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INTERGOVERNMENTAL NEGOTIATING
COMMITTEE FOR A CONVENTION ON
BIOLOGICAL DIVERSITY

Sixth negotiating session/Fourth session of INC
Nairobi, 6-15 February 1992

FOURTH REVISED DRAFT CONVENTION
ON BIOLOGICAL DIVERSITY

Explanatory note

1. The fourth revised draft Convention on Biological Diversity contains articles revised by Working Groups I and II of the Intergovernmental Negotiating Committee (INC) for a Convention on Biological Diversity at the third negotiating session/first session of INC (Madrid, 24 June - 3 July 1991), the fourth negotiating session/second session of INC (Nairobi, 23 September - 2 October 1991) and the fifth negotiating session/third session of INC (Geneva, 25 November - 4 December 1991), as well as articles or paragraphs adopted as a basis for future negotiations.
2. Article 1, Article 3, paragraphs 1-6, Article 4, paragraph 1 and paragraphs 2 (a) to (f), and Articles 14 to 19 underwent a first reading during the third negotiating session. Two new articles, 15 *bis* and 17 *bis*, were adopted at the same session as a basis for future negotiations and included in the draft.
3. At the fourth negotiating session/second session of INC, Article 5, Article 6 and Article 7 (chapeau and subparagraph (a)) were given a first reading, while Articles 15, 15 *bis*, 16, 17 and 17 *bis*, paragraph 1, were given a second reading. New Article 5 *bis*, subparagraphs (k) and (l) of Article 6, Article 7 *bis* and Article 14 *bis* were proposed for future negotiations and included in the draft.
4. New Article 22, Article 31 and Article 40 were added during the Geneva meeting (11-13 April 1991) of a regionally balanced group of lawyers convened by the Executive Director (hereinafter referred to as "the Lawyers' Meeting").
5. At the fifth negotiating session/third session of INC, Article 3, paragraphs 8, 12, 15 and 18, were revised and given provisional formulations. The remainder of Article 7, as well as Articles 8, 8 *bis*, 9, 10, 11, 12, 13, 21, 22, 22 *bis*, 24, 25 and 26, went through a first reading. Following some deletions and the relocation of other provisions to Articles 4 and 5, Article 21 was removed from the draft Convention as a separate provision. Articles 13 and 22 *bis* were placed in square brackets, since no consensus was reached on the relevance of Global Lists to the Convention. Article 17 *bis* underwent a first reading and Articles 18 and 19 went through a second reading. With the deletion of Article 21, Articles 22 and 22 *bis* were renumbered 21 and 22, respectively.

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6. During the fifth negotiating session/third session of INC, a Lawyers' Drafting Group was established with a mandate to review and revise Articles 20, 23, and 27-40. Because of time constraints, consideration of the above articles, as revised by the Lawyers' Drafting Group, was left to the sixth negotiating session/fourth session of INC, the revised texts being contained in the appendix to the fourth revised draft Convention.

7. The draft contains appropriate footnotes, resulting from the deliberations in INC working groups and the Lawyers' Meeting.

8. In response to a request by delegations, the articles, paragraphs or subparagraphs which have undergone first or second readings as well as new articles submitted for a first reading, are flagged using the following system:

- "*" = Undergone a first reading;
- "**" = Undergone a second reading;
- "***" = Submitted for a first reading.

Preamble

The Contracting Parties,

Recognizing that humanity shares the earth with other forms of life and accepting that these should exist independently of their benefits for humanity;

Affirming that the conservation of biological diversity is a common concern of all peoples;

Conscious of the ever growing environmental, ecological, genetic, scientific, aesthetic, recreational, cultural, educational, social and economic values of biological diversity and its components;

Recognizing the close and traditional dependence of many local communities and indigenous populations on biological resources, their continuing interest in their conservation, and the need to reward their knowledge and innovations associated with the conservation and wise use of biological diversity and its components;

Noting that biological diversity is being seriously reduced and that some species are threatened with extinction;

Accepting that the threats to these irreplaceable resources include degradation of the environment from habitat destruction and pollution, human population growth, unsustainable exploitation of some species, and the unlawful taking of flora and fauna;

Noting the deterioration in quality of life caused by unwise use of biological resources;

Stressing that in exercising their sovereign rights over their biological resources States have a responsibility to use and develop them in a sustainable manner and to conserve biological diversity;

Stressing the importance of and need to promote cooperation among States and international governmental and non-governmental organizations in a coordinated and comprehensive regional and global approach for the conservation of biological diversity and sustainable use and development of its components in areas both under and beyond national jurisdiction and control;

Aware that the conservation of natural habitats and the maintenance of viable populations of species in natural surroundings are vital components of the *in-situ* and *ex-situ* conservation of biological resources;

Recognizing to this end the need to set aside areas of natural habitat for the conservation of biological diversity and to pursue sustainable development outside these areas through planning and management which conserves biological diversity to the maximum extent possible;

Aware that the conservation of biological diversity also requires special measures independent of natural surroundings [which are also vital];

Aware of the benefits from the sharing and diffusion of knowledge about biological diversity, its uses and developments, technologies and practices favourable to its conservation;

Acknowledging that special provision is required to meet the needs of developing countries, including the provision of additional financial

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resources and access to relevant technologies, bearing in mind that the funds can be expected to make a substantial difference in the world's ability to address the loss of biodiversity;

Accepting that the developed countries and large industrial enterprises, including transnational corporations, have benefitted from their significant role in the development and use of biological resources;

Considering that these countries and enterprises can help avoid additional costs and burdens for developing countries which forgo exploitation of their biological resources when acting in accordance with this Convention;

Stressing the need for States, international organizations and non-governmental organizations to promote the conservation of biological diversity and the wise use and development of its components;

Noting that action by States and international organizations directly and jointly to conserve biological diversity and to use and develop its components in a sustainable manner will strengthen cooperative and friendly relations among States, and contribute to peace and security for all peoples; and

Agreeing that existing international arrangements dealing with biological resources do not cover, in spite of the progress achieved, all aspects of biological diversity, the sources of threats to it and the wise use and development of biological resources,

Have agreed as follows:

*Article 1. Objectives **

[The objective of this Convention is to conserve the maximum possible biological diversity for the benefit of present and future generations and for its intrinsic value, [and to provide for the fair and equitable sharing of the benefits of research in biotechnology arising out of conservation of the biological diversity. This is to be achieved] by ensuring that the use of biological resources is sustainable; [by providing adequate, new and additional funding to the developing countries] [by taking account of the need to share costs and benefits between developed and developing countries,] and by [securing] [providing] economic and legal conditions favourable for the transfer of technology [to them on preferential and non-commercial terms] necessary to accomplish this objective.]

Article 2. Use of Terms for the Purpose of this Convention ¹

[For the purposes of this Convention:

"ALIEN SPECIES" means a species occurring in a particular country or area outside its historically known natural range, as a result of intentional or accidental dispersal by human intervention.

¹ Based on the informal note "Use of Terms" by the Chairman of the INC circulated at the Fourth Negotiating Session/Second Session of the INC. The terms include those that appeared in the "non-paper" presented by the Chairman at the Third Negotiating session; these terms have been revised and additional terms have been included and are indicated by an "+".

"BIOLOGICAL DIVERSITY (OR BIODIVERSITY)" means the variety of and variability among living organisms and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems.

"BIOLOGICAL RESOURCES" means genetic material, organisms or part thereof, populations, or ecosystems with actual or potential use or value for humanity.

"BIOTECHNOLOGY" means the use of biological systems and organisms for scientific, industrial, agricultural, medical and environmental applications.

"CONSERVATION OF BIOLOGICAL DIVERSITY" means the preservation (or integral protection), maintenance, sustainable use, recovery and enhancement of the components of biological diversity.

"CONSERVATION": see conservation of biological diversity. +

"COUNTRY OF ORIGIN OF BIODIVERSITY" means a country which, as of the date of entry into force of this convention for the contracting party concerned, is the source of indigenous biological resources, including genetic material.

"COUNTRY OF ORIGIN": see country of origin of biodiversity. +

"COUNTRY PROVIDING BIODIVERSITY" means the country supplying genetic material, organisms and parts thereof, or populations which may or may not have originated in that country. Such material may have been combined with material originating elsewhere.

"COUNTRY PROVIDING GENETIC MATERIAL": see country providing biodiversity. +

"DOMESTICATED OR CULTIVATED SPECIES" means species in which the evolutionary process has been influenced by humans to meet their needs.

"ECOSYSTEM" means a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as an ecological unit.

"ENDANGERED SPECIES" means a species in danger of extinction and whose survival is unlikely if the causal factors continue operating.

"THREATENED SPECIES" means a species that are either endangered or vulnerable. +

"SPECIES THREATENED WITH EXTINCTION": see threatened species. +

"ENDEMIC SPECIES" means a species whose natural geographic distribution is restricted to a specific area or country.

"EX-SITU CONSERVATION" means the conservation of components of biological diversity (genetic material, organisms, populations) outside their natural surroundings.

"GENETIC MATERIAL" means hereditary material found in living organisms or parts thereof. The characteristics of an organism are derived from this material.

"HABITAT" means the place or type of site where an organism or population naturally occurs.

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"INDIGENOUS POPULATIONS": it is advised that the word "populations" be substituted by the word "people" when used for humans. +

"INDIGENOUS SPECIES" means a species occurring in the wild in a particular area or country, within its known natural range.

"*IN-SITU* CONSERVATION" means the conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings.

"NONTERRESTRIAL SPECIES" means organisms not relying on the land for a significant aspect of their life cycle.

"PROTECTED AREA" means a geographically defined area which is designated, or regulated, and managed to achieve specific conservation objectives.

"RATIONAL USE OF BIOLOGICAL DIVERSITY": means the use of components of biological diversity in a way and at a rate that does not lead to their long term decline.

"UTILIZATION/USE OF BIOLOGICAL DIVERSITY": see rational use of biological diversity. +

"TERRESTRIAL SPECIES" means organisms relying on the land for a significant aspect of their life cycle.

"WILD SPECIES" means a species which has not been deliberately modified by humans.

"(WILDLIFE) CORRIDORS" means routes or avenues to ensure completion of life cycles and unimpeded migrations and gene flows. +

Article 3. Fundamental Principles

The following fundamental principles shall guide the Contracting Parties in the achievement of the objectives of this Convention: *

1. The conservation of biological diversity is a [matter of] common concern of all humankind and requires cooperation by all Contracting Parties. *

2. The Contracting Parties have as States the sovereign right to exploit their own biological resources pursuant to their own environmental policies and the responsibility:

(a) For the conservation and sustainable use of their biological resources; and

(b) For ensuring that activities within their jurisdiction or control do not cause damage to the biological diversity of other States or of areas beyond the limits of national jurisdiction. *

3. The fundamental requirement for the conservation of biological diversity is the *in-situ* conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings. *Ex-situ* measures, preferably in the country of origin, also have an important role to play. *

4. Conservation of biological diversity, particularly of migratory species and their habitats, cross-border ecosystems and areas beyond the jurisdiction of each State Party, requires international cooperation in addition to the national effort that strengthens it. *

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5. While recognizing that remedying damage to biological diversity is important, it is vital to anticipate, prevent and attack the causes of reduction or loss of biological diversity at source. *
6. Where there is a threat of [serious or irreversible damage to] [significant reduction or loss of] biological diversity, lack of full scientific certainty shall not be used as a reason for postponing [measures] [actions] to avoid or minimize such a threat. *
7. The value of the contribution of biological resources and of maintenance of biological diversity and the uneven distribution of these resources among countries are to be recognized and reflected in economic and financial arrangements among them, with the countries benefiting most from biological diversity carrying the main responsibility for the cost of its conservation.
8. The benefits of research and development derived from biomaterial taken from developing countries are to be made available to those developing countries.*

[8. Countries providing genetic material located within their national jurisdiction shall share in benefits from the research and the development which make use of that genetic material.] ²
9. Technology related to conservation of biological diversity and the sustainable use and development of its components is to be transferred to developing countries on a preferential and non-commercial basis.
10. Technology related to conservation of biological diversity and the sustainable use and development of biological resources is to be developed jointly by the owners of the resources and those with financial, scientific and technical resources.
11. Those responsible for activities which threaten or could [damage] [cause significant loss of] biological diversity are responsible for the costs of avoiding that threat or damage and for remedial action directly or through financing where damage occurs.
12. Countries are to gain directly from all the contributions that biological resources within their jurisdiction or control make to environment protection, economic development and better health and quality of life in other countries.* ³
13. Practices and innovations developed in the course of traditional life and by indigenous [peoples] [communities] [populations] which contribute to the wise and sustainable use of biological resources and conservation of biological diversity are to be recognized and rewarded.
14. The additional burden on developing countries arising out of protection of their biological diversity requires new and additional funding to be provided by the developed countries through a new multilateral fund to be established under this Convention.

² Provisional formulation to replace Article 3, paragraph 8 and 12.

³ See footnote No. 14.

15. Access to genetic material and substances and products derived from them or to technology related or contributing to the conservation of biological diversity which are within the jurisdiction or control of a State is to be [open] [on the basis of mutual agreements].* ⁴

[15. Access to genetic material [and substances and products derived from them] or to technology related or contributing to the conservation of biological diversity which are within the jurisdiction or control of a State is to be [open] [on the basis of mutual agreements]. ⁵

16. The application of biotechnology may involve risks and requires regulatory approaches involving safeguards for health and the environment.

17. Patent systems may have unwanted socio-economic effects for developing countries and small farmers.

18. Biotechnology contributes to the conservation and sustainable use of biodiversity, which requires a wide genetic base.* ⁶

[18. The maintenance of a wide genetic base is necessary for biotechnology to be able to contribute to conservation and sustainable use of biological diversity.] ⁷

Article 4. General Obligations

1. [Each Contracting Party] [The Contracting Parties] shall take [in accordance with [the means at [their] [its] disposal [,] [and]] [its] [their] capabilities] [and [its] [their] national plans, programmes and priorities], [all] [possible] [appropriate] measures [in accordance with the provisions of this Convention] [to ensure] [consistent with] the conservation of [the maximum possible] biological diversity and the sustainable use [and the development] of its components within [the area under] [its] [their] national jurisdiction [or control]. *

[They shall ensure that activities within their jurisdiction [or control] do not cause damage to the biological diversity of other States or of areas beyond the limits of national jurisdiction.] *

[They shall ensure that the [measures of] conservation of biological diversity and the sustainable use [and the development] of its components are [as far as possible appropriately integrated into national plans and policies.] [Treated as an integral part of national [development] plans and are taken duly into account in all relevant sectoral policies and legislation.]] *

⁴ The Lawyers' Meeting recommended that the term "biological resources" be replaced by "genetic material". This would be consistent with Article 14.

⁵ Provisional formulation to replace Article 3, paragraph 15 with bracketed text to be deleted.

⁶ As recommended by Lawyers' Meeting, if retained, paragraphs 16, 17 and 18 should be relocated in the Preamble since they are statements of fact.

⁷ Provisional formulation to replace Article 3, paragraph 18.

[The Contracting Parties shall cooperate on a global basis and, as appropriate, on a regional basis, directly or through appropriate international organizations with a view to ensuring the conservation of biological diversity in areas beyond national jurisdiction.] *

The Contracting Parties shall cooperate with each other and with or through such international organizations as they may deem appropriate in coordinating their activities and in supporting and assisting each other in fulfilling their obligations under the present Convention [related to biological diversity and] [biotechnology] [relevant aspects of biotechnology] [including health, food and industrial processes]. *

2. [To these ends, Contracting Parties shall in accordance with the means at their disposal and their capabilities]: *

(a) Cooperate in the development of agreed measures, procedures, technologies, practices and standards for the implementation of this Convention, [where appropriate with a view to the adoption of protocols and annexes]; *

(b) Foster favourable economic and legal conditions for the sustainable use and development of biological diversity and its components; *

(c) Ensure measures are taken to conserve natural habitats and viable populations of species in natural surroundings; *

(d) Provide, establish and implement procedures for assessing the impact on biological diversity of proposed policies, programmes and projects where such an impact may be significant; *

(e) Provide individually, or in cooperation with other States and international organizations, [new and additional] financial resources and other forms of cooperation for programmes which support implementation of the provisions of this Convention, taking into considerations the special situations and needs of developing countries [.] and loss of opportunities for alternative uses of biological resources foregone because of measures taken pursuant to this Convention]. *

(f) In the case of imminent or grave danger or damage originating under its jurisdiction [or control] to biological diversity within the area under jurisdiction [or control] of other States or in areas beyond the limits of national jurisdiction [or control], notify immediately the potentially affected States of such danger or damage, and establish the necessary procedures for that purpose, as well as initiate [at source] action to prevent or minimize such danger or damage.

[Be responsible for the cost of avoiding or minimizing threats or damage to biological diversity beyond the limits of the areas under its national jurisdiction resulting from activities within its jurisdiction or control and, where such damage occurs for the costs of remedial action and, where it is not possible to return the biological diversity to the *status quo ante*, for compensation.]

[Establish procedures for international cooperation for the control, mitigation of damage or restoration of biological diversity, when the affected Party or the Party of the origin of damage is not able to address it individually.] *

(g) Promote and support scientific research individually and jointly with other Contracting Parties and international organizations;

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(h) Promote public awareness of the need to conserve biological diversity and the wise use and development of its components through education and the dissemination of general information;

(i) Support and cooperate in the development and implementation of international arrangements for emergency responses to activities or events whether caused naturally or otherwise which [presents a grave and imminent danger to] [threaten] biological diversity;

(j) Facilitate the exchange of information among themselves and with international organizations.

[(k) Taking into consideration the special needs of developing countries, cooperate with the aim of ensuring the capacity of developing countries to implement the provisions of the present Convention through national institutions and legislation.]

[3. The Contracting Parties may adopt stricter regulations than those provided by the present Convention.]

*Article 5. Implementation Measures **

1. Each Contracting Party shall [, in accordance with the particular conditions in each country,] develop national strategies, plans or programmes for the conservation and sustainable use of biological diversity or shall adapt for this purpose its existing strategies, plans or programmes. *

[2. Designate national bodies to implement the provisions of the present Convention and coordinate activities related to the conservation and sustainable use of biological diversity;]

*[Article 5 bis - Identification and Monitoring ****

1. The Contracting Parties shall identify components of biological diversity important for its conservation, including:

(a) Ecosystems ⁸ containing:

- (i) High diversity;
- (ii) Endemic species;
- (iii) Habitats of rare or endangered species;
- (iv) Habitats used and required by migratory species;
- (v) Wilderness; or
- (vi) Biological diversity of social, economic and cultural importance.

⁸ The term "ecosystem" is understood to include natural and culturally influenced ecosystems.

- (b) Species⁹ which are:
- (i) Rare or endangered;
 - (ii) Wild relatives of domestic or cultivated species;
 - (iii) Of medicinal, agricultural or other economic value;
 - (iv) Of social or cultural importance; or
 - (v) Important for research into the conservation of biological diversity, such as indicator species; and
- (c) Described genomes and genes of social and economic importance.

2. In identifying the ecosystems and species pursuant to paragraph 1, Contracting Parties shall have regard to ecosystems and species which are identified pursuant to any other international convention as requiring conservation measures and shall pay particular attention to ecosystems and species which require urgent conservation and ecosystems which have become degraded.

3. The Contracting Parties shall identify processes and activities which adversely affect or which are likely adversely to affect biological diversity, including:

- (a) Pollution;
- (b) Habitat degradation;
- (c) Unsustainable harvesting of biological diversity; and
- (d) release or spread of alien species or genetically modified organisms.

4. The Contracting Parties shall:

- (a) Monitor the components of biological diversity identified pursuant to paragraph 1, with particular attention to ecosystems and species under threat; and
- (b) monitor the activities and processes identified pursuant to paragraph 3.

5. The Contracting Parties shall establish and maintain data banks containing data derived from identification and monitoring pursuant to paragraphs 1-4 of this Article, individually or jointly with other States directly or through international organizations.]

⁹ The term "species" is intended to cover populations and varieties within species.

Article 6. *In-situ Conservation* * ¹⁰

Each Contracting Party shall [, as far as possible and as appropriate] [, in accordance with its national legislation]:

(a) [[Identify [, where appropriate,] [terrestrial, aquatic and marine] areas requiring measures for the conservation of biological diversity] [which include the most representative or unique ecosystems [, *inter alia*, those containing substantial diversity of species], which contain substantial biological diversity, large numbers of species, or endemic, rare or endangered species and wild relatives of domesticated or cultivated species, and species identified pursuant to any international agreement including this Convention, as requiring conservation measures, or which are vital to migratory species]];

(a') Establish [within national capabilities] a system of protected areas or areas where special measures need to be taken to conserve biological diversity [and [wildlife] [ecological] corridors [as appropriate]] [to provide for the conservation of those areas identified in paragraph (a) requiring special conservation measures]. [In so far as Contracting Parties which are developing countries are concerned, the obligation contained in this subparagraph is subject to the provision to them of technical resources, as appropriate, and of adequate, new and additional financial resources, covering on a grant basis the full cost to them for fulfilling their obligations under this subparagraph];

(b) Develop guidelines where appropriate and necessary for the selection, establishment and management of [protected] [natural] areas and systems of [protected] [natural] areas [and [wildlife] [ecological] corridors [as appropriate]];

(c) [Regulate, as appropriate, the use of] [manage] biological resources [whether within or outside protected areas] with a view to ensuring [, in so far as possible,] their conservation, sustainable use and sustainable development;

[(d) Provide financial and other assistance for new and existing programmes supporting the protection of ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings, with particular attention to technology and the needs of developing countries;] ¹¹

(e) As necessary and if appropriate, [and in accordance with national legislation] promote environmentally sound and sustainable development, in areas adjacent to protected areas [inter alia, by taking into account the concept of biosphere reserves] with a view to furthering protection of these areas;

¹⁰ One delegation considered that the whole of the Article 6, including its title, should be revised since it was discussed without the definition of the words used. In order to work effectively, an agreement should be reached as soon as possible on the definitions. This will save a great deal of work.

¹¹ A first reading of this subparagraph was postponed and was not undertaken by Working Group I during the fourth negotiating session/second session of INC since it was felt advisable to consider it only after the articles relating to funding and technology transfer had been agreed to by Working Group II. The square brackets around subparagraph (d) do not imply any disagreement on the text, but only that Working Group I has agreed not to consider it at this time.

(f) Adopt and implement [, as far as possible and as appropriate,] plans for the recovery, rehabilitation, restoration, management [and sustainable use] of degraded ecosystems and habitats as well as [endangered] [threatened] species [, populations and varieties] [representative of those covered in subparagraph (a)] [in order to strengthen biological diversity]. [Each such plan should specify the state of biological diversity selected as its objective] [and, where the Contracting Party is a developing country, the financial and technological requirements to achieve these objectives, in accordance with the provisions of Article 16 and paragraph 2 of Article 18];

(g) [[Regulate] [manage] the development, use and release of genetically modified organisms];

(h) [Control, prevent the introduction of, or eradicate] [endeavour, wherever possible, to establish a regulatory management system of] those alien species [, populations and varieties] which threaten ecosystems, habitats or species [especially] [including] those that could disperse into neighbouring states;

(i) Endeavour to provide in so far as possible [on the basis of national legislation and in accordance with national programmes, plans and priorities] economic incentives, legislation, and the condition needed for compatibility between present uses [in all relevant sectors including agriculture, forestry and fisheries] and the conservation of biological diversity and the sustainable use of its components [taking into account the circumstances of countries with economies in transition] [taking into account the needs of developing countries];

(j) Endeavour to establish, maintain and strengthen [, according to its national legislation, policies and capabilities] [systematic] recording and [use] [application of the knowledge and traditional practices of [local farmers] [local and] indigenous [peoples] [communities] relevant to the conservation of biological diversity and the sustainable use and development of its components [through the involvement of such [local farmers] [local and] indigenous [peoples] [communities] in such recording and [use] [application] and in the planning and execution of conservation programmes,] [and also in local development planning which affects their territorial interests] taking into account the need for [economic reward] [fair compensation] to these [farmers] [people] [communities] [for mere access or should direct or indirect economic gains emerge from the [use] [application] of that knowledge]. [[Each Contracting Party shall] provide assistance for local populations to develop and implement remedial action in degraded areas where biological diversity has been reduced, or where species have been eliminated;]

[(k) Develop necessary legislation for the protection of threatened species, populations and varieties as identified in Article 5 *bis*;] ***

[(l) Regulate human impacts, as identified in Article 5 *bis*, which adversely affect or which are likely to adversely affect biological diversity;] ***

Article 7. *Ex-situ Conservation* *

[The Contracting Parties] [Each Contracting Party] shall [, as far as possible and as appropriate] [, in accordance with its national legislation] [directly or jointly with other Contracting Parties or other international organizations]:

(a) Adopt [if appropriate and in conformity with its capabilities] [measures] [at the national or international level in cooperation with other Contracting Parties, policies, strategies and [or] programmes] for the conservation of [the following] species [components of biological diversity] *ex-situ* [as identified in Article 5 *bis*] preferably in the country of origin:

- [(i) Endangered;
- (ii) Of medicinal, agricultural or other economic value;
- (iii) Of cultural significance;
- (iv) Relatives of domesticated species [components of biological diversity];
- (v) Local races and domesticated species [components of biological diversity] which hybridize with wild species [components of biological diversity];
- (vi) [Economically] Important sources of genetic material;
- [(vii) Identified under international agreements, including this Convention, as requiring conservation measures; or]
- [(viii) Identified on any other relevant basis as requiring conservation measures;]]

[[To complement *in-situ* measures] [; where providing adequate *in situ* facilities to conserve the species [components of biological diversity] is impracticable or not feasible]].¹²

(b) Establish facilities for *ex-situ* conservation and research of plants, animals and micro-organisms;

¹² The Lawyer's Meeting noted that items (vii) and (viii) may overlap with item (i). Indeed, items (vii) and (viii) would be completely redundant if the expression "endangered species" were defined to mean all species recognized, under any international agreements or on any other relevant basis, to be in danger of extinction. The key to what requires conservation measures leads back to what is meant by "endangered". The Lawyers' Meeting comments:

(a) That it may be undesirable to impose obligations on the Contracting Parties in respect of species identified as requiring conservation measures under other agreements to which they are not parties; and

(b) That the phrase "other relevant basis" in item (viii) gives no indication of what is, and what is not, "relevant" and hence is unsatisfactory.

(c) Adopt measures for the recovery and rehabilitation of endangered species and for their reintroduction into their natural habitats under appropriate conditions;

(d) Regulate [and control] collection of biological resources from natural habitats for *ex-situ* conservation purposes so as not to threaten ecosystems and *in-situ* populations of species [ensuring that they are not exploited for commercial purposes];

[(e) Financial and other assistance to facilitate the establishment and maintenance of *ex-situ* conservation facilities in developing countries.]¹³

[Article 7 bis ***

For Contracting Parties which are developing countries the obligations under Articles 5, 6 and 7 of this Convention would be subject to the provision to them of technical resources, as appropriate, and of adequate, new and additional financial resources covering on a grant basis the entire cost to them for fulfilling their obligations under those articles.]

*Article 8. Sustainable Use of Components of Biological Diversity **

[The Contracting Parties] [Each Contracting Party] shall [as far as possible and as appropriate]:

(a) Integrate procedures for the conservation and sustainable use of biological resources into domestic decision making;

(b) Adopt measures relating to the use of biological resources [individually or jointly directly or through international organizations] to avoid or minimize adverse impacts on biological diversity;

(c) Protect and encourage customary use by local [and indigenous] communities and indigenous [people] [populations] of areas and biological resources in accordance with traditional cultural practices that are recognized as compatible with sustainable use requirements;¹⁴

¹³ A first reading of this subparagraph was postponed and was not undertaken by Working Group I during the fifth negotiating session/third session of INC since it was felt advisable to consider it only after the articles relating to funding and technology transfer had been agreed to by Working Group II. The square brackets around subparagraph (e) do not imply any disagreement on the text, but only that Working Group I has agreed not to consider it at this time.

¹⁴ Discussed during fifth negotiating session/third session of INC and put aside for consideration at a later stage of the issue of "local and indigenous populations/peoples/communities".

[(d) Provide financial and other assistance for local populations to develop and implement remedial action in degraded areas where biological diversity has been reduced;].¹⁵

[(e) Encourage cooperation between [national] [governmental] authorities and private sector in developing methods for sustainable use of biological resources.]

[Article 8 bis. Incentive Measures¹⁶ ***

1. Each Contracting Party shall, as far as possible and as appropriate, take effective economic and social measures to encourage the conservation and sustainable use of biological diversity.

2. In determining such measures, each Contracting Party shall take into account, *inter alia*:

(a) Economic and social policies which act as incentives to conserve biodiversity;

(b) The effect of:

(i) Institutional arrangements;

(ii) Systems of rights to use biological resources;

(iii) International trade species; and

(iv) Pricing policies

on the conservation and sustainable use of biological diversity.

3. The Conference of the Parties shall establish at its first meeting a group of experts to develop guidelines for determining the value (ecological, economic, aesthetic and cultural) of biological diversity.]

Article 9. Research and Training *

[The Contracting Parties] [Each Contracting Party] [taking into account the special needs of developing countries] shall:

(a) Establish and maintain programmes for scientific and technical education and training in measures for the identification, conservation and sustainable use of biological diversity and its components and provide support for such education and training for the specific needs of developing countries;¹⁷

¹⁵ A first reading of this subparagraph was postponed and was not undertaken by Working Group I during the fifth negotiating session/third session of INC since it was felt advisable to consider it only after the articles relating to funding and technology transfer had been agreed to by Working Group II. The square brackets around subparagraph (d) do not imply any disagreement on the text, but only that Working Group I has agreed not to consider it at this time.

¹⁶ A first reading of new Article 8 bis was not undertaken by WG.I but postponed until the sixth negotiating session/third session of INC.

¹⁷ The meaning of "conservation" requires clarification. Should it be defined to include, for example, identification and sustainable use, the text could be streamlined.

(b) Promote and encourage research which contributes to the conservation and sustainable use of biological diversity, particularly in developing countries, [inter alia, in accordance with decisions of the Conference of the Parties taken in consequence of recommendations of the Scientific Committee] [inter alia:

- (i) Increased knowledge of the components of biological diversity and their role in the functioning of ecosystems;
- (ii) Increased knowledge of the impact of natural and human factors affecting the conservation of biological diversity, including social studies;
- (iii) Application of this knowledge for sustainable use of biological diversity;
- (iv) Development of technologies and other measures for the conservation and sustainable use of biological diversity [including of biotechnology in line with the objectives of this Convention]; and
- (v) Estimation of economic and social values of biological resources;¹⁸

(c) [In keeping with the provisions of Articles 16 and 17,] promote and cooperate in the use of scientific advances in biological diversity research in developing methods for conservation and sustainable use of biological resources.¹⁹

*Article 10. Public Education and Awareness **

The Contracting Parties shall:

(a) Promote and encourage understanding of the importance of and the measures required for the conservation of biological diversity, as well as its propagation through media, and the inclusion of these topics in educational programmes;

(b) Cooperate, as appropriate, with other States and international organizations in developing educational and public awareness programmes, including with respect to conservation of biological diversity for [shared [transboundary] ecosystems [belonging to more than one State], [migratory species and areas beyond the limits of national jurisdiction].

*Article 11. Impact Assessment **

Each Contracting Party, as far as possible and as appropriate shall:

(a) Introduce appropriate procedures requiring assessment of the environmental effects of proposed policies, programmes or projects that are likely to have significant adverse effects on biological diversity [whether within or beyond the limits of national jurisdiction] with a view to avoiding or minimizing such effects;

¹⁸ Some delegations considered that, if there were to be a list, it should be located in an annex.

¹⁹ The contexts of subparagraph (c) may be covered by one of the bracketed provisions of subparagraph (b).

(b) Develop guidelines for the application of procedures for assessment of adverse effects on biological diversity and integrate such procedures into national decision-making processes. [These guidelines should foresee, in accordance with the legislation of each State, appropriate participation procedures for the public concerned;

[(c bis) Cooperate upon request with other Contracting Parties and international organizations, as appropriate, for development of national procedures and guidelines for assessment of effects on biological diversity in developing countries.]²⁰

(d) Promote, on the basis of reciprocity, notification, exchange of information and consultation about the potential adverse effects on biological diversity of activities under their jurisdiction or control which are likely significantly to affect other States²¹ or areas beyond the limits of national jurisdiction, by encouraging the conclusion of bilateral, regional or multilateral arrangements as appropriate [as well as for the establishment of contingency plans to address situations affecting biological diversity];²²

(e) Monitor and evaluate impacts on biological diversity as the projects, programmes or policies are implemented with a view to taking actions to safeguard its conservation.]

[Article 12. Surveys and Inventories *

Each Contracting Party, as far as possible and as appropriate, shall:

(a) Survey, monitor and maintain inventories of biological diversity within its jurisdiction, with particular attention to ecosystems, habitats and species that are known to be threatened; and

(b) Establish and maintain a national data bank of inventories of biological diversity and, in cooperation with other Contracting Parties, [establish] a [suitable] network.]

[Article 13. Global Lists *

1. A Global List of Biogeographic Areas of Particular Importance for the Conservation of Biological Diversity and a Global List of Species Threatened with Extinction on a Global Level shall be established pursuant to the procedures set down in Article 22.] [A List of [Components of] Biological Diversity of [Outstanding Global Importance] shall be established, pursuant to the procedures set out in Article 22.]

²⁰ A proposal placed in square brackets for consideration at a later stage.

²¹ Upon the second reading all paragraphs using words "Contracting Parties" or "States" to be reconsidered to achieve consistency.

²² During the fifth negotiating session/third session of INC, a proposal was made for the addition of this text at the end of paragraph (d) of Article 11. While the importance of the issue of "contingency plans" was not contested, Working Group I decided that, at the second reading, consideration should be given as to the precise location of the additional text proposed. The text was placed in square brackets.

2. Inclusion of an area on the List of Biogeographic Areas of Particular Importance requires the consent of the State or States concerned.²³
3. Contracting Parties, in fulfilling their obligations under this Convention shall [, so far as possible, and as appropriate for each Contracting Party,] give priority to areas and species on the Global Lists.²³
4. Inclusion of areas or species on the Lists shall not prejudice the rights of States over areas in respect of which more than one State claims sovereignty or jurisdiction.²³

*Article 14. [Regulated] Access to [Biological Diversity]
[Genetic Material] **

1. Each Contracting Party [undertakes] [shall endeavour] to provide on mutually agreed terms and subject to the provisions of this Article access to *in-situ* and *ex-situ* genetic material [genetic resources] from wild, domestic and migratory terrestrial and non-terrestrial species, within its national jurisdiction for purposes of research and development, training, surveying and monitoring and for other environmentally sound uses for the collective benefit of humankind including economic benefit.
2. In affirmation of the national sovereignty of states over their natural [and genetic] resources the authority to determine access to genetic material [genetic resources] rests with national governments in accordance with national legislation.
3. Each Contracting Party [undertakes] [shall endeavour] to create conditions to facilitate access to genetic material [genetic resources] for other Contracting Parties on mutually agreed terms and not to impose restrictions that run counter to the principles of this convention.
4. Access to genetic material [genetic resources] shall be based upon the prior [informed] consent of the Contracting Party providing such material.
5. The Contracting Party shall [endeavour as appropriate to] develop and carry out the scientific research referred to in paragraph 1 of this Article in and with the full participation of the countries of origin of genetic material [genetic resources].
6. The Contracting Party shall [take appropriate measures] [undertake] to [promote fair] [equitable and preferential] access by the countries of origin of genetic material to the results of research, the products developed and the benefits and profits arising from the commercial exploitation of the relevant genetic material [genetic resources]. [Access shall be subject to mutual agreement between Contracting Parties concerned].²⁴

Alternative 2 [to replace all of alternative 1]

1. Access to *in-situ* and *ex-situ* genetic material for purposes of scientific research, training, surveying and monitoring shall be in

²³ These paragraphs were not discussed in substance.

²⁴ In the context of Articles 14-16, decisions on intellectual property rights within the framework of other fora, such as WIPO and GATT, should be taken into consideration.

accordance with Protocols adopted by Contracting Parties or bilateral and multilateral agreements in cooperation with relevant research institutions.

*[Article 14 bis - Traditional Indigenous and Local Knowledge *** ²⁵*

Each Contracting Party, recognizing that traditional indigenous and local knowledge, innovations and practices are contributing to the wise and sustainable use of biological resources and the conservation of biological diversity and have intrinsic and economic value, shall endeavour, within its national legislation, policies and capabilities, to ensure that measures be established to protect such traditional knowledge, innovations and practices and that access and transactions related to them, when appropriate, be duly rewarded.]

*Article 15 - Access to Technology ***

1. The Contracting Parties, recognizing that technology includes biotechnology, in furtherance of the principles of this Convention, undertake to provide on mutually agreed terms and to create conditions to facilitate access to [environmentally sound] technologies relevant to the conservation and sustainable use of biological diversity, as well as access to technology that makes use of genetic material [and does not cause obvious or apparent damage to the environment]. The Contracting Parties shall also eliminate [to the extent possible in conformity with international law] and refrain from imposing restrictions [such as patents and intellectual property rights] that run counter to the principles of this Convention.

2. Access to technology shall be provided taking into consideration the special needs of developing countries and in accordance with the financial mechanisms established by Articles 18 and 19.

3. The Contracting Parties shall [ensure] [the creation of appropriate conditions] through legislative, administrative or [and] general policy measures as appropriate [[to] encourage the private sector to facilitate] [that the private sector facilitates] access to and joint development of technologies referred to in paragraph 1 by both governmental institutions and the private sector in developing countries [and in this regard [to abide] [abides] by the obligations included in paragraphs 1 and 2 of this Article].

4. The Contracting Parties, recognizing that patents and other intellectual property rights have an influence on the implementation of the present Convention undertake [to cooperate] to ensure [that the exercise of these rights is supportive of] [the attainment of] the objectives of this Convention [and minimize any negative effects thereon]. [Except as expressly provided for in the articles to this Convention and its Protocols, nothing in this Convention shall affect the rights and obligations of any Contracting Party or of any person subject to its jurisdiction pursuant to any national regime or international agreement relating to intellectual property rights].

²⁵ This text, based upon an intervention by Peru and proposed by Canada on the basis of consultations with Australia, Bolivia, Brazil, Colombia, Costa Rica, Denmark, Ecuador, Kenya, Peru, Sweden, United Republic of Tanzania, Uruguay and Venezuela, was not discussed during the deliberations of Working Group II at the Fourth Negotiating Session/Second Session of the Intergovernmental Negotiating Committee (INC).

Alternative text for paragraph 4:

4. [The Contracting Parties, recognizing that patents and intellectual property rights exist and are regulated by national legislation and international agreements, also recognizing that such rights have an influence on the implementation of the present Convention, shall cooperate in this regard in accordance with national legislation and existing international law in order to ensure that these legal arrangements are supportive of and do not run counter to the objectives of this Convention.] ²⁶ ***

*Article 15 bis - Exchange of Information ***

1. The Contracting Parties shall facilitate the continuing exchange of information and specialized knowledge [including information on technologies] relevant to the conservation and sustainable use of biological diversity from all [available] sources.

2. The exchange of such information shall be facilitated taking into account the special needs of developing countries.

3. Exchange of such information shall include exchange of [published or publicly available] [results of] [technical] and scientific [and socio-economic] research, training and surveying programmes, specialized knowledge, traditional knowledge as such and in combination with technologies [including biotechnology] [referred to in Article 15, paragraph 1]. [It shall also, where feasible, include repatriation of information.]

*Article 16. Transfer of Technology ***

[1. [Recognizing that technology transfer among Contracting Parties is an essential element for the attainment of the objectives of this Convention,] the Contracting Parties [, in particular those which are developed countries,] undertake to [promote and facilitate] transfer of the [appropriate, new and derived] technologies referred to in paragraph 1 of Article 15 on a [fair, equitable and [most] favourable] [preferential and non-commercial] basis. In this respect, in the case of technologies which make use of genetic material, the Contracting Parties, [in particular those which are developed countries,] [recognizing the additional contribution of countries] [of origin] [which can be identified as] providing that genetic material, undertake to [give special emphasis to the] transfer, to those countries, [of] technologies which make use of that genetic material on mutually agreed terms, in accordance with the provisions of this Convention and its Protocols.]

2. The Contracting Parties, [within their competencies] shall [endeavour to encourage] [ensure that] [through legislative, administrative [or] [and] general policy measures] as appropriate the private sector [to transfer] [transfers] on a [fair, equitable and [most] favourable] [preferential and non-commercial] basis the technologies referred to in Article 15, paragraph 1, and in the same manner as provided for in Article 16, paragraph 1, [in particular to developing countries Parties to this Convention] [not with-standing patents and other intellectual property rights] [having due regard for patents and other intellectual property rights].

²⁶ The text of this paragraph, introduced as a compromise proposal by Norway, was not discussed during the deliberations of Working Group II at the Fourth Negotiating Session/Second Session of INC.

3. [The transfer of technology referred to in this Article shall be in accordance with the financial mechanisms established by Articles 18 and 19.]

*Article 17. Technical and Scientific Cooperation ***

1. The Contracting Parties shall promote international technical and scientific cooperation in the field of conservation and sustainable use of biological diversity, where necessary through the appropriate international and national institutions.

2. The Contracting Parties, in particular those [with a well-developed technological base] [which are developed countries], shall promote technical and scientific cooperation with other Contracting Parties, in particular developing countries Parties to this Convention, in their efforts to pursue the objectives of this Convention, *inter alia*, through the development and implementation of national policies. In promoting such cooperation, special attention should be given to development of national capabilities, *inter alia*, by means of human resources development and institution building. [The developed countries Parties to this Convention shall [, without prejudice to their contributions in accordance with Articles 18 and 19 of this Convention,] provide financial resources in support of such cooperation.]

3. The Contracting Parties shall [consider the establishment of] [establish] a clearing-house mechanism [, *inter alia*,] to promote and facilitate technical and scientific cooperation between the Contracting Parties [as well as strengthening, for these purposes, the appropriate existing institutions].

4. The Contracting Parties shall encourage and develop methods of cooperation in the development and use of technologies in pursuance of the objectives of this Convention, in particular those referred to in Article 15. The Contracting Parties shall also promote cooperation in the training of [qualified] personnel [and the exchange of experts and specialists] in this field. Special attention shall be given to the [recovery, dissemination and] development of local and indigenous technologies [and decentralized cooperation].

5. The Contracting Parties shall, subject to mutual agreement, promote the establishment of joint research programmes as referred to in Article 9 and joint ventures for development of technologies relevant to the objectives of this Convention. [Where feasible, research programmes shall, subject to mutual agreement, be carried out [in accordance with national legislation] in the country [providing the genetic material] [of origin of the genetic material].]

*Article 17 bis - Handling of Biotechnology and
Distribution of Its Benefits*

1. [Without prejudice to the rights and obligations of the Contracting Parties in] [In accordance with the spirit of] Articles 14, 15 and 16, the Contracting Parties shall ensure that [developing countries Parties to this Convention, in particular] countries of origin of genetic material or providing genetic material subject to biotechnological research, be exempted from royalties on patents relating to the products of such research.] **

2. The Contracting Parties shall [establish mechanisms to ensure] [take all reasonable steps to engage] [engage] the participation of developing countries in biotechnological research activities, in particular in those relating to products obtained from species in areas within their jurisdiction. **

3. The Contracting Parties shall [endeavour to] ensure that [developing] countries [of origin are] providing genetic material from [in-situ] [all] sources located within their national jurisdiction have priority access to the use of and other benefits from the products of biotechnology which make use of that genetic material. Such access shall be on mutually agreed terms. **

4. Each Contracting Party introducing [genetically modified organisms] [living organisms resulting from biotechnology] [which may have an impact] [on the conservation and sustainable use of biological diversity] shall obtain the [prior informed consent] [advance agreement] of the country into which any of these are to be introduced. [Such an agreement shall be based on exchange of information stipulated in paragraph 5 of this Article]. *

5. Each Contracting Party shall ensure that information about the use and safety regulations required [for the conservation and sustainable use of biological diversity] in handling [genetically modified organisms] [living organisms resulting from biotechnology] in the providing country is made available to the receiving country before introduction of any of these organisms. *

[6. Each Contracting Party shall ensure that the private sector within its jurisdiction also undertakes the obligations contained in paragraphs 1-5 of this Article.] ²⁷ ***

Article 18. Financial Resources ²⁸

1. Each Contracting Party undertakes to provide, in accordance with its capabilities, financial support and incentives in respect of those activities which are intended to [achieve the objectives of this convention] [contribute to the conservation and sustainable use of biological diversity] in accordance with its national plans, priorities and programmes. ²⁹

²⁷ This paragraph was introduced at the fifth negotiating session/third session of INC by China, India and Malaysia but discussion postponed until after the further development of paragraphs 1-5 of this Article.

²⁸ Some delegations noted that the final outcome of this article would be closely related to the final text of Article 1 and Article 19.

²⁹ Basic text proposed by an informal Sub-Working Group of Working Group II.

Alternative 1 for paragraph 2 to replace alternative 2

2. The Contracting Parties which are developed countries commit themselves to provide adequate new and additional financial resources to enable developing countries to achieve the objectives of this Convention.³⁰ [Developed countries referred to above do not include countries with economies in transition.]³¹ ***

Alternative 2 for paragraph 2 to replace alternative 1

2. The Contracting Parties, and in particular developed countries, undertake to provide [new and additional] financial [and other] resources to meet the agreed incremental costs to developing countries of [achieving the objectives] [fulfilling the obligations under Articles ...] of this Convention.³²

3. The extent to which developing countries are able to [meet the objectives] [fulfil the obligations under Articles ...] of this Convention will be subject to the availability of [such] resources [to meet agreed incremental costs.]³³

Article 19. Financial Mechanisms

*Alternative 1*³⁴ **

[1. There is hereby established a fund, hereinafter called the Biological Diversity Fund, for the achievement of the objectives of the Convention by developing countries. Contributions to the fund shall be mandatory for Contracting Parties which are developed countries according to the formula in Annex ... to this Convention. Voluntary contributions may also be made by the developed countries and by other countries and sources.]

[2. The Fund shall be administered [through an agency to be decided by the Conference of the Parties] [in the following manner].]

[3. Pursuant to the objectives of this Convention, the Conference of the Parties at its first meeting shall establish detailed criteria and guidelines for access to and utilization of the Fund, including monitoring and evaluation of such utilization.]

4. The Conference of the Parties shall review the effectiveness of the funding mechanism established under this Article, including the criteria and guidelines referred to in paragraph 3, not less than two years after the entry into force of this Convention and thereafter on a regular basis.

³⁰ Basic text proposed by an informal Sub-Working Group of Working Group II.

³¹ Bracketed text proposed by Bulgaria, Czechoslovakia, Poland, Romania and the USSR.

³² Proposal by the United Kingdom with modifications by the United States.

³³ Basic text by an informal Sub-Working Group of Working Group II with modifications by the United Kingdom and the United States.

³⁴ Text by an informal Sub-Working Group of Working Group II.

[5. The Contracting Parties shall consider strengthening existing financial institutions to provide financial resources for the conservation and sustainable use of biological diversity.]

*Alternative 2 to paragraphs 1, 2, 3 and 5 above*³⁵ ***

[1. The Contracting Parties, pursuant to the objectives of this Convention and taking into consideration the special needs of developing countries, shall establish a [fund] [financial mechanism] to provide the resources which Contracting Parties that are developing countries require to meet the agreed incremental costs for complying with the provisions of this Convention, access to and transfer of technology referred to in Articles 15 and 16 and the benefits of the provisions of paragraph 6 of Article 14. Contributions shall be assessed according to the formula in Annex ... to this Convention. Additional contributions may also be made by developed countries and by other countries and sources.]

[2. The [fund] [financial mechanism] shall be administered [through the evolving Global Environment Facility] [through a Multilateral Fund for Biological Diversity] [through an agency to be decided by the Conference of the Parties] [in the following manner ...].]

[3. Pursuant to the objectives of this Convention, the Conference of the Parties at its first meeting shall [confirm] [establish] criteria and guidelines [set out in Annex ... to this Convention] for access to and utilization of the [fund] [financial mechanism], including monitoring and evaluation of such utilization.]

[5. The Contracting Parties shall consider strengthening existing financial institutions to support the [fund] [financial mechanism] established under this Convention.]

Article 20. Relationship with other International Conventions

1. The provisions of the present Convention shall not affect the rights and obligations of any Contracting Party deriving from any existing international agreement relating to the conservation and sustainable use of biological diversity.³⁶

2. Any existing international agreement relating to the conservation and sustainable use of biological diversity may be renegotiated as protocols to the present Convention.³⁷

³⁵ Proposal by the United Kingdom with modification by Mexico.

³⁶ The language in paragraph 1 leaves open the question of the relationship of this Convention with future agreements. The Committee may want to make an express provision for this.

³⁷ The Lawyers' Meeting felt that this paragraph has the character of a recommendation and would invite the Committee to consider the necessity of retaining it.

3. The Contracting Parties shall invite the Parties to any international agreement relating to the conservation and sustainable use of biological diversity to agree on arrangements for facilitating joint actions, coordination, and exchange of information.³⁸

*Article 21. Conference of the Parties **

1. A Conference of the Parties is hereby established. The first meeting of the Conference of the Parties shall be convened by the Executive Director of UNEP not later than one year after the entry into force of this Convention. Thereafter, ordinary meetings of the Conference of the Parties shall be held at regular intervals to be determined by the Conference at its first meeting.

2. Extraordinary meetings of the Conference of the Parties shall be held at such other times as may be deemed necessary by the Conference, or at the written request of any Party, provided that, within [six] [three] months of the request being communicated to them by the Secretariat, it is supported by at least one third of the Parties.

3. The Conference of the Parties shall by consensus agree upon and adopt rules of procedure for itself and for any subsidiary body it may establish, as well as financial rules governing the funding of the Secretariat. At each ordinary meeting, it shall adopt a budget for the financial period until the next ordinary meeting.³⁹

4. The Conference of the Parties shall keep under review the implementation of the present Convention, and, for this purpose, shall:

(a) Establish the form and the intervals for transmitting the information to be submitted in accordance with Article 25 and consider such information as well as reports submitted by any subsidiary body;

[(b) Review [and approve] scientific [information] [technological advice] on biological diversity provided by the Scientific Committee in accordance with Article 24;]

(c) Consider and adopt, as required, in accordance with Articles 29 and 30, amendments to this Convention and its annexes;

(d) Consider amendments to any protocol, as well as to any annexes thereto, and, if so decided, recommend their adoption to the parties to the Protocol concerned;

(e) Consider and adopt, as required, in accordance with Article 30, additional annexes to this Convention;

(f) Consider and adopt, as required, protocols in accordance with Article 28;

(g) Establish such subsidiary bodies as are deemed necessary for the implementation of this Convention;

³⁸ If retained, the Lawyers' Meeting felt this paragraph might more appropriately be located in Article 21 as a function of the Conference of the Parties.

³⁹ WG.I decided to transfer paragraphs 4, 5 and 6 to WG.II for further consideration.

[5. The Contracting Parties shall consider strengthening existing financial institutions to provide financial resources for the conservation and sustainable use of biological diversity.]

*Alternative 2 to paragraphs 1, 2, 3 and 5 above*³⁵ ***

[1. The Contracting Parties, pursuant to the objectives of this Convention and taking into consideration the special needs of developing countries, shall establish a [fund] [financial mechanism] to provide the resources which Contracting Parties that are developing countries require to meet the agreed incremental costs for complying with the provisions of this Convention, access to and transfer of technology referred to in Articles 15 and 16 and the benefits of the provisions of paragraph 6 of Article 14. Contributions shall be assessed according to the formula in Annex ... to this Convention. Additional contributions may also be made by developed countries and by other countries and sources.]

[2. The [fund] [financial mechanism] shall be administered [through the evolving Global Environment Facility] [through a Multilateral Fund for Biological Diversity] [through an agency to be decided by the Conference of the Parties] [in the following manner ...].]

[3. Pursuant to the objectives of this Convention, the Conference of the Parties at its first meeting shall [confirm] [establish] criteria and guidelines [set out in Annex ... to this Convention] for access to and utilization of the [fund] [financial mechanism], including monitoring and evaluation of such utilization.]

[5. The Contracting Parties shall consider strengthening existing financial institutions to support the [fund] [financial mechanism] established under this Convention.]

Article 20. Relationship with other International Conventions

1. The provisions of the present Convention shall not affect the rights and obligations of any Contracting Party deriving from any existing international agreement relating to the conservation and sustainable use of biological diversity.³⁶

2. Any existing international agreement relating to the conservation and sustainable use of biological diversity may be renegotiated as protocols to the present Convention.³⁷

³⁵ Proposal by the United Kingdom with modification by Mexico.

³⁶ The language in paragraph 1 leaves open the question of the relationship of this Convention with future agreements. The Committee may want to make an express provision for this.

³⁷ The Lawyers' Meeting felt that this paragraph has the character of a recommendation and would invite the Committee to consider the necessity of retaining it.

3. The Contracting Parties shall invite the Parties to any international agreement relating to the conservation and sustainable use of biological diversity to agree on arrangements for facilitating joint actions, coordination, and exchange of information.³⁸

*Article 21. Conference of the Parties **

1. A Conference of the Parties is hereby established. The first meeting of the Conference of the Parties shall be convened by the Executive Director of UNEP not later than one year after the entry into force of this Convention. Thereafter, ordinary meetings of the Conference of the Parties shall be held at regular intervals to be determined by the Conference at its first meeting.

2. Extraordinary meetings of the Conference of the Parties shall be held at such other times as may be deemed necessary by the Conference, or at the written request of any Party, provided that, within [six] [three] months of the request being communicated to them by the Secretariat, it is supported by at least one third of the Parties.

3. The Conference of the Parties shall by consensus agree upon and adopt rules of procedure for itself and for any subsidiary body it may establish, as well as financial rules governing the funding of the Secretariat. At each ordinary meeting, it shall adopt a budget for the financial period until the next ordinary meeting.³⁹

4. The Conference of the Parties shall keep under review the implementation of the present Convention, and, for this purpose, shall:

(a) Establish the form and the intervals for transmitting the information to be submitted in accordance with Article 25 and consider such information as well as reports submitted by any subsidiary body;

[(b) Review [and approve] scientific [information] [technological advice] on biological diversity provided by the Scientific Committee in accordance with Article 24;]

(c) Consider and adopt, as required, in accordance with Articles 29 and 30, amendments to this Convention and its annexes;

(d) Consider amendments to any protocol, as well as to any annexes thereto, and, if so decided, recommend their adoption to the parties to the Protocol concerned;

(e) Consider and adopt, as required, in accordance with Article 30, additional annexes to this Convention;

(f) Consider and adopt, as required, protocols in accordance with Article 28;

(g) Establish such subsidiary bodies as are deemed necessary for the implementation of this Convention;

³⁸ If retained, the Lawyers' Meeting felt this paragraph might more appropriately be located in Article 21 as a function of the Conference of the Parties.

³⁹ WG.I decided to transfer paragraphs 4, 5 and 6 to WG.II for further consideration.

(h) Consider and undertake any additional action that may be required for the achievement of the purposes of this Convention in the light of experience gained in its operation.

5. The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State not Party to this Convention, may be represented as observers at meetings of the Conference of the Parties. Any other body or agency, whether governmental or non-governmental, qualified in fields relating to 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. The admission and participation of observers shall be subject to the rules of procedure adopted by the Conference of the Parties.

[Article 22. Procedures for Global Lists ⁴⁰

The Conference of the Parties shall:

(a) Receive from the Contracting Parties inventories of biogeographic areas within the limits of their national jurisdiction of particular importance for the conservation of biological diversity and inventories of species found within the limits of their national jurisdiction which are threatened with extinction on a global level;

(b) Select, taking into account the recommendations of the Scientific Committee, from the inventories forwarded pursuant to subparagraph (a), areas and species to be included in the Global Lists;

(c) Publish the Global Lists;

(d) Establish, taking into account the recommendations of the Scientific Committee, guidelines to assist Contracting Parties to select areas and species for inclusion in the inventories to be forwarded to the Conference of the Parties pursuant to subparagraph (a);

(e) Establish, taking into account the recommendations of the Scientific Committee, criteria for selecting areas and species for inclusion in the Global Lists pursuant to subparagraph (b) [so that they may contain areas and species representative of the greatest feasible proportion of biological diversity, with particular regard to threatened areas and species];

(f) Establish and publish, taking into account the advice of the Scientific Committee, guidelines to assist the Contracting Parties to manage areas and species on the Global Lists;

(g) Establish and publish guidelines for the provision of financial and other assistance to Contracting Parties where it considers this desirable or necessary in connection with areas and species on the Global Lists; and

(h) Ensure that arrangements made in relation to the Global Lists complement and strengthen the conservation activities of Contracting Parties and international organizations developed and implemented under other international agreements.]

⁴⁰ The substance of Article 22 was not discussed by WG.I.

Article 23. Secretariat

1. The functions of the Secretariat shall be:

(a) To arrange for and service meetings of the Conference of the Parties provided for in Article 21;

(b) To assist the Conference of the Parties and the Scientific Committee in performing their functions with regard to establishment and functioning of the Global Lists pursuant to the provisions of Article 13 of the present Convention as well as assist in facilitating and promoting transfer of technology and knowledge and technical cooperation pursuant to the provisions of Articles 16 and 17 of the present Convention;

(c) To maintain the Global Lists referred in Article 13 of the present Convention;

(d) To prepare and transmit reports based upon information received in accordance with Article 5, as well as upon information derived from meetings of any subsidiary bodies established under Article 21;

(e) To perform the functions assigned to it by any Protocol;

(f) To prepare reports on its activities carried out in implementation of its functions under this Convention and present them to the Conference of the Parties;

(g) To ensure the necessary coordination with other relevant international bodies, and in particular to enter into such administrative and contractual arrangements as may be required for the effective discharge of its functions;

(h) To perform such other functions as may be determined by the Conference of the Parties.

2. The secretariat functions will be carried out on an interim basis by the Secretariat of United Nations Environment Programme until the completion of the first ordinary meeting of the Conference of the Parties held pursuant to Article 21. At its first ordinary meeting, the Conference of the Parties shall designate the secretariat from amongst those existing, competent international organizations which have signified their willingness to carry out the secretariat functions under this Convention. At this meeting, the Conference of the Parties shall also evaluate the implementation by the interim Secretariat of the functions assigned to it, in particular under paragraph 1, above, and decide upon the structure as appropriate for those functions.

*Article 24. [Scientific] and [Technical] [Technological] [Committee]
[Subsidiary Bodies for Scientific and Technological Cooperation]*

Alternative 1

[The Conference of the Parties shall at its first meeting establish such subsidiary bodies for providing scientific and [technical] [technological] advice as required for the implementation of the Convention.]

/...

Alternative 2

[1. The Conference of the Parties shall at its first meeting establish a Scientific and [Technical] [Technological] Committee with a balanced regional representation.]

[1. A Scientific and [Technical] [Technological] Committee is hereby established. The Conference of the Parties shall, at its first meeting, appoint the members of the committee with a balanced regional representation.]

2. The Committee shall under the direction of the Conference of the Parties provide scientific and [technical] [technological] advice to assist the Conference of the Parties to promote the objectives of the Convention.]

Article 25. Reports

Each Contracting Party shall, at intervals to be determined by the Conference of the Parties, [submit] [present] to the Conference of the Parties, reports on:

The actions which it has taken for the implementation of this Convention [including, in particular, those pursuant to Articles 5 and 15-18 of this Convention] [and its view on the effectiveness of those actions and on the state of components of biological diversity within the limits of its national jurisdiction.]

Article 26. Operational Cost

1. Expenses incurred in respect of the technical and scientific cooperation referred to in Article 17 shall be borne by the Biological Diversity Fund. The expenses incurred in operating the Biological Diversity Fund shall also be borne by that Fund.

Article 27. Settlement of Disputes

1. In the event of a dispute between Contracting Parties concerning the interpretation or application of this Convention, the parties concerned shall seek solution by negotiation.

2. If the parties concerned cannot reach agreement by negotiation, they may jointly seek the good offices of, or request mediation by, a third party.

3. When ratifying, accepting, approving or acceding to this Convention, or at any time thereafter, a State or regional economic integration organization may declare in writing to the Depositary that for a dispute not resolved in accordance with paragraph 1 or paragraph 2 above, it accepts one or both of the following means of dispute settlement as compulsory:

(a) Arbitration in accordance with the procedure laid down in Annex 1;

(b) Submission of the dispute to the International Court of Justice.

4. If the parties to the dispute have not, in accordance with paragraph 3 above, accepted the same or any procedure, the dispute shall be submitted to conciliation in accordance with paragraph 5 below unless the parties otherwise agree.

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5. A conciliation commission shall be created upon the request of one of the parties to the dispute. The commission shall be composed of an equal number of members appointed by each party concerned and a chairman chosen jointly by the members appointed by each party. The commission shall render a final and recommendatory award, which the parties shall consider in good faith.

6. The provisions of this Article shall apply with respect to any protocol except as otherwise provided in the protocol concerned.

Article 28. Adoption of Protocols

1. The Contracting Parties shall cooperate in the formulation and adoption of protocols to this Convention.

2. Protocols shall be adopted at a meeting of the Conference of the Parties.

3. The text of any proposed protocol shall be communicated to the Contracting Parties by the Secretariat at least six months before such a meeting.

Article 29. Amendment of the Convention or Protocols

1. Any Contracting Party may propose amendments to this Convention or to any protocol.

2. Amendments to this Convention shall be adopted at a meeting of the Conference of the Parties. Amendments to any protocol shall be adopted at a meeting of the Parties to the protocol in question. The text of any proposed amendment to this Convention or to any protocol, except as may otherwise be provided in such protocol, shall be communicated to the Parties by the Secretariat at least six months before the meeting at which it is proposed for adoption. The Secretariat shall also communicate proposed amendments to the signatories to this Convention for information.

3. The Contracting Parties shall make every effort to reach agreement on any proposed amendment to this Convention or to any protocol by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a two-third majority vote of the Contracting Parties to the instrument in question present and voting at the meeting, and shall be submitted by the Depositary to all Contracting Parties for ratification, acceptance or approval.

4. Ratification, acceptance or approval of amendments shall be notified to the Depositary in writing. Amendments adopted in accordance with paragraph 3 above shall enter into force among Parties having accepted them on the ninetieth day after the receipt by the Depositary of notification of their ratification, acceptance or approval by at least two-thirds of the Contracting Parties to this Convention or of the Parties to the protocol concerned, except as may otherwise be provided in such protocol. Thereafter the amendments shall enter into force for any other Party on the ninetieth day after that Party deposits its instrument of ratification, acceptance or approval of the amendments.

5. For the purposes of this article, "Parties present and voting" means Parties present and casting an affirmative or negative vote.

Article 30. Adoption and Amendment of Annexes

1. The annexes to this Convention or to any protocol shall form an integral part of this Convention or of such protocol, as the case may be, and, unless expressly provided otherwise, a reference to this Convention or its protocols constitutes at the same time a reference to any annexes thereto. Such annexes shall be restricted to scientific, technical and administrative matters.

2. Except as may be otherwise provided in any protocol with respect to its annexes, the following procedure shall apply to the proposal, adoption and entry into force of additional annexes to this Convention or of annexes to protocol:

(a) Annexes to this Convention or to any protocol shall be proposed and adopted according to the procedure laid down in Article 29, paragraphs 2 and 3;

(b) Any Party that is unable to approve an additional annex to this Convention or an annex to any protocol to which it is Party shall so notify the Depositary, in writing, within six months from the date of the communication of the adoption by the Depositary. The Depositary shall without delay notify all Parties of any such notification received. A Party may at any time substitute an acceptance for a previous declaration of objection and the annexes shall thereupon enter into force for that Party;

(c) On the expiry of six months from the date of the circulation of the communication by the Depositary, the annex shall become effective for all Parties to this Convention or to any protocol concerned which have not submitted a notification in accordance with the provision of subparagraph (b) above.

3. The proposal, adoption and entry into force of amendments to annexes to this Convention or to any protocol shall be subject to the same procedure as for the proposal, adoption and entry into force of annexes to the Convention or annexes to a protocol.

4. If an additional annex or an amendment to an annex involves an amendment to this Convention or to any protocol, the additional annex or amended annex shall not enter into force until such time as the amendment to this Convention or to the protocol concerned enters into force.

Article 31. Right to Vote

1. Except as provided for in paragraph 2 below, each Contracting Party to this Convention or to any protocol shall have one vote.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote with a number of votes equal to the number of their member States which are Contracting Parties to the Convention or the relevant protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs, and vice versa.

Article 32. Relationship Between the Convention and Its Protocols

1. A State or a regional economic integration organization may not become a Contracting Party to a protocol unless it is, or becomes at the same time, a Contracting Party to the Convention.

2. Decisions concerning any protocol shall be taken only by the Contracting Parties to the protocol concerned.

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Article 33. Signature

This Convention shall be open for signature at ... by all States and any regional economic integration organization from ... until

Article 34. Ratification, Acceptance or Approval

1. This Convention and any protocol shall be subject to ratification, acceptance or approval by States and by regional economic integration organizations. Instruments of ratification, acceptance or approval shall be deposited with the Depositary.

2. Any organization referred to in paragraph 1 above which becomes a Contracting Party to this Convention or any protocol without any of its member States being a Contracting Party shall be bound by all the obligations under the Convention or the protocol, as the case may be. In the case of such organizations, one or more of whose member States is a Contracting Party to the Convention or relevant protocol, the organization and its member States shall decide on their respective responsibilities for the performance of their obligation under the Convention or protocol, as the case may be. In such cases, the organization and the member States shall not be entitled to exercise rights under the Convention or relevant protocol concurrently.

3. In their instruments of ratification, acceptance or approval, the organizations referred to in paragraph 1 above shall declare the extent of their competence with respect to the matters governed by the Convention or the relevant protocol. These organizations shall also inform the Depositary of any substantial modification in the extent of their competence.

Article 35. Accession

1. This Convention and any protocol shall be open for accession by States and by regional economic integration organizations from the date on which the Convention or the protocol concerned is closed for signature. The instruments of accession shall be deposited with the Depositary.

2. In their instruments of accession, the organizations referred to in paragraph 1 above shall declare the extent of their competence with respect to the matters governed by the Convention or the relevant protocol. These organizations shall also inform the Depositary of any substantial modification in the extent of their competence.

3. The provisions of Article 34 paragraph 2, shall apply to regional economic integration organizations which accedes to this Convention or any protocol.

Article 36. Entry Into Force

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the ... instrument of ratification, acceptance, approval or accession.

2. Any protocol, except as otherwise provided in such protocol, shall enter into force on the ninetieth day after the date of deposit of the instrument of ratification, acceptance or approval of such protocol or accession thereto.

/....

3. For each Contracting Party which ratifies, accepts or approves this Convention or accedes thereto after the deposit of the ... instrument of ratification, acceptance, approval or accession, it shall enter into force on the ninetieth day after the date of deposit by such Contracting Party of its instrument of ratification, acceptance, approval or accession.

4. Any protocol, except as otherwise provided in such protocol, shall enter into force for a Contracting Party that ratifies, accepts or approves that protocol or accedes thereto after its entry into force pursuant to paragraph 2 above, on the ninetieth day after the date on which that Contracting Party deposits its instrument of ratification, acceptance, approval or accession, or on the date on which the Convention enters into force for that Contracting Party, whichever shall be the later.

5. For the purposes of paragraphs 1 and 2 above, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

Article 37. Reservations

No reservations may be made to this Convention.

Article 38. Withdrawals

1. At any time after ... years from the date on which the present Convention has entered into force for a Contracting Party, that Contracting Party may withdraw from the Convention by giving written notification to the depositary.

2. Except as may be provided in any protocol, at any time after ... years from the date on which such protocol has entered into force for a Contracting Party that Contracting Party may withdraw from the protocol by giving written notification to the Depositary.

3. Any such withdrawal shall take place upon expiry of one year after the date of its receipt by the Depositary, or on such later date as may be specified in the notification of the withdrawal.

4. Any Contracting Party which withdraws from this Convention shall be considered as also having withdrawn from any protocol to which it is party.

Article 39. Depositary

1. The Secretary-General of the United Nations shall assume the functions of Depositary of this Convention and any protocols.

2. The Depositary shall inform the Contracting Parties, in particular, of:

(a) The signature of this Convention and of any protocol, and the deposit of instruments of ratification, acceptance, approval or accession in accordance with Articles 34 and 35;

(b) The date on which the Convention and any protocol will come into force in accordance with Article 36;

(c) Notifications of withdrawal made in accordance with Article 38;

(d) Amendments adopted with respect to the Convention and any protocol, their acceptance by the Contracting Parties and their date of entry into force in accordance with Article 29;

/...

(e) All communications relating to the adoption and approval of annexes and to the amendment of annexes in accordance with Article 30;

(f) Notifications by regional economic integration organizations of the extent of their competence with respect to matters governed by this Convention and any protocols, and of any modifications thereof in accordance with Articles 34 and 35;

(g) Declarations made in accordance with Article 27 paragraph 3.

Article 40. Authentic Texts

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, being duly authorized to that effect, have signed this Convention.

Done at on the day of

/...

Annex I

ARBITRATION ⁴¹

Article 1

Unless the agreement referred to in Article 27 of the Convention provides otherwise the arbitration procedure shall be conducted in accordance with articles 2 to 16 below.

Article 2

The claimant Party shall notify the Secretariat that the Parties are referring a dispute to arbitration pursuant to Article 27, paragraph 3, of the Convention. The notification shall state the subject-matter of arbitration and include, in particular the articles of the Convention or the Protocol, the interpretation or application of which are at issue. The Secretariat shall forward the information thus received to all Contracting Parties to the Convention or to the Protocol concerned.

Article 3 ⁴²

1. In disputes between two Parties, the arbitral tribunal shall consist of three members. Each of the Parties to the dispute shall appoint an arbitrator and the two arbitrators so appointed shall designate by common agreement the third arbitrator who shall be the chairman of the tribunal. The latter shall not be a national of one of the Parties to the dispute, nor have his usual place of residence in the territory of one of these Parties, nor be employed by any of them, nor have dealt with the case in any other capacity.

2. In disputes between more than two Parties, Parties in the same interest shall appoint one member of the tribunal jointly by agreement.

3. Any vacancy shall be filled in the manner prescribed for the initial appointment.

Article 4

1. If the chairman of the arbitral tribunal has not been designated within two months of the appointment of the second arbitrator, the Secretary-General of the United Nations shall, at the request of a Party, designate him within a further two months period.

⁴¹ This arbitration procedure is based upon the procedure adopted by the first Conference of the Parties to the Vienna Convention for the Protection of the Ozone Layer (UNEP/OzL.Conv.1/5, Annex II). The Lawyers' Meeting requested that the differences between this procedure and that provided by Annex VI of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal be identified in the form of footnotes.

⁴² Article 3, paragraphs 2 and 3 are not included in Annex VI of the Basel Convention.

2. If one of the Parties to the dispute does not appoint an arbitrator within two months of receipt of the request, the other Party may inform the Secretary-General of the United Nations who shall designate the other arbitrator within a further two months' period.⁴³

Article 5

The arbitral tribunal shall render its decisions in accordance with international law, as well as the provisions of this Convention and any protocols concerned.

*Article 6*⁴⁴

Unless the parties to the dispute otherwise agree, the arbitral tribunal shall determine its own procedure, assuring that each Party has a full opportunity to be heard and to present its case.

Article 7

The Parties to the dispute shall facilitate the work of the arbitral tribunal and, in particular, using all means at their disposal, shall:

(a) Provide it with all relevant documents, facilities and information; and

(b) Enable it when necessary to call witnesses or experts and receive their evidence.

*Article 7 bis*⁴⁵

The Parties and the arbitrators are under an obligation to protect the confidentiality of any information they receive in confidence during the proceedings of the arbitral tribunal.

Article 8

Unless the arbitral tribunal determines otherwise because of the particular circumstances of the case, the costs of the tribunal shall be borne by the Parties to the dispute in equal shares. The tribunal shall keep a record of all its costs, and shall furnish a final statement thereof to the Parties.

Article 9

Any Contracting Party that has an interest of a legal nature in the subject-matter of the dispute which may be affected by the decision in the case, may intervene in the proceedings with the consent of the tribunal.

⁴³ The procedure to follow if a Party does not appoint an arbitrator is more streamlined than the Basel Convention's Article 4, paragraph 2.

⁴⁴ The caveat that the tribunal's procedure assure "each Party has a full opportunity to be heard and present its case" is not present in the equivalent Basel Convention provision (Article 5, paragraph 2).

⁴⁵ Articles 7 and 7 bis are more explicit than the article in Basel with similar coverage (Article 6, paragraphs 2 and 3).

Article 10

The tribunal may hear and determine counterclaims arising directly out of the subject-matter of the dispute.

Article 11

Decisions both on procedure and substance of the arbitral tribunal shall be taken by a majority vote of its members.

Article 12

If one of the Parties to the dispute does not appear before the arbitral tribunal or fails to defend its case, the other Party may request the tribunal to continue the proceedings and to make its award. Absence of a Party or failure of a Party to defend its case shall not constitute a bar to the proceedings. Before rendering its final decision, the arbitral tribunal must satisfy itself that the claim is well founded in fact and law.

Article 13

The tribunal shall render its final decision within five months of the date on which it is fully constituted unless it finds it necessary to extend the time-limit for a period which should not exceed five months.

*Article 14*⁴⁶

The final decision of the arbitral tribunal shall be confined to the subject-matter of the dispute and shall state the reasons on which it is based. It shall contain the names of the members who have participated and the date of the final decision. Any member of the tribunal may attach a separate or dissenting opinion to the final decision.

*Article 15*⁴⁷

The final decision shall be without appeal unless the Parties to the dispute have agreed in advance to an appellate procedure. It shall be complied with by the Parties to the dispute.

Article 16

Any controversy which may arise between the Parties to the dispute as regards the interpretation or manner of implementation of the final decision may be submitted by either Party for decision to the arbitral tribunal which rendered it.

⁴⁶ Article 14 is similar but more explicit than the Basel Convention's Article 10, paragraph 2. For example, Article 14 explicitly states that the arbitral's decision is to be confined to the subject matter of the dispute. It also provides for dissenting opinions.

⁴⁷ The Basel Convention does state that the tribunal's decision is final but does not go further to state "unless the Parties to the dispute have agreed in advance to an appellate procedure" as is the case with this Article.

Appendix

Articles revised by Lawyer's Drafting Group

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Article 20. Relationship with other International Conventions

1. [The provisions of the present Convention shall not affect the rights and obligations of any Contracting Party deriving from any existing international agreement compatible with the conservation and sustainable use of biological diversity.]

Article 23. Secretariat

1. A Secretariat is hereby established. Its functions shall be:

(a) To arrange for and service meetings of the Conference of the Parties provided for in Article 22;

[(b) To assist the Conference of the Parties and the Scientific Committee in performing their functions with regard to establishment and functioning of the Global List pursuant to the provisions of Article 13 of the present Convention as well as assist in facilitating and promoting transfer of technology and knowledge and technical cooperation pursuant to the provisions of Articles 16 and 17 of the present Convention;]

(c) To maintain the Global Lists referred to in Article 13 of the present Convention;]

(d) To perform the functions assigned to it by any Protocol;

(e) To prepare reports on the execution of its functions under this Convention and present them to the Conference of the Parties;

(f) To coordinate with other relevant international bodies, and in particular to enter into such administrative and contractual arrangements as may be required for the effective discharge of its functions;

(g) To perform such other functions as may be determined by the Conference of the Parties.

2. The secretariat functions will be carried out on an interim basis by the Secretariat of the United Nations Environment Programme until the completion of the first ordinary meeting of the Conference of the Parties held pursuant to Article 22. At its first ordinary meeting, the Conference of the Parties shall designate the secretariat from amongst those existing, competent international organizations which have signified their willingness to carry out the secretariat functions under this Convention.

*Article 27. Settlement of Disputes*¹

1. In the event of a dispute between Contracting Parties concerning the interpretation or application of this Convention, the parties concerned shall seek solution by negotiation.

¹ Although most environmental conventions provide a single system of dispute resolution for all articles (e.g. Vienna Convention for Protection of the Ozone Layer), some environmental conventions have limited the applicability of some dispute resolution mechanisms to specified articles (e.g. Protocol on Environmental Protection to the Antarctic Treaty, articles 19 and 20; U.N. Convention on the Law of the Sea, articles 286, 297-298.

2. If the parties concerned cannot reach agreement by negotiation, they may jointly seek the good offices of, or request mediation by, a third party.

3. When ratifying, accepting, approving or acceding to this Convention, or at any time thereafter, a State or regional economic integration organization may declare in writing to the Depositary that for a dispute not resolved in accordance with paragraph 1 or paragraph 2 above, it accepts one or both of the following means of dispute settlement as compulsory:

(a) Arbitration in accordance with the procedure laid down in [Part 1 of] n Annex I;

(b) Submission of the dispute to the International Court of Justice.

4. *Alternative 1.* If the parties to the dispute have not, in accordance with paragraph 3 above, accepted the same or any procedure, the dispute shall be submitted to conciliation in accordance with Annex I, part 2 unless the parties otherwise agree.

Alternative 2. If the parties to the dispute have not, in accordance with paragraph 3 above, accepted the same or any procedure, a party which has not made a declaration under paragraph 3 above shall be deemed to have accepted arbitration in accordance with the procedure laid down in Annex I. If the parties to a dispute have not accepted the same means of dispute settlement, the dispute shall be submitted to arbitration in accordance with the procedure laid down in [Part 1 of] Annex I.

5. The provisions of this Article shall apply with respect to any protocol except as otherwise provided in the protocol concerned.

Article 28. Adoption of Protocols

1. The Contracting Parties shall cooperate in the formulation and adoption of protocols to this Convention.

2. Protocols shall be adopted by consensus at a meeting of the Conference of the Parties.

3. The text of any proposed protocol shall be communicated to the Contracting Parties by the Secretariat at least six months before such a meeting.

Article 29. Amendment of the Convention or Protocols

1. Amendments to this Convention may be proposed by any Contracting Party. Amendments to any protocol may be proposed by any party to that protocol.

2. Amendments to this Convention shall be adopted at a meeting of the Conference of the Parties. Amendments to any protocol shall be adopted at a meeting of the Parties to the protocol in question. The text of any proposed amendment to this Convention or to any protocol, except as may otherwise be provided in such protocol, shall be communicated to the Parties to the instrument in question by the Secretariat at least six months before the meeting at which it is proposed for adoption. The Secretariat shall also communicate proposed amendments to the signatories to this Convention for information.

3. The Parties shall make every effort to reach agreement on any proposed amendment to this Convention or to any protocol by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a two-third majority vote of the Parties to the instrument in question present and voting at the meeting, and shall be submitted by the Depositary to all Parties for ratification, acceptance or approval.

4. Ratification, acceptance or approval of amendments shall be notified to the Depositary in writing. Amendments adopted in accordance with paragraph 3 above shall enter into force among Parties having accepted them on the ninetieth day after the receipt by the Depositary of notification of their ratification, acceptance or approval by at least two-thirds of the Contracting Parties to this Convention or of the Parties to the protocol concerned, except as may otherwise be provided in such protocol. Thereafter the amendments shall enter into force for any other Party on the ninetieth day after that Party deposits its instrument of ratification, acceptance or approval of the amendments.

5. For the purposes of this article, "Parties present and voting" means Parties present and casting an affirmative or negative vote.

Article 30. Adoption and Amendment of Annexes

1. The annexes to this Convention or to any protocol shall form an integral part of this Convention or of such protocol, as the case may be, and, unless expressly provided otherwise, a reference to this Convention or its protocols constitutes at the same time a reference to any annexes thereto. Such annexes shall be restricted to procedural, scientific, technical and administrative matters.

2. Except as may be otherwise provided in any protocol with respect to its annexes, the following procedure shall apply to the proposal, adoption and entry into force of additional annexes to this Convention or of annexes to any protocol:

(a) Annexes to this Convention or to any protocol shall be proposed and adopted according to the procedure laid down in Article 29;

(b) Any Party that is unable to approve an additional annex to this Convention or an annex to any protocol to which it is Party shall so notify the Depositary, in writing, within six months from the date of the communication of the adoption by the Depositary. The Depositary shall without delay notify all Parties of any such notification received. A Party may at any time substitute an acceptance for a previous declaration of objection and the annexes shall thereupon enter into force for that Party subject to paragraph (c) below;

(c) On the expiry of six months from the date of the circulation of the communication by the Depositary, the annex shall enter into force for all Parties to this Convention or to any protocol concerned which have not submitted a notification in accordance with the provision of subparagraph (b) above.

3. The proposal, adoption and entry into force of amendments to annexes to this Convention or to any protocol shall be subject to the same procedure as for the proposal, adoption and entry into force of annexes to the Convention or annexes to any protocol.

4. If an additional annex or an amendment to an annex is related to an amendment to this Convention or to any protocol, the additional annex or amendment shall not enter into force until such time as the amendment to this Convention or to the protocol concerned enters into force.

Article 31. Right to Vote

1. Except as provided for in paragraph 2 below, each Contracting Party to this Convention or to any protocol shall have one vote.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote with a number of votes equal to the number of their member States which are Contracting Parties to the Convention or the relevant protocol, [and which are present when the vote is taken]. Such organizations shall not exercise their right to vote if their member States exercise theirs, and vice versa.

Article 32. Relationship Between the Convention and Its Protocols

1. A State or a regional economic integration organization may not become a Party to a protocol unless it is, or becomes at the same time, a Contracting Party to the Convention.

2. Decisions under any protocol shall be taken only by the Parties to the protocol concerned.

Article 33. Signature

This Convention shall be open for signature at ... by all States and regional economic integration organizations from ... until

Article 34. Ratification, Acceptance or Approval

1. This Convention and any protocol shall be subject to ratification, acceptance or approval by States and by regional economic integration organizations. Instruments of ratification, acceptance or approval shall be deposited with the Depositary.

2. Any organization referred to in paragraph 1 above which becomes a Contracting Party to this Convention or any protocol without any of its member States being a Contracting Party shall be bound by all the obligations under the Convention or the protocol, as the case may be. In the case of such organizations, one or more of whose member States is a Contracting Party to the Convention or relevant protocol, the organization and its member States shall decide on their respective responsibilities for the performance of their obligation under the Convention or protocol, as the case may be. In such cases, the organization and the member States shall not be entitled to exercise rights under the Convention or relevant protocol concurrently.

3. In their instruments of ratification, acceptance or approval, the organizations referred to in paragraph 1 above shall declare the extent of their competence with respect to the matters governed by the Convention or the relevant protocol. These organizations shall also inform the Depositary of any substantial modification in the extent of their competence.

Article 35. Accession

1. This Convention and any protocol shall be open for accession by States and by regional economic integration organizations from the date on which the Convention or the protocol concerned is closed for signature. The instruments of accession shall be deposited with the Depositary.
2. In their instruments of accession, the organizations referred to in paragraph 1 above shall declare the extent of their competence with respect to the matters governed by the Convention or the relevant protocol. These organizations shall also inform the Depositary of any substantial modification in the extent of their competence.
3. The provisions of Article 34 paragraph 2, shall apply to regional economic integration organizations which accede to this Convention or any protocol.

Article 36. Entry Into Force

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the [twentieth] instrument of ratification, acceptance, approval or accession.
2. Any protocol shall enter into force on the ninetieth day after the date of deposit of the number of instruments of ratification, acceptance, approval or accession, specified in that protocol, has been deposited.
3. For each Contracting Party which ratifies, accepts or approves this Convention or accedes thereto after the deposit of the [twentieth] instrument of ratification, acceptance, approval or accession, it shall enter into force on the ninetieth day after the date of deposit by such Contracting Party of its instrument of ratification, acceptance, approval or accession.
4. Any protocol, except as otherwise provided in such protocol, shall enter into force for a Contracting Party that ratifies, accepts or approves that protocol or accedes thereto after its entry into force pursuant to paragraph 2 above, on the ninetieth day after the date on which that Contracting Party deposits its instrument of ratification, acceptance, approval or accession, or on the date on which the Convention enters into force for that Contracting Party, whichever shall be the later.
5. For the purposes of paragraph 1 and 2 above, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

Article 37. Reservations²

No reservations may be made to this Convention.

Article 38. Withdrawals

1. At any time after [two] [three] [four] years from the date on which the present Convention has entered into force for a Contracting Party, that Contracting Party may withdraw from the Convention by giving written notification to the depositary.

2. Any such withdrawal shall take place upon expiry of one year after the date of its receipt by the Depositary, or on such later date as may be specified in the notification of the withdrawal.

3. Any Contracting Party which withdraws from this Convention shall be considered as also having withdrawn from any protocol to which it is party.

Article 39. Depositary

The Secretary-General of the United Nations shall assume the functions of Depositary of this Convention and any protocols.

Article 40. Authentic Texts

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, being duly authorized to that effect, have signed this Convention.

Done at on the day of

² Some environmental conventions contain a clause prohibiting reservations (e.g. Vienna Convention for Protection of the Ozone Layer; Protocol on Environmental Protection to the Antarctic Treaty). Some do not (e.g. London Dumping Convention; Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region). Some permit only specified reservations, an approach provided for in the Vienna Convention on the Law of Treaties and customary international law (e.g. Convention on the Conservation of Migratory Species of Wild Animals).

In accordance with the Vienna Convention on Treaties and customary international law, when a multilateral convention does not address the topic of reservations, the usual presumption is that states may formulate reservations that are not incompatible with the object and purpose of the Convention.

The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal presents another approach. It prohibits reservations but allows "declarations or statements ... with a view, *inter alia*, to the harmonization of its laws and regulations with "the Convention, provided that any such declaration or statement is not tantamount to a reservation.

Annex I

Part 1

ARBITRATION

Article 1

The claimant party shall notify the Secretariat that the parties are referring a dispute to arbitration pursuant to Article 27 of the Convention. The notification shall state the subject-matter of arbitration and include, in particular, the articles of the Convention or the Protocol, the interpretation or application of which are at issue. [If the parties do not agree on the subject matter of the dispute before the President of the tribunal is designated the arbitral tribunal shall determine the subject matter]. The Secretariat shall forward the information thus received to all Contracting Parties to the Convention or to the Protocol concerned.

Article 2

1. In disputes between two parties, the arbitral tribunal shall consist of three members. Each of the parties to the dispute shall appoint an arbitrator and the two arbitrators so appointed shall designate by common agreement the third arbitrator who shall be the President of the tribunal. The latter shall not be a national of one of the parties to the dispute, nor have his or her usual place of residence in the territory of one of these parties, nor be employed by any of them, nor have dealt with the case in any other capacity.

2. In disputes between more than two parties, parties in the same interest shall appoint one arbitrator jointly by agreement.

3. Any vacancy shall be filled in the manner prescribed for the initial appointment.

Article 3

1. If the President of the arbitral tribunal has not been designated within two months of the appointment of the second arbitrator, the Secretary-General of the United Nations shall, at the request of a party, designate the President within a further two-month period.

2. If one of the parties to the dispute does not appoint an arbitrator within two months of receipt of the request, the other party may inform the Secretary-General who shall make the designation within a further two-month period.

Article 4

The arbitral tribunal shall render its decisions in accordance with the provisions of this Convention, any protocols concerned, and international law.

Article 5

Unless the parties to the dispute otherwise agree, the arbitral tribunal shall determine its own rules of procedure.

/...

Article 6 bis

[The arbitral tribunal may, at the request of one of the parties, recommend essential interim measures of protection].

Article 7

The parties to the dispute shall facilitate the work of the arbitral tribunal and, in particular, using all means at their disposal, shall:

(a) Provide it with all relevant documents, information and facilities; and

(b) Enable it, when necessary, to call witnesses or experts and receive their evidence.

Article 7 bis

The parties and the arbitrators are under an obligation to protect the confidentiality of any information they receive in confidence during the proceedings of the arbitral tribunal.

Article 8

Unless the arbitral tribunal determines otherwise because of the particular circumstances of the case, the costs of the tribunal shall be borne by the parties to the dispute in equal shares. The tribunal shall keep a record of all its costs, and shall furnish a final statement thereof to the parties.

Article 9

Any Contracting Party that has an interest of a legal nature in the subject-matter of the dispute which may be affected by the decision in the case, may intervene in the proceedings with the consent of the tribunal.

Article 10

The tribunal may hear and determine counterclaims arising directly out of the subject-matter of the dispute.

Article 11

Decisions both on procedure and substance of the arbitral tribunal shall be taken by a majority vote of its members.

Article 12

If one of the parties to the dispute does not appear before the arbitral tribunal or fails to defend its case, the other party may request the tribunal to continue the proceedings and to make its award. Absence of a party or a failure of a party to defend its case shall not constitute a bar to the proceedings. Before rendering its final decision, the arbitral tribunal must satisfy itself that the claim is well founded in fact and law.

Article 13

The tribunal shall render its final decision within five months of the date on which it is fully constituted unless it finds it necessary to extend the time-limit for a period which should not exceed five months.

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Article 14

The final decision of the arbitral tribunal shall be confined to the subject-matter of the dispute and shall state the reasons on which it is based. It shall contain the names of the members who have participated and the date of the final decision. Any member of the tribunal may attach a separate or dissenting opinion to the final decision.

Article 15

The award shall be binding on the parties to the dispute. It shall be without appeal unless the parties to the dispute have agreed in advance to an appellate procedure.

Article 16

Any controversy which may arise between the parties to the dispute as regards the interpretation or manner of implementation of the final decision may be submitted by either party for decision to the arbitral tribunal which rendered it.

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Part 2

CONCILIATION

Article 1

A conciliation commission shall be created upon the request of one of the parties to the dispute. The commission shall, unless the parties otherwise agree, be composed of five members, two appointed by each Party concerned and a President chosen jointly by those members.

Article 2

In disputes between more than two parties, parties in the same interest shall appoint their members of the commission jointly by agreement. Where two or more parties have separate interests or there is a disagreement as to whether they are of the same interest, they shall appoint their members separately.

Article 3

If any appointments by the parties are not made within two months of the date of the request to create a conciliation commission, the Secretary-General of the United Nations shall, if asked to do so by the party that made the request, make those appointments within a further two-month period.

Article 4

If a President of the conciliation commission has not been chosen within two months of the last of the members of the commission being appointed, the Secretary-General of the United Nations shall, if asked to do so by a party, designate a President within a further two-month period.

Article 5

The conciliation commission shall take its decisions by majority vote of its members. It shall, unless the parties to the dispute otherwise agree determine its own procedure. It shall render a proposal for resolution of the dispute, which the parties shall consider in good faith.

Article 6

A disagreement as to whether the conciliation commission has competence shall be decided by the commission.
