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

Fifth meeting

Montreal, 16-20 June 2014

Item 14 of the provisional agenda\*

### RETIREMENT OF DECISIONS: REFOCUSING THE EXERCISE

*Note by the Executive Secretary*

#### I. INTRODUCTION

1. As a continuation of its practice that was introduced in 2002 at its sixth meeting, the Conference of the Parties decided, at its eleventh meeting (decision XI/12), to retire some of the decisions and elements of decisions adopted at its seventh meeting. In the same decision, the Conference of the Parties recognized that the exercise of retiring its decisions may have higher added value if the exercise is directed towards supporting the review of implementation of existing decisions and creating a good basis for the adoption of new decisions.

2. Accordingly, the Conference of the Parties decided, in paragraph 2 of decision XI/12, to refocus the exercise towards supporting the review of implementation of existing decisions and creating a good basis for the adoption of new decisions by integrating, where possible, the exercise and proposals for retirement into the preparation and adoption of new decisions on the same subject matter.

3. The Executive Secretary was requested, under paragraph 3 of decision XI/12, to make proposals on how best to refocus the exercise of retirement of decisions for consideration by the Ad Hoc Open-ended Working Group on Review of Implementation of the Convention at its present meeting.

4. This document presents, in section II, brief background information on how the exercise of retiring decisions has evolved over the years. Section III offers some proposals on how to refocus the exercise in response to the request in decision XI/12. Finally, some elements of a draft recommendation are submitted, in section IV, for consideration by the Ad Hoc Open-ended Working Group on Review of Implementation of the Convention.

\* UNEP/CBD/WGRI/5/1.

## II. HOW THE EXERCISE OF RETIRING DECISIONS EVOLVED

5. At its fifth meeting, held in May 2000, the Conference of the Parties decided to review its previous decisions periodically in order to assess their status of implementation.<sup>1</sup> Following that decision, the Open-ended Inter-sessional Meeting on the Strategic Plan, National Reports and Implementation of the Convention, requested the Executive Secretary to carry out, under the guidance of the Bureau of the Conference of the Parties, a pilot review of the status of implementation and continued relevance of the decisions of the Conference of the Parties and propose a preliminary list of decisions and elements of decisions that could be retired, and submit a report for the consideration of the sixth meeting of the Conference of the Parties.<sup>2</sup>

6. The year 2000 also saw the publication of the first edition of the “Handbook of the Convention on Biological Diversity”. The Handbook was intended to help clarify the relationship of the decisions of the Conference of the Parties both to each other and to individual provisions of the Convention and to indicate at the same time how the decisions serve to develop and elaborate further the general commitments set out in the Convention.<sup>3</sup> The Handbook continued to be published subsequently as the second and third editions, which were made available in 2003 and 2005 integrating the outcomes the sixth and seventh meetings of the Conference of the Parties, respectively. The exercise of retiring decisions or elements of decisions started at the sixth meeting of the Conference of the Parties and continued thereafter as described below. The exercise was expected to be helpful in keeping the volume of the Handbook at a manageable size since the text of the retired decisions or elements of decisions were excluded from the second and third editions. The Handbook was, however, discontinued after the third edition, mainly because it became increasingly voluminous and not easy to use even without the text of the retired decisions.<sup>4</sup>

7. As indicated in paragraph 5 above, following the request of the Open-ended Inter-sessional Meeting on the Strategic Plan, National Reports and the Implementation of the Convention, the Executive Secretary carried out the review of decisions<sup>5</sup> and submitted a report to the sixth meeting of the Conference of the Parties that was held in 2002. The sixth meeting of the Parties decided to retire, based on the Executive Secretary’s proposal, a number of decisions or elements of decisions taken at its first and second meetings.<sup>6</sup> The decisions or elements of decisions that were decided to be retired were either: (i) fully implemented and thus were of no continuing relevance or effect; (ii) superseded by subsequent decisions; or (iii) of only historical value. These continued to be the criteria for retiring decisions since. The sixth meeting of the Conference of the Parties also decided to review, on the basis of proposals by the Executive Secretary, the status of implementation of all its decisions at its seventh meeting, with a view to adopting a consolidated body of decisions and to inform decision-making on the long-term work plan of the Convention.<sup>7</sup>

8. The seventh meeting of the Conference of the Parties, held in February 2004, decided, based on the proposals of the Executive Secretary,<sup>8</sup> to: (i) retire, as appropriate, decisions and elements of decisions adopted at its third and fourth meetings; (ii) adopt a phased process of consolidation of its

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<sup>1</sup> Decision V/20, paragraph 4

<sup>2</sup> UNEP/CBD/COP/6/5 Report of the open-ended inter-sessional meeting on the strategic plan, national reports and implementation of the Convention on Biological Diversity, Appendix 4, A, paragraph 1

<sup>3</sup> Handbook of the Convention on Biological Diversity, 3<sup>rd</sup> edition, 2005, foreword, p. xvi

<sup>4</sup> The 3<sup>rd</sup> and the last edition had 1493 pages

<sup>5</sup> See document UNEP/CBD/COP/6/5/Add.4 and UNEP/CBD/COP/6/INF/17

<sup>6</sup> Decision VI/27 B, paragraph 3

<sup>7</sup> Decision VI/27 A, paragraph 2

<sup>8</sup> See document UNEP/CBD/COP/7/20/Add.2

decisions, with a view to completing the process of consolidating all its decisions by 2010, and requested the Executive Secretary to propose draft consolidated decisions in the areas of forest biological diversity; access to genetic resources and benefit-sharing; and guidance to the financial mechanism for consideration at the eighth meeting of the Conference of the Parties.<sup>9</sup> It was also the seventh meeting of the Conference of the Parties that established the Ad Hoc Open-ended Working Group on Review of Implementation of the Convention.<sup>10</sup>

9. The eighth meeting of the Conference of the Parties decided to discontinue the process of consolidation of decisions established at its previous meeting because of the recognition of the complexity and far reaching implications of the process.<sup>11</sup> The eighth meeting 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. Accordingly, at its second meeting, the Working Group developed guidance and submitted it as a recommendation to the ninth meeting of the Conference of the Parties.

10. The ninth meeting of the Conference of the Parties, decided,<sup>12</sup> on the basis of the recommendation of the Ad Hoc Open-ended Working Group on Review of Implementation of the Convention, to: (i) review and, if appropriate, retire decisions and elements of decisions, taking care to avoid retiring guiding principles and decisions that have not been implemented or reflected in subsequent decisions, at an interval of eight years following their adoption; and (ii) re-examine the interval for review at its tenth meeting.<sup>13</sup> The meeting also requested the Executive Secretary to: (i) proceed with the criteria for the review and retirement of decisions adopted for the previous reviews; and (ii) continue the practice of maintaining the full text of all decisions on the Secretariat's website, while indicating those decisions and elements of decisions that have been retired.

11. At its tenth meeting, the Conference of the Parties, decided to maintain the interval for review regarding the retirement of decisions at eight years following the adoption of a decision.<sup>14</sup> At the same meeting, the Conference of the Parties also agreed to retire the previous decisions and elements of decisions related to the financial mechanism and limited to only those provisions related to the financial mechanism<sup>15</sup> adopted from its first to ninth meetings and replace them by the 'Consolidated Guidance to the Financial Mechanism of the Convention' as contained in the annex to decision X/24.

12. The eleventh meeting of the Conference of the Parties decided, on the basis of the Executive Secretary's proposal, to retire decisions or elements of decisions from its seventh meeting.<sup>16</sup> By the end of the eleventh meeting, the decisions of the Conference of the Parties from its first to seventh meetings were reviewed<sup>17</sup> and a number of decisions or elements of decisions have been retired. As indicated

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<sup>9</sup> Decision VII/33, paragraphs 1, 2 and 4

<sup>10</sup> Decision VII/30, paragraph 24

<sup>11</sup> Decision VIII/10, V, paragraph 38

<sup>12</sup> Decision IX/29, III, paragraph 14

<sup>13</sup> Decision IX/29, III, paragraph 14 (a), (b)

<sup>14</sup> Decision X/14, paragraph 1

<sup>15</sup> Decision X/24, paragraph 2. This does not include decision III/8 on the Memorandum of understanding between the Conference of the Parties to the Convention on Biological Diversity and the Council of the Global Environment Facility

<sup>16</sup> Decision XI/12, paragraph 1

<sup>17</sup> As indicated, decisions on the financial mechanism that were adopted from the first to the ninth meetings of the COP are reviewed, retired, and replaced by a consolidated guidance to the financial mechanism of the Convention.

earlier, the eleventh meeting of the Conference of the Parties also decided to refocus the exercise of retiring decisions, which is the subject of this document.<sup>18</sup>

### III. PROPOSALS ON REFOCUSING THE EXERCISE

13. The proliferation, repetition, and limited cohesiveness of the decisions of the Conference of the Parties were recognized from the early days of the Convention process. This was also confirmed by the review processes undertaken over the years. The reviewing of previous decisions was intended initially to streamline the decisions of the Conference of the Parties and to measure progress in the implementation of the Convention. However, the review remained limited to identifying the decisions that became obsolete through time and retiring them.

14. It is recognized, in decision XI/12, that the exercise of retiring decisions may have higher added value if directed towards: (i) supporting the review of implementation of existing decisions; and (ii) creating a good basis for the adoption of new decisions. The Executive Secretary is requested to make proposals on how to refocus the exercise in this regard. Accordingly, the Executive Secretary is submitting the following proposals for the consideration of the Ad Hoc Open-ended Working Group on Review of Implementation of the Convention at its present meeting.

#### *A. Reviewing decisions for purposes other than retirement*

15. The Secretariat proposes further rethinking of the need for and the purpose of retiring decisions. Historically, retiring decisions seemed to have some purpose, in particular in the context of the publication of the Handbook as discussed in paragraph 6 above. However, over time, retiring decisions has become an exercise with little or no clear purpose. This is more evident when one takes into account the practice of maintaining the full text of all decisions on the Secretariat's website. In that context, the Secretariat's first proposal would be to consider discontinuing the exercise of retiring decisions and replacing it with a more meaningful exercise of reviewing the decisions of the Conference of the Parties with the view to assessing the status of their implementation and to providing a good basis for the adoption of new decisions in accordance with decision XI/12.

16. Instead of 'retirement', the review of decisions could lead, still using the same criteria used for retiring decisions, to tagging or labelling a decision or an element of a decision as "implemented" (if fully implemented and thus was of no continuing relevance or effect) or "superseded" (if the decision has been superseded by a subsequent decision), or "elapsed" (if it has only historical value), as the case may be. The review of decisions could also characterize a decision or an element of a decision as "active" (if the decision is implemented but has continuing relevance or effect, or implementation is ongoing or pending).

17. It is also possible to identify, from the outset, two types of decisions or elements of decisions - those decisions that require action on the one hand, and decisions that do not require action, or are for information only, on the other. These may be indicated as "operational" (if the decision requires action from one or more stakeholders), and "no action" (if the decision is a statement or information only that does not require action).

18. The identification or tagging of a decision or elements of a decision as "implemented", "superseded", "elapsed", or "active"; or "operational" or "no action", and the linking of the decision to related information as outlined in proposal 'B' below, is anticipated to provide a better picture of the status of implementation of decisions and a good basis for the adoption of new decisions by allowing a quick search on information related to the existing decisions. If this proposal or approach is acceptable, the tagging of decisions or elements of decisions as such may not necessarily require a decision of the

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<sup>18</sup> Decision XI/12, paragraph 2

Conference of the Parties. It may be considered as information only from the Secretariat, with no consequence on the legal status of the concerned decision or element of a decision. Finally, the implementation of this approach should be considered in the context of proposal B below.

### ***B. Online decision tracking tool***

19. The mission of the clearing-house mechanism, as specified in the annex to decision X/15, is to contribute to the implementation of the Convention through, among other things, the provision of effective information services. The clearing-house mechanism could be used to develop and implement a tool that supports the review of existing decisions and improves the adoption of new decisions, as intended in decision XI/12.

20. Accordingly, the Secretariat could, consistent with the mission and programme of work of the clearing-house mechanism, develop and maintain an online decision tracking tool. The tracking tool may comprise information about the decision or elements of a decision and related information, in particular the following:

*(a) Information regarding the decision:*

- (i) Type of decision – whether the decision is “operational” or “no action”;
- (ii) Status of the decision – whether “implemented”, “superseded”, “elapsed”, or “active” or, in the event the exercise of retirement continues, whether the decision is “retired”;
- (iii) The entity to which the decision is directed – COP, a Party/Parties, Secretariat, GEF, SBSTTA, other subsidiary body; other stakeholders;
- (iv) Timelines (implementation or process related), if applicable;

*(b) Related information:*

- (v) The recommendation or the element of a recommendation of a subsidiary body, if any, that formed the basis of the decision;
- (vi) Related decisions;
- (vii) Notifications issued;
- (viii) Submissions received;
- (ix) Related documents (such as reports, working or information documents, publications);
- (x) Related activities and outcomes (such as workshops, technical meetings, training programmes)

### ***C. Integrating the exercise of retiring decisions into the preparation and adoption of new decisions on the same subject matter***

21. In the event the Ad Hoc Open-ended Working Group on Review of Implementation of the Convention sets aside proposal A under section III above, the retirement of decisions may continue as part of the decision tracking tool described in proposal B above, on the basis of the following conditions:

- (a) Decisions or elements of decisions may be retired when the review shows that they are either: (i) fully implemented and thus were of no continuing relevance or effect; (ii) have been superseded by subsequent decisions; or (iii) were of only historical value;

- (b) No decision may be retired if a Party disagrees with the proposed retirement;
- (c) The Conference of the Parties may decide, on the basis of a proposal by the Executive Secretary, to retire decisions or elements of a decision once eight years have lapsed after the adoption of the decisions;
- (d) The Executive Secretary may propose the retirement of any previous decision, regardless of the timeline indicated in (c) above, in cases where the development and adoption of elements for a new draft decision on the same subject matter show that: (i) the previous decision in question will inevitably be superseded by the new decision; and (ii) the previous decision in question may lack consistency with the newly proposed decision;

#### IV. SUGGESTED RECOMMENDATION

22. The Ad Hoc Open-ended Working Group on Review of Implementation of the Convention may wish to recommend that the Conference of the Parties, at its twelfth meeting, adopt a decision along the following lines:

*The Conference of the Parties,*

1. *Decides* to refocus the exercise of retiring decisions, using an online decision tracking tool to be developed and maintained in the clearing-house mechanism with the view to support the review of existing decisions, and improve the adoption of new decisions;
2. *Agrees* to discontinue the retirement of decisions and to replace the exercise by a new approach for the review of decisions or elements of decisions in a manner that supports implementation and creates a good basis for the preparation and adoption of new decisions;
3. *Requests* the Executive Secretary to:
  - (a) Assemble and make available, through the online decision tracking tool, information on the status of existing decisions or elements of decisions, and any other related information as contained in the annex to this decision;\*
  - (b) Implement the proposed online decision tracking tool on a pilot basis, by reviewing the decisions of the eighth and ninth meetings of the Conference of the Parties in accordance with paragraphs 2 and 3 above, and to report to the sixth meeting of the Ad Hoc Open-ended Working Group on Review of Implementation of the Convention; and
  - (c) Use the decision tracking tool in the preparation of draft: (i) recommendations for consideration by the appropriate subsidiary body; and (ii) decisions for consideration by the Conference of the Parties; by, *inter alia*, identifying interlinkages among the draft decisions or recommendations, and their relation with previous decisions with a view to avoiding or minimizing overlap and repetition, and to ensuring consistency.
4. *Requests* the Working Group to consider the report of the Executive Secretary referred to in paragraph 3 (b) above and any additional resource needs that may be identified in order to review all other previous decisions of the Conference of the Parties, to fully implement and maintain the online decision tracking tool beyond the pilot phase, and to prepare a recommendation for consideration by the Conference of the Parties at its thirteenth meeting;

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\* If this recommendation is acceptable, the annex may contain the list under paragraph 20 of this document, as appropriate.

5. *Requests* the Executive Secretary to\*\*:

(a) Review the decisions of the eighth meeting of the Conference of the Parties and make proposals of decisions or elements of decisions for retirement for the consideration of the thirteenth meeting of the Conference of the Parties; and

(b) Propose the retirement of any previous decision in cases where the preparation and adoption of elements for a new decision on the same subject matter show that the previous decision in question: (i) will inevitably be superseded by the new decision; and (ii) may not be consistent with the new decision.

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\*\* In case where the Working Group decides to maintain the exercise of retiring decisions: (i) these two elements may be considered along with some or all of the items specified under paragraph 21 of this document, which have been applicable to the exercise as agreed in the past; and (ii) paragraph 2 of the recommendation above will also need to be revisited.