenth meeting Conference of the Parties, and so on. Such an approach might be re-examined, however, if the periodicity of meetings of the Conference of the Parties were to change in the future.

2. Criteria for the future review and retirement of the decisions of the Conference of the Parties

11. With regard to criteria for the review and retirement of decisions of the Conference of the Parties, it seems appropriate to maintain the approach taken in the past and to conduct the review in line with the format used so far. Should that approach be retained, the Executive Secretary would continue to submit proposals along the following lines: an overview of each decision, an outline of the elements of the decision, a review of its implementation status and an overall assessment and suggested action by the Conference of the Parties (as was done in the information documents prepared for the sixth, seventh and eighth meetings of the Conference of the Parties (UNEP/CBD/COP/6/INF/17, UNEP/CBD/COP/7/INF/16 and UNEP/CBD/COP/8/INF/2, respectively)).

12. As example of such a proposal is contained in the box below.

Box. Example of the suggested format for proposals by the Secretariat regarding the retirement of decisions

DECISION V/1: WORK PLAN OF THE INTERGOVERNMENTAL COMMITTEE FOR THE CARTAGENA PROTOCOL ON BIOSAFETY

Overview of the decision

The decision approves a work plan for the Intergovernmental Committee for the Cartagena Protocol on Biosafety (ICCP), an interim arrangement established by decision EM-I/3 of the extraordinary meeting of the Conference of the Parties, to undertake the preparations necessary for the first meeting of the Parties to the Protocol.

Overall assessment and possible action by the Conference of the Parties

Since ICCP ceased to exist upon the convening of the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol (COP-MOP), held from 23 to 27 February 2004, this decision will have only historical significance. Hence, the entire decision could be retired.

CORE ELEMENTS OF THE DECISION	STATUS OF IMPLEMENTATION	OVERALL ASSESSMENT AND POSSIBLE ACTION BY COP
The COP 1. Endorsed the work plan for ICCP as contained in an annex to the decision;	Implemented	Has only historical value. Hence it could be retired
2. Requested the Executive Secretary to invite all relevant stakeholders to contribute to capacity building in biosafety and to report on progress to the first meeting of the Parties;	Implemented. The progress report was presented to COP-MOP 1 as part of document UNEP/CBD/BS/COP-MOP/1/6	No further action may be necessary. It could be retired.
3. Requested the Executive Secretary to convene a meeting of technical experts on the BCH prior to the first meeting of the ICCP;	Implemented	No action is necessary. Could be retired.
4. Welcomed the offer made by France to host the first meeting of the ICCP.	Implemented	No further action is necessary. Could be retired.

C. Recommendation

13. The Executive Secretary therefore recommends a procedure of review and retirement of decisions and elements of decisions with the frequency and according to the criteria described above, as reflected in the suggested recommendation on pages 1-2 above.

III. DRAFT POLICY FOR PROCEDURES FOR ADMISSION OF BODIES AND AGENCIES, WHETHER GOVERNMENTAL OR NON-GOVERNMENTAL

14. The admission of observers in meetings of the Conference of the Parties is governed by Article 23, paragraph 5, of the Convention which provides that any body or agency, whether governmental or non-governmental qualified in fields relating to the conservation and sustainable use of biological diversity which has informed the Secretariat of its wish to be represented as an observer at a meeting of the Conference of the Parties, may be admitted unless at least one third of the Parties present object. It further stipulates that the admission and participation of observers shall be subject to the rules of procedure adopted by the Conference of the Parties.

15. Rule 7 of the rules of procedure of the Conference of the Parties, adopted by decision I/1, requires the Secretariat to notify any body or agency whether governmental or non-governmental qualified in fields relating to the conservation and sustainable use of biological diversity which has informed the Secretariat of its wish to be represented, of meetings of the Conference of the Parties so that they may be represented as observers.

16. To date and since the first meeting of the Conference of the Parties, non-governmental organizations (NGOs) have been admitted to meetings under the Convention process on an ad hoc basis and at the request of such observers to participate in specific meetings. No objections have been raised by any Party about the participation of any observer in meetings of the Conference of the Parties and its subsidiary bodies.

17. Non-governmental organizations cover a wide range of entities that are major stakeholders in the Convention. In the preamble of the Convention, the Parties to the Convention stressed the importance of, and the need to promote, international, regional and global cooperation among States and intergovernmental organizations and the non-governmental sector for the conservation of biological diversity and the sustainable use of its components. This reference to the non-governmental sector acknowledges the diverse expertise of non-governmental organizations, which is particularly well suited to helping Parties address the complex issues involved in conserving biological diversity and in using its components sustainably, especially at the national and local level. Parties have recognized the desirability of a broad participation of non-governmental organizations in meetings held under the Convention. Such participation takes on added significance as we move to the new enhanced phase of implementation of the Convention. Indeed, the Conference of the Parties has recognized to need to ensure the support of all stakeholders in the pursuit of the objectives of the Convention with a view to achieving the 2010 target and beyond.

18. To ensure broad participation of non-governmental organizations in the work of the Conference of the Parties and to allow the Secretariat to efficiently implement rule 7 of the rules of procedure, and in accordance with the United Nations established practice and taking into account the procedure followed by other Rio-related conventions, a clear and transparent procedure of admission should be considered. The annex below provides a summary of practice in such other processes. Special attention should be directed to the procedures under the two other Rio conventions since their relevant articles and rules of procedures are identical or similar to those of the Convention on Biological Diversity. Taking into account the valuable contribution of non-governmental organization to the Convention's progress, the procedure should be as open as possible and not restrictive.

19. The Executive Secretary therefore recommends a procedure of admission based on the criteria and process described in the following paragraphs. A draft decision that may be considered by the Working Group on Review of Implementation and forwarded to the Conference of the Parties for adoption at its ninth meeting is included in the suggested recommendations on page 2 above.

Procedure for the admission of bodies and agencies, whether governmental or non-governmental, to meetings of the Conference of the Parties and its subsidiary bodies

20. In accordance with Article 23, paragraph 5, of the Convention and rule 7 of the rules of procedure, representation is reserved to bodies or agencies, governmental or non-governmental "qualified in the fields relating to the conservation and sustainable use of biological diversity". Given the broad scope of the Convention and the need to ensure the support of all stakeholders in the achievement of its objectives, the term "qualified" must be interpreted in the broadest possible manner.

21. In view of the foregoing, admission as observer in meetings of the Conference of the Parties and its subsidiary bodies should be open, upon request, to all relevant national, regional and international educational, scientific and research organizations; civil society organizations, inter-governmental and non-governmental organizations, indigenous and local communities, as well as private-sector entities qualified or active in the fields of conservation and sustainable use of biological diversity.

22. The Executive Secretary shall issue a notification to all interested bodies or agencies informing them to address a formal request for admission as an observer to meetings of the Conference of the Parties or the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety and their subsidiary bodies. The notification should require the bodies or agencies to specify qualifications, interests and work in the field of conservation of biological diversity, the sustainable use of its components and fair and equitable sharing of benefits arising from the utilization of genetic resources.
23. The bodies or agencies should forward to the Executive Secretary their statutes/by-laws/rules or terms of reference, as well as any relevant information such as brochures, work plans or other information regarding activities pertaining to the conservation and sustainable use of biological diversity and the fair and equitable sharing of benefits arising from the utilization of genetic resources.
24. The Executive Secretary will prepare a list of applicants for admission as observers and submit such list to the Conference of the Parties for its approval. The bodies listed will be admitted unless at least one third of the Parties present object. The list will also be provided, in advance of the meeting, to the Bureau of the Conference of the Parties for its information.
25. Organizations listed do not need to apply for admission for subsequent sessions. Admission to the Conference of the Parties or the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety shall also be valid for the respective subsidiary bodies of the Convention on Biological Diversity.
26. Only new applicants need to undergo the procedure for admission. New applicants will be admitted as observers for meetings of subsidiary bodies of the Conference of the Parties during the inter-sessional period between meetings of the Conference of the Parties on a provisional basis pending approval of an updated list by the Conference of the Parties, provided that they have complied with the requirements set out in paragraph 23 above.
27. An updated list of observers shall be submitted on a regular basis to the meetings of the Conference of the Parties or of the Conference of the Parties serving as the meeting of the Parties to the Protocol.
28. However, admission to meetings of the Conference of the Parties and its subsidiary bodies remains subject to Article 23, paragraph 5, of the Convention, which provides that observers may be admitted “unless at least one third of the Parties present object”.

*Annex***PRACTICE REGARDING ADMISSION IN OTHER INTERNATIONAL PROCESSES**

1. Admission procedures for bodies or agencies, whether governmental or non-governmental have been established, inter alia, by the United Nations Framework Convention on Climate Change (UNFCCC), the United Nations Convention on Desertification (UNCCD), the United Nations Environment Programme (UNEP), and the United Nations Economic and Social Council (ECOSOC).

A. *United Nations Framework Convention on Climate Change (UNFCCC)*

2. Article 7, paragraph 6, of the United Nations Convention on Climate Change stipulates exactly the same prerequisites for the admission of observers to the Conference of the Parties as the Convention on Biological Diversity does in its Article 23, paragraph 5. Thus, under the UNFCCC an organization wishing to be admitted formally applies to the Secretariat and provides official documents proving it is a legally recognized non-profit organization in a State Member of the United Nations, of one of its specialized agencies or of the International Atomic Energy Agency or in a State Party to the International Court of Justice and competent in climate-change issues. The Bureau of the Conference of the Parties reviews lists of applicant organizations and submits a recommendation to the Conference of the Parties for approval. According to a decision adopted at the first session of the Conference of the Parties (see FCCC/CP/1995/7, para.22), an organization, once admitted, does not need to apply for admission for subsequent sessions of the Conference of the Parties and will be admitted to the sessions unless an objection is raised according to the Convention and the relevant rules of procedure. At each meeting of the Conference of Parties a list of intergovernmental and non-governmental organizations is submitted to the Conference for approval (see, for example, FCCC/CP/2000/2/Add.1).

B. *United Nations Convention to Combat Desertification (UNCCD)*

3. Article 22, paragraph 7, of the United Nations Convention to Combat Desertification is also identical to Article 23, paragraph 5, of the Convention. However, under the Convention to Combat Desertification, admission requests are received and evaluated by the Executive Secretary. The Executive Secretary prepares a list of such organizations and recommends to the Conference of the Parties to admit as observers the organizations listed (see ICCD/COP(4)/9/Add.1). Upon consideration of the list, the Conference of the Parties then adopts a decision admitting the relevant organizations (see, for example, decision 26/COP.1).

C. *United Nations Environment Programme (UNEP)*

4. UNEP revised its policy and admission procedure for non-governmental organization pursuant to decision SS.VII/5 of the seventh special session of the Governing Council/Global Ministerial Environment Forum, which called for enhanced involvement of civil society organizations in the work of UNEP. Under the current practice, a non-governmental organization seeking admission forwards a letter of request, including proof of non-profit status and interest in the environment, a detailed account of international scope of its activities, and a copy of admission to other United Nations bodies and agencies. The application is examined by the Major Groups and Stakeholders Branch of UNEP and a recommendation is made to the Office of the Secretariat for Governing Bodies for its decision. The Office notifies the non-governmental organization of its decision.

D. *Economic and Social Council (ECOSOC)*

5. Non-governmental organizations can apply for a consultative status with the Economic and Social Council. The requirements for obtaining consultative status are defined in Council resolution 1996/31. In order to obtain such a status an organization must have the aims and purposes in conformity with the spirit, purposes and principles of the Charter of the United Nations. The application is reviewed by the Council's Committee on Non-Governmental Organizations. The Committee is composed of 19 Member States of the United Nations. The recommendation of the Committee is forwarded to the full meeting of the Council, which makes the final decision.