



CONVENTION ON BIOLOGICAL DIVERSITY

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OPEN-ENDED INTER-SESSIONAL MEETING ON THE STRATEGIC PLAN, NATIONAL REPORTS AND IMPLEMENTATION OF THE CONVENTION ON BIOLOGICAL DIVERSITY

Montreal, 19-21 November 2001
Item 6 of the provisional agenda*

OPERATIONS OF THE CONVENTION

Note by the Executive Secretary

I. INTRODUCTION

1. Considering ways and means to ensure the efficient operations of the Convention has been a central issue for each meeting of the Conference of the Parties. Most recently the matter has been the subject of attention in decisions IV/16, recommendation 1 of the Inter-Sessional Meeting on the Operations of the Convention (ISOC) and decision V/20. By decision V/20, the Conference of the Parties adopted a number of elements with respect to the operations of the Convention dealing with meetings of the Conference of the Parties, the development of a Strategic Plan for the Convention, the operations of the Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA), implementation and other miscellaneous matters. An important aspect of the developments adopted by the Conference of the Parties with respect to implementation was the convening of the Open-ended, Inter-sessional Meeting on the Strategic Plan, National Reports and the Implementation of the Convention (MSP), with the overall purpose of assisting with the preparations for the sixth meeting of the Conference of the Parties. The Parties specifically requested the MSP to consider the preparation of the Strategic Plan, the second national reports and means to support implementation. An important element of those three topics, and a central feature of the overall purpose of the meeting, is the operations of the Convention. A manifestation of the importance of this topic is that item 24 of the provisional agenda for the sixth meeting of the Conference of the Parties is "Strategic Plan, national reporting and operations of the Convention". The report of the MSP is the principal document for the deliberations of the Conference of the Parties on this item of the agenda. Accordingly, item 6 of the provisional agenda for the MSP (contained in document UNEP/CBD/MSP/1) is "Operations of the Convention".

2. The present note has been prepared by the Executive Secretary to assist the MSP in reviewing the operations of the Convention, with a view to proposing the elements of a draft decision for the consideration of the Conference of the Parties at its next meeting. Part II of the note reviews the operations of the Convention. Key aspects of this review are the implementation of decisions, the recommendations of SBSTTA, and the role of the inter-sessional process in enhancing implementation, with an emphasis on the need for further mechanisms to review implementation, the operations of the

* UNEP/CBD/MSP/1.

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clearing-house mechanism, operations of the financial mechanism and the role of regional process. Based on this review, part III proposes a number of draft elements for the consideration of the MSP.

II. THE OPERATIONS OF THE CONVENTION

3. Most of the operational developments contained in decision V/20 have been, or are in the process of being, implemented and have improved the transparency, effectiveness and efficiency of the process. Examples include the system of notification established by the Executive Secretary, allowing SBSTTA to initiate the ad hoc technical expert groups and the development of a Strategic Plan.

4. Decision V/20 contained a number of issues that the Conference of the Parties indicated that it wished to revisit, either periodically or at its next meeting, which include:

“4. *Decides* to review its previous decisions periodically in order to assess their status of implementation;

(...)

7. *Decides* to revise its procedures for decision-making regarding administrative and financial matters with a view to ensuring:

- (a) Transparency;
- (b) Participation; and
- (c) Full consideration of its other decisions;

(...)

23. *Decides* to make an assessment at its sixth meeting of the recommendations made to it by the Subsidiary Body on Scientific, Technical and Technological Advice with a view to providing guidance to the Subsidiary Body on ways to improve its inputs;

(...)

39. *Decides* to review at its sixth meeting, in the light of this experience [being the MSP], the role of inter-sessional processes in enhancing implementation of the Convention;”

A. *Reviewing previous decisions periodically in order to assess their status of implementation*

5. The Conference of the Parties has now taken 114 decisions addressed to Parties, States, intergovernmental and non-governmental organizations and private entities, which fill over 500 pages of text (and have been compiled in the Handbook). There is no formal method for reviewing the implementation of these decisions at the Convention or multilateral level (which is to be distinguished from considering implementation by the Secretariat and national governments at the national level, through the national reporting process and other mechanisms being discussed under items 4 and 5 of the provisional agenda for the MSP meeting). Consequently, in decision V/20, the Conference of the Parties decided that it should review its decisions periodically in order to assess their status of implementation.

6. Reviewing the status of decisions of the Conference of the Parties, with a view to retiring those that have been implemented or overlap and/or are repetitive, would improve the coherence and focus of the decisions of the Conference of the Parties as a whole. It would also identify those decisions that have not yet been implemented and possibly reveal areas or types of decisions for which the Conference of the Parties should, in the future, avoid developing policy, until it addresses the underlying cause of their failure to be implemented.

7. The Handbook of the Convention not only reproduces all of these decisions, but also considers how they collectively relate to the provisions of the Convention. Considering all the decisions together illustrates the extent of obsolescence, overlap and repetition in the collective decisions of the Conference of the Parties.

8. Reviewing decisions with a view to retiring those that have been implemented is, however, not a straightforward matter. For instance, even though budget decisions appear to be a simple example of the type of decision that can be retired in a fairly routine manner, there are aspects of those decisions that need to be carefully reviewed before that can happen. One such aspect is that there are still outstanding assessed contributions from previous budget decisions. Moreover, there are other issues in the budget decisions that need to be maintained. An example is the Administrative Arrangements endorsed by the budget decision of the Conference of the Parties at its fourth meeting. Reviewing implementation becomes even more complex when considering the relationship between various decisions of a substantive nature on a particular topic. For example, even though a large degree of consolidation is possible with respect to the decisions on the thematic work programmes (e.g. decisions II/10, IV/5 and V/3, on marine and coastal biological diversity), much of it will require a degree of political judgement.

9. Consequently, only the Conference of the Parties has the competence to determine the status of implementation. Although the Executive Secretary can provide a preliminary review of the status of implementation of decisions, the relevant part of the Handbook is nearly 200 pages in length and to review that amount of text would not be feasible at a meeting of the Conference of the Parties without a thorough preparatory process. At a minimum, the review process would require at least one preparatory meeting, the results of which would need to be vetted by a legal drafting group, either prior to the relevant meeting of the Conference of the Parties or during the course of such a meeting. In part III of the present note the Executive Secretary has proposed the draft elements of a decision that would initiate such a process during the next inter-sessional period, thereby allowing the Conference of the Parties at its seventh meeting to undertake the first review of the status of implementation of its decisions.

B. Reviewing procedures for decision-making regarding administrative and financial matters

10. Decision V/20 introduced numerous changes to the operations of the Convention that have improved the transparency and quality of decision-making generally. Important examples of this include the ad hoc technical expert groups, the methodology for the roster of experts, which ensures regional balance in the technical meetings of the Convention and the ability of SBSTTA to make inter-sessional requests of the Secretariat. However, many of these activities have had a significant budgetary impact that was not incorporated into the approved core budget (BY Trust Fund), although they were approved in the Trust Fund for Voluntary Contributions in support of approved activities (BE Trust Fund) and in the Trust Fund for Facilitating Participation of Parties (BZ Trust Fund). The BE and the BZ Trust Funds have never been fully funded by voluntary contributions, and activities to be supported by those Funds have been affected accordingly. In practice, the more important activities that have not been funded on a voluntary basis have been able to proceed through the use of surplus funds from the core budget being applied to these approved activities with the authorization of the Bureau. This practice was endorsed by the Conference of the Parties in its decision V/22 on the budget, along with a request to the Executive Secretary to monitor the situation, in consultation with the Bureau. Retrospective endorsements of such transfers hamper the planning of these activities and, in turn, their effectiveness. The Executive Secretary therefore suggests that the MSP recommend to the Conference of the Parties that, in future, the Bureau of the Conference of the Parties be able to authorize the Executive Secretary to make transfers of the surplus in the BY Trust Fund to support approved activities listed in the BE and BZ Trust Funds in the event that voluntary support for these activities is not sufficient to cover their costs.

11. The Global Environment Facility (GEF) has recently agreed to become the institutional structure to operate the financial mechanism of the Stockholm Convention on Persistent Organic Pollutants and also provide direct support for the implementation of the United Nations Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (UNCCD) and has significantly expanded the role of executing agencies. In order to implement these developments the seventeenth meeting of the GEF Council agreed to commence a process to review the GEF Instrument. To that end, it requested the GEF Secretariat to prepare a paper for consideration at the next Council meeting, as well as at the next replenishment meeting (11 to 12 October 2001), on the overall structure, process and procedures of the GEF, taking into consideration the findings and

conclusions of the second overall performance evaluation of the GEF (OPS 2). The report of OPS 2 will not be available in time for the MSP (and is not due to be completed until 2002). Due to the evolving nature of the Convention, the changing nature of the role of the Convention Secretariat and other developments of relevance (e.g. approval of three new funds under the process of the United Nations Framework Convention on Climate Change (UNFCCC)) the MSP may wish to recommend to the Conference of the Parties that the role of the Secretariat in the GEF processes also be re-examined. In particular, whether the increasing focus on implementation in the work of the Convention should be reflected in the role of the Convention Secretariat in any restructuring of the GEF Instrument.

C. *Assessment the usefulness of the recommendations of SBSTTA*

12. Decision V/20 contained a significant number of modifications to the *modus operandi* of SBSTTA that are intended to improve the quality and usefulness of its recommendations. For example, the Conference of the Parties recognized that it would be appropriate in certain cases for SBSTTA to make recommendations that include options or alternatives. Other innovations that are expected to improve the usefulness of SBSTTA's recommendations include:

- (a) The pilot assessments initiated by decision V/20;
- (b) The ability of SBSTTA to initiate ad hoc technical expert groups;
- (c) The uniform methodology for the use of the roster of experts; and
- (d) The system of notification established since the fifth meeting of the Conference of the

Parties.

13. The pilot assessments have the potential to profoundly improve the quality of SBSTTA's advice to the Conference of the Parties. However, only the pilot assessment on forests has produced a preliminary assessment, which still has to be reviewed by SBSTTA before it will be presented to the Conference of the Parties. Nor has the Conference of the Parties had the opportunity to consider the impact of the other adjustments. As a result, it is difficult at this time to properly gauge their effect on the quality of the recommendations of SBSTTA. Moreover, such a review would benefit from the SBSTTA itself considering the matter. The Bureau of SBSTTA considered how and when to undertake such a review. Due to the workload for SBSTTA during the current inter-sessional period and the somewhat nascent nature of the changes made in decision V/20, SBSTTA felt that the matter would be better considered by SBSTTA at its ninth meeting, or in time for the seventh meeting of the Conference of the Parties. In part III of the present note the Executive Secretary has provided draft elements of a decision that would result in the MSP making a similar recommendation on the matter to the Conference of the Parties at its sixth meeting.

D. *The role of inter-sessional processes in enhancing implementation of the Convention*

14. Most of the important activities of the inter-sessional process for enhancing implementation of the Convention are those activities being considered by the MSP, namely, the development of a Strategic Plan for the Convention, the national reporting process, and mechanisms to support implementation at the national level. Beyond these measures there are a number of other activities of the Convention that the MSP may wish to consider in order to promote implementation of the Convention. Important activities along these lines are:

- (a) The need for further mechanisms to review implementation;
- (b) The role of regional and sub-regional processes;
- (c) The financial mechanism; and
- (d) The clearing-house mechanism.

1. Mechanisms to review implementation

15. An issue that has received considerable attention within the framework of the review of the operations of the Convention at the fourth and fifth meetings of the Conference of the Parties was the need for some inter-sessional mechanism to review implementation of the Convention. In the course of those reviews, some Parties expressed the view that a factor hampering implementation of the Convention is the absence of a standing mechanism for conducting a review of implementation. Various types of mechanism have been proposed to address this issue. These include: a subsidiary body for implementation; an executive inter-sessional body; extended mandate for the bureaux; an open-ended working group of the Parties on implementation; and various compliance mechanisms. The report of ISOC contains draft elements of a decision to establish many of these options (see document UNEP/CBD/COP/5/4). To date, the Conference of the Parties has decided to consider incremental improvements to the operations of the Convention, rather than establish a new body to specifically address implementation. The need for such a body and its role may also be discussed under item 4 of the provisional agenda of the MSP (see document UNEP/CBD/MSP/3). It may also be considered at the second meeting of Intergovernmental Committee for the Cartagena Protocol (ICCP) (to be held in October 2001), in line with Article 35 of the Protocol, which requires the Conference of the Parties serving as the meeting of the Parties to the Protocol to undertake an evaluation of the effectiveness of the Protocol, including an assessment of its procedures and annexes, at least every five years. In part III of the present note, the Executive Secretary has after consultations with the Bureau of the Conference of the Parties provided draft elements of one additional option to those that have previously been considered by the Conference of the Parties to assist the MSP in its consideration of the issue.

2. Regional activities

16. Regional activities have made an important contribution to preparing for meetings and implementing the Convention. For example, within European and Central Asian regions, the European Union, the Council of Europe and UNEP's regional office are working together to implement the Convention through the Pan-European Biological and Landscape Diversity Strategy (PEBLDS). Other active regions include the Pacific Island Countries (assisted by the South Pacific Regional Environment Programme (SPREP)) and Mesoamerican Countries (assisted by the Central American Commission on Environment and Development (CCAD)). The Ramsar Convention on Wetlands, the Basel Convention on Transboundary Movements of Hazardous Wastes and their Disposal, and the UNCCD rely on regional networks for implementation as well. Perhaps the most important implementation role they play is interpreting and applying the decisions of the Conference of the Parties in the regional context and providing training and general capacity-building programmes. They also play a number of other roles that promote implementation, which include: preparing for meetings of the Convention; promoting more effective participation of small delegations at meetings; and promoting ownership of the Convention.

17. The Conference of the Parties has acknowledged the importance of regional networks and partners and at its last meeting decided to enhance further the functions of subregional and regional processes in preparing for meetings under the Convention and in promoting the implementation of the Convention at these levels. Promoting the role of regional networks and partners is being considered by the Conference of the Parties within the strategic planning process. In many cases these regional activities are hampered by: limited funds, the ad hoc nature of their relationship with the Convention process or, in some cases, a lack of a regional coordination mechanism. For example, only limited financial support has been made available through the trust funds of the Convention for regional activities. Moreover, in many regions there are no regional centres promoting the Convention. The potential of regional activities to contribute to the inter-sessional process needs to be explored more fully. Accordingly, the Executive Secretary has proposed, in part III of the present note, a consultative process to assess in more detail the merits of developing more formal links with regional partners and to begin the process of identifying such partners for all regions.

3. *Financial mechanism*

18. The financial mechanism is the most important aspect of the inter-sessional process for promoting implementation. Its effectiveness in performing this role is currently being reviewed by an independent consultant for the Conference of the Parties at its sixth meeting and the second overall performance study (OPS 2) is being undertaken by the GEF itself. Preliminary results of the review of the Conference of the Parties are due in early December 2001. However, should preliminary results be available in time for the MSP, the Executive Secretary will make these available at this meeting.

4. *The clearing-house mechanism*

19. The clearing-house mechanism also has an important role to play in the inter-sessional process. In recent years, the clearing-house mechanism has made significant progress in developing a network that provides, in a timely and accessible fashion, enormous amounts of relevant information. During this process, it has assisted in developing the capacity of many developing country partners to use and disseminate the information. In this way it has begun to develop the scientific and technical platform that is a central part of its mandate and which will be the focus of development for the future. Recent notable examples of this include: the restructuring of the clearing-house mechanism and the homepage of the Secretariat, the development of a network on alien invasive species with the Global Invasive Species Programme (GISP), the role of the clearing-house mechanism in the pilot phase of the Biosafety Clearing-house and the role of the Informal Advisory Committee in the implementation of the Strategy and Action Plan of the clearing-house mechanism. There are also a number of important projects that have the potential to further develop this aspect of the clearing-house mechanism. Two important examples are the UNEP/GEF Sustainable Alternatives Network Project and the Development Gateways Project. Thus, even though there is no lack of ideas for further developing the platform, the major limitation to the clearing-house mechanism doing more with respect to scientific and technical cooperation is a lack of resources to develop the capacities of its developing country partners.

III. CONCLUSIONS

20. Based on the foregoing, the Executive Secretary proposes the following draft elements for the consideration of the MSP:

The Open-ended Inter-Sessional Meeting on the Strategic Plan, National Reports and Implementation of the Convention on Biological Diversity,

Recommends that the Conference of the Parties at its sixth meeting consider the following elements of a draft decision with a view to their adoption:

“The Conference of the Parties,

[Review of the status of implementation of the decisions of the Conference of the Parties]

1. *Welcomes* the Handbook on the Convention on Biological Diversity;
2. *Requests* the Executive Secretary to prepare a review of the status of implementation of all decisions of the Conference of the Parties and, based on the Handbook, propose a consolidated body of decisions for the consideration of [an inter-sessional meeting];
3. *Requests* the President of the Conference of the Parties to establish a legal drafting group to assist the Executive Secretary in preparing the review of the status of implementation of decisions of the Conference of the Parties;
4. *Decides* to review the status of implementation of all its decisions at its next meeting with a view to adopting a consolidated body of decisions;

[Procedures for decision-making regarding administrative and financial matters]

5. *Authorizes* the Executive Secretary, with the approval of its Bureau, to be able to transfer surplus funds from the BY Trust Fund for approved activities listed in the BE and BZ Trust Funds in the event that voluntary support for these activities is not sufficient to cover their costs;

[Review of SBSTTA recommendations]

Recalling its decision to make an assessment at its sixth meeting of the recommendations made to it by the Subsidiary Body on Scientific, Technical and Technological Advice with a view to providing guidance to the Subsidiary Body on ways to improve its inputs,

6. *Decides* to undertake this assessment at its seventh meeting;

7. *Requests* the Subsidiary Body on Scientific, Technical and Technological Advice to provide the seventh meeting of the Conference of the Parties with an analysis of the quality of its recommendations;

[Mechanism to review implementation]

8. *Decides* to establish an Ad Hoc Working Group on Implementation to review and analyse reports submitted by Parties in order to draw conclusions and propose concrete recommendations on further steps in the implementation of the Convention. The Ad Hoc Working Group shall:

- (a) Identify best practices and successes in implementing the Convention;
- (b) Identify the main difficulties, obstacles and challenges in implementing the Convention;
- (c) Consider the level of participation of all actors, including financial and technical support from developed countries, in the implementation process;
- (d) Consider linkages and synergies with other conventions;
- (e) Consider strategies established within the framework of sustainable development plans and/or policies;

[Regional centres for capacity-building]

9. *Invites* the Executive Secretary to take the necessary steps for the preparation of feasibility studies in Africa, Asia, and the Pacific, Latin America and the Caribbean and Central and Eastern Europe for the development of a network of regional centres or partners for capacity-building;

10. *Requests* the Executive Secretary to prepare a report, based on a review of feasibility studies, for distribution to all Parties and Signatories. Each feasibility study should include a consideration of:

- (a) The needs of the region;
- (b) The resources available in the region;
- (c) The resources required to address the needs;
- (d) The benefits to be gained through establishment of a pilot centre;
- (e) The views from candidate regions as to the types of technical assistance or training they consider to be of the highest priority; and
- (f) The urgency of the priorities;

11. *Recommends* that the following guidelines be used as a basis to determine the suitability of a potential pilot centre(s):

- (a) Presence or potential use of an existing suitable facility, e.g. technology centre, university;

- (b) Access to appropriately qualified individuals suitable for management training programmes and who can act as future instructors or trainers;
- (c) Availability of a personnel pool to implement a biological diversity management system;
- (d) Commitment to invest time and resources into the maintenance, continuation and advancement of the centre;
- (e) Programme must be fully recognized and promoted by senior government authorities;
and
- (f) Centres should be located in a reasonably accessible area within a candidate region;

12. *Invites* those countries in a position to do so, individually or collectively, on a bilateral or multilateral basis, to consider supplying financial resources and technically qualified person(s) recruited from either government or the private sector to collaborate in the preparation of the feasibility study(ies) in the candidate regions;

13. *Decides*, based on the feasibility studies, to select sites for the regional centre(s) for capacity-building at its seventh meeting.”
