



CONVENTION ON BIOLOGICAL DIVERSITY

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CONFERENCE OF THE PARTIES TO THE
CONVENTION ON BIOLOGICAL DIVERSITY
Fifth meeting
Nairobi, 15-26 May 2000
Item 10 of the provisional agenda*

REPORT OF THE INTER-SESSIONAL MEETING ON THE OPERATIONS OF THE CONVENTION

AGENDA ITEM 1: OPENING OF THE MEETING

1. The Inter-Sessional Meeting on the Operations of the Convention, convened pursuant to decision IV/16 adopted by the Conference of the Parties to the Convention on Biological Diversity at its fourth meeting, was held at the headquarters of the International Civil Aviation Organization (ICAO), in Montreal, from 28 to 30 June 1999.
2. The Meeting was opened by Mr. László Miklós (Slovakia), President of the Conference of the Parties, at 10.25 a.m. on Monday, 28 June 1999.
3. In his opening statement, Mr. Miklós welcomed participants and recalled that, in accordance with decision IV/16 adopted by the Conference of the Parties at its fourth meeting, the current Inter-Sessional Meeting on the Operations of the Convention was being held to consider possible arrangements to improve preparations for and conduct of the meetings of the Conference of the Parties, taking into account proposals made at the fourth meeting of that body. The main questions for which the Meeting needed to find answers were: how to improve the clarity of the decisions of the Conference of the Parties; whether the development and implementation of the Convention would benefit from a mechanism to draw more systematically on existing scientific knowledge, assessments and organizations; whether there was a need for further subsidiary bodies, for example, a subsidiary body on implementation; what were the ways and means to assist countries to implement the commitments they had taken on by becoming Parties; what tools would enable the Conference of the Parties to assess the state of implementation of the Convention and how would they be developed; and what was expected of the financial mechanism, its implementing agencies, the

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Secretariat and those institutions that could assist. The Inter-Sessional Meeting would also look at access to genetic resources, make recommendations for future work on resolving the issue of ex situ collections acquired prior to the entry into force of the Convention and begin assessing the relationship between intellectual property rights and the relevant provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights and the Convention. Finally, he updated the Meeting on matters related to the future Cartagena Protocol on Biosafety and called on participants to make full use of the presence at the Inter-Sessional Meeting of representatives of Parties and of the negotiating groups to move ahead.

4. Opening statements were also made by Mr. Hamdallah Zedan, Acting Executive Secretary of the Convention on Biological Diversity, and Mr. Jorge Illueca, Director, Division of Environmental Conventions, United Nations Environment Programme (UNEP), on behalf of the Executive Director of the UNEP.

5. Mr. Zedan welcomed participants and stressed the importance of the meeting to the Convention. Stressing the importance of developing a more effective method for producing and using scientific assessments, he said that, at its recently concluded fourth meeting, the Subsidiary Body on Scientific, Technical and Technological Advice had adopted a number of recommendations on how to ensure the provision of such scientifically based advice to the Conference of the Parties. Another issue of major concern to be considered was the need for clear decisions by the Conference of the Parties. Ambiguous decisions were not only hard to implement; they undermined the authority of the Conference of the Parties but also wasted resources.

6. The Meeting would also address questions of access to genetic resources and benefit-sharing which were critical aspects of the Convention. It was important that the meeting focus on issues on which it could make progress on and recognize that broad and comprehensive progress could not be made on all aspects of the matter. One important aspect where progress could be achieved was in providing guidance to the Panel of Experts on Access and Benefit-Sharing, which was to meet in Costa Rica in October 1999. He concluded by drawing attention to the opportunity offered to consult on the process for the adoption of the Protocol on Biosafety and said that the resources of the Secretariat would be made available for that purpose.

7. Mr. Illueca welcomed participants on behalf of the Executive Director of UNEP and said that, since September 1998, UNEP had provided assistance in addressing the staffing and administrative needs of the Convention. All but a few of the 27 Professional and 20 General Service posts had been filled, and the remaining ones were in the process of being so. He was confident that the Secretariat of the Convention, with its highly qualified staff and the strong commitment of the Parties, would continue to accelerate the pace of implementation of the Convention.

AGENDA ITEM 2: ORGANIZATIONAL MATTERS

8. The Meeting was attended by the following Parties to the Convention on Biological Diversity: Albania, Algeria, Antigua and Barbuda, Argentina, Armenia, Australia, Austria, Bahamas, Bangladesh, Belarus, Belize, Bhutan, Bolivia, Brazil, Bulgaria, Burkina Faso, Burundi, Cameroon, Canada, Chile, China, Colombia, Comoros, Cook Islands, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Czech Republic, Democratic Republic of Congo, Denmark, Djibouti, Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, European Community, Finland, France, Gambia, Georgia, Germany, Greece, Guinea, Guyana, Haiti, Honduras, India, Indonesia, Ireland, Italy, Jamaica, Japan, Jordan, Kenya, Kiribati, Latvia, Lesotho, Madagascar, Malawi, Malaysia, Mali, Mauritania, Mauritius, Mexico, Micronesia (Federated States of), Morocco, Myanmar, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Oman, Pakistan, Panama, Peru, Philippines, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Rwanda, Saint Lucia, Seychelles, Singapore, Slovakia, South Africa, Spain, Sri Lanka, Swaziland, Sweden, Switzerland, Syrian Arab Republic, Togo, Turkey, United Kingdom of Great Britain and Northern Ireland, Uruguay, Zimbabwe.

9. The following States not party to the Convention were represented by observers: Holy See, Saudi Arabia, Thailand, United States of America.

10. Observers from the following United Nations bodies, Secretariat units, specialized agencies and Convention secretariats also attended: Food and Agriculture Organization of the United Nations (FAO), Global Environment Facility (GEF), Secretariat of the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (UNCCD), United Nations Environment Programme (UNEP).

11. The following other organizations were represented:

(a) Intergovernmental organizations: Arab Center for Studies of Arid Zones and Drylands (ACSAD), International Plant Genetics Resources Institute (IPGRI), South Pacific Regional Environment Programme (SPREP);

(b) Non-governmental organizations: Belgian Coordinated Collections of Micro-organisms, Biodiversity Action Network, BirdLife International, BMH Biotechnology Consulting, Canada International, Concordia University, Council for Responsible Genetics, Foundation for International Environmental Law and Development (FIELD), Fundacion Ecotropico, Greenpeace International, ICI/Environment-SCBD Scholars Programme, IUCN (The World Conservation Union), Just Blue International, London School of Economics, North American Indigenous Peoples Biodiversity Project, Quaker Peace & Service, Rural Advancement Foundation International (RAFI), Safari Club International, Third World Network, University College London, University of Kentucky, Université de Québec à Montréal, World Federation for Culture Collections (WFCC), World Resources Institute, World Wide Fund for Nature (WWF), Zoo de Granby.

2.1. Election of officers

12. In accordance with the rules of procedure for meetings of the Conference of the Parties to the Convention and the guidance of the Bureau, the Bureau of the fourth meeting of the Conference of the Parties presided over the Meeting. The members of the Bureau for the Meeting were thus:

President: Mr. László Miklós (Slovakia)

Vice-Presidents: Mr. Ralph Adewoye (Nigeria)
Ms. Elaine Fisher (Jamaica)
Ms. Ilona Jepsen (Latvia)
Ms. Bernarditas C. Muller (Philippines)
Mr. Sid-Ali Branci (Algeria)
Mr. Mohammed Reza Salamat (Islamic Republic of Iran)
Mr. Robert Lamb (Switzerland)
Mr. Marcel Vernooij (Netherlands)

Rapporteur: Ms. Mariangela Rebuá (Brazil)

2.2. Adoption of the agenda

13. On the recommendation of the Bureau, the Meeting adopted the following agenda, which had been circulated under the symbol UNEP/CBD/ISOC/1:

1. Opening of the Meeting.
2. Organizational matters:
 - 2.1. Election of officers;
 - 2.2. Adoption of the agenda;
 - 2.3. Organization of work.
3. Review of the operations of the Convention and the programme of work:
 - 3.1. Consideration of the operations of other conventions;
 - 3.2. Review of the experience of the operations of the Convention.
4. Access to genetic resources and benefit-sharing:
 - 4.1. Review of access to genetic resources and benefit-sharing arrangements and consideration of options;
 - 4.2. Ex situ collections which were acquired prior to the entry into force of the Convention on Biological Diversity and which are not addressed by the Commission on Genetic Resources for Food and Agriculture of the Food and Agriculture Organization of the United Nations;

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- 4.3. The relationship between intellectual property rights and the relevant provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights and the Convention on Biological Diversity.
5. Other matters.
6. Adoption of the report.
7. Closure of the Meeting.

2.3. Organization of work

14. On the recommendation of the Bureau, it was agreed that the Meeting would be conducted in plenary, with a view to, inter alia, promoting the full participation of developing countries, especially those with one-person delegations.

15. Also on the recommendation of the Bureau, the Meeting further agreed that the first day would be devoted to agenda item 3 and the second to agenda item 4.

AGENDA ITEM 3: REVIEW OF THE OPERATIONS OF THE CONVENTION AND THE PROGRAMME OF WORK

16. The Meeting took up agenda item 3 at its 1st session, on 28 June 1999. In considering the item, the Meeting had before it a note by the Executive Secretary containing an analysis of the development and experience of the operations of other conventions and agreements (UNEP/CBD/ISOC/2). Also available as background documents were the report of the fourth meeting of the Conference of the Parties (UNEP/CBD/COP/4/27), a note by the Executive Secretary containing a synthesis of the views on the operations of the Convention that had been prepared for the fourth meeting of the Conference of the Parties (UNEP/CBD/COP/4/14), and a note by the Executive Secretary on the relationship of the Convention with other conventions, institutions and processes: modalities for enhanced cooperation with relevant biodiversity-related bodies, which had been prepared for the third meeting of the Conference of the Parties (UNEP/CBD/COP/3/35).

17. On the proposal of the President, the Meeting decided to take up agenda items 3.1 and 3.2 concurrently.

3.1. Consideration of the operations of other conventions
and

3.2. Review of experience of the operations of the Convention

18. Introducing the items at the 1st session of the Meeting, on 28 June 1999, the representative of the Secretariat said that the note by the Executive Secretary submitted under the item (UNEP/CBD/ISOC/2) reviewed the existing structure of the Convention and considered concerns raised during the review of the operations of the Convention at the fourth meeting of the Conference of the Parties. It also reviewed the impact of the changes made by decision IV/16 of the Conference of the Parties. Based on the experience of other agreements, the document contained a number of options to address the concerns expressed. Some of those options only required an adjustment to the current modus operandi and had no resource implications; they included biennial meetings of the Conference of the Parties, development of a standard structure for decisions, and retirement of old decisions. Other options implied a more fundamental change in the operations of the Convention; they included the proposal regarding the generation of scientific assessments, the development of the programme of work, regionalization of the Convention process and the need for further subsidiary bodies.

19. Following the introduction of the item by the Secretariat, the Meeting heard a report by Mr. Cristián Samper (Colombia), incoming Chair of the Subsidiary Body on Scientific, Technical and Technological Advice, on the outcome of the fourth meeting of the Subsidiary Body, held in Montreal from 21 to 25 June 1999. In his report, Mr. Samper said the role of the Subsidiary Body was to bridge the gap between science and policy. The fourth meeting of the Subsidiary Body had provided the opportunity to see the results of some of the improvements in the operations of the Convention, including an agenda more focused on priority issues to be addressed by the Conference of the Parties at its fifth meeting, input from leading scientists to the papers prepared by the Secretariat and a joint meeting of the Bureaux of the Conference of the Parties and the Subsidiary Body on Scientific, Technical and Technologic Advice, to discuss the results of the fifth meeting of Subsidiary Body. With regard to the issues to be addressed by the Inter-Sessional Meeting, he mentioned the need for better scientific and technical inputs into the Subsidiary Body and for its deliberations to focus on scientific, technical and technological issues relevant to the Convention. The issue of the improvement of outputs from the Subsidiary Body to the Conference of the Parties was also worthy of consideration. In conclusion, he proposed that the Inter-Sessional Meeting also examine how to establish a follow-up mechanism to the recommendations of the Subsidiary Body and promote better coordination with other scientific bodies and organizations.

20. In the discussion under this item at the 1st session of the Meeting, on 28 June, statements were made by the representatives of the following Parties and countries: Argentina, Brazil, Canada, China, Côte d'Ivoire, Ethiopia (on behalf of the African Group), Germany (on behalf of the European Community and its member States), India (on behalf of the Asian Group), Indonesia, Kenya, Malaysia, New Zealand, Norway, Philippines, Peru, (on behalf of the Latin American and Caribbean Group) South Africa, Switzerland, Tonga, United Kingdom of Great Britain and Northern Ireland.

21. At the 2nd session of the Meeting, statements under the item were made by the representatives of the following Parties and countries: Algeria, Australia, Belarus, Burkina Faso, Burundi, Cameroon, Colombia, Cook Islands (on behalf of the Pacific Island countries party to the Convention), Costa Rica, Cuba, Czech Republic, Guinea, Guyana (on behalf of the Group of 77 and China), Haiti, Hungary, Jordan, Malawi, Mali, Mexico, Netherlands, Republic of Korea, Syrian Arab Republic, Russian Federation, Togo. A statement was also made by a representative speaking on behalf of the following eight non-governmental organizations: Sobrevivencia-Friends of the Earth Paraguay, Green Earth Organization-Ghana, BirdLife International, Indigenous Peoples Biodiversity Network, Netherlands Committee for IUCN, Biodiversity Action Network-USA, Fundación Ecotropico-Colombia and IBIN-USA.

22. A number of representatives expressed satisfaction at the documentation prepared by the Executive Secretary, noting that it provided a good basis for a recommendation to the Conference of the Parties.

23. A number of representatives said that they would be willing to explore all options available to strengthen the preparatory activities that would lead to more efficient and effective decision-making by the Conference of the Parties, and supported the creation of a new inter-sessional body. A number of other representatives were opposed to the establishment of new institutional structures under the Convention, specifically the creation of a new subsidiary body, pointing out that it was necessary to make better use of the existing structures. One representative said that the establishment of any new body should not conflict with the Subsidiary Body on Scientific, Technical and Technological Advice, but should define how to work in cooperation with other organizations and processes. One representative said that the Subsidiary Body itself needed: further development through a strategic framework identifying the components of a scientific-assessment mechanism of the Convention on Biological Diversity; a broad basis for establishing the terms of reference given to the expert panels, where the critical issues to be assessed were identified; the establishment of more formal links to existing scientific organizations and mechanisms and centres of excellence; and the development of a system whereby the Subsidiary Body made full use of the current roster of national experts. Several representatives considered that there was a need to set up a body to hold inter-sessional consultations on financial and budgetary questions.

24. Many representatives called for increased contributions to the strategic improvement of the clearing-house mechanism, citing it as the primary instrument that States had at their disposal in making the Convention fully operational. Several stressed that information-sharing, technology transfer, and transparency all needed to be enhanced in order to further develop the operations and organization of the Convention. Many representatives highlighted the need for capacity-building so that the benefits of the clearing-house mechanism would not be limited to those States with highly developed technical expertise. Several representatives expressed the view that the financial mechanism was not providing timely funding for the operationalization of the clearing-house mechanism in developing countries and they urged that that be given high priority, considering that the pilot phase for the development of the clearing-house mechanism was almost over. Several others supported that statement and

called for increased attention to the development of human resources and capacity-building for the implementation of the Convention.

25. A number of representatives supported the establishment of expert panels, stressing that the composition of such panels should be based on, inter alia, equitable regional representation and principles of transparency. In addition, it was observed that such panels should have specific mandates and terms of reference, with a well-defined time-frame for their work. Several representatives expressed concern over the proliferation of expert panels.

26. Several representatives expressed the view that the Convention should continue to move toward having a cycle of annual meetings of the Subsidiary Body on Scientific, Technical and Technological Advice and biennial Conferences of the Parties. One representative suggested that the Subsidiary Body should meet twice a year.

27. Several representatives said that more attention should be given to developing products and processes within the context of national implementation, and urged the Parties to think through the elaboration of various programmes of work and their practical implication at the national, regional, and subregional levels. In that context, several representatives said that the complex nature of the subject of biological diversity presented a challenge to the implementation of the Convention at both the national and international levels.

Several pointed to the need to establish cross-sectoral ties to other conventions, based on their relevant experience, and considered that to be an essential step in improving the operations of the Convention. Other representatives advocated an increased focus on regional processes based around groupings of States facing similar challenges related to biological diversity.

28. Some representatives said particular attention should be paid to the purpose of meetings and their potential outcomes, including decisions, though the improved annotation of agendas; to improving standards and use of reports by Parties and the Secretariat; and to improving mutual awareness of relevant inter-sessional activities. Several other representative emphasized the need for facilitating and monitoring the implementation of decisions through clearer indications of priorities. One representative suggested ways to improve participation by small delegations by adjusting meeting procedures.

29. Several representatives said that national reports needed to be given a more effective framework, including a common format and meaningful indicators that could be monitored and synthesized. Several representatives emphasized the importance of reporting in determining national progress and tracking international implementation and areas where support was required. Other representatives pointed out that national reports should contain clear-cut results and include information on implementation within a specific time-frame.

30. A number of representatives drew attention to the importance of a strategic plan for the Convention. One called for the development of a ten-year general plan, including details for the first five or six years, and suggested that other conventions, such as the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and the Convention on Wetlands, could provide useful models.

31. Another representative urged the Inter-Sessional Meeting and the Secretariat to take into account the specific circumstances of the Pacific Island countries to enable them to fully participate in the implementation of such a strategic plan. Other representatives, while endorsing the idea of a strategic plan, were hesitant on how to proceed for the Convention as a whole and suggested that perhaps the best approach would be for the Subsidiary Body on Scientific, Technical and Technological Advice first to work out a strategic plan for itself.

32. One representative spoke about the continued incorporation of the concerns of indigenous and local communities into the Convention process, and expressed the intention to ensure progress with regard to Article 8(j). Linkages with scientific organizations to strengthen the credibility and effectiveness of the Subsidiary Body on Scientific, Technical and Technological Advice were also mentioned by several representatives as being crucial to the operations of the Convention.

33. Several representatives pointed to the importance of tracking the implementation of decisions already taken under the Convention, and expressed satisfaction at the development of a handbook on the Convention on Biological Diversity, which was considered to be a potentially useful tool.

34. Another representative proposed that a distinction be made between issues related to the Subsidiary Body on Scientific, Technical and Technological Advice and those related to the Conference of the Parties. He called for a greater use of recommendations submitted by the Subsidiary Body on Scientific, Technical and Technological Advice and commended the holding of meetings between the Bureau of the Subsidiary Body and the Conference of the Parties as being useful for assessing the state of progress.

35. One observer, speaking on behalf of a number of environmental non-governmental organizations, said that little of the policy guidance had been translated into action. He proposed that the Parties consider the institutional structure and operations of the Convention in order to strengthen its effectiveness. He also suggested that the notion of experts be extended beyond the natural sciences to include social scientists and experts not appointed by Governments in rosters.

36. At the 2nd session of the Meeting, on 28 June 1999, the Meeting established an open-ended contact group on agenda items 3.1 and 3.2, to be coordinated by Mr. J. Tillson (United Kingdom of Great Britain and Northern Ireland), to discuss the issues further and to report back to the President.

37. At the 5th session of the Meeting, on 30 June 1999, the coordinator of the contact group reported back to the Meeting on the results of the work of the group and which were reflected in a draft recommendation on the subject submitted by the President (UNEP/CBD/ISOC/L.2). The coordinator explained that the draft recommendation contained elements for a draft decision and was intended to provide a good basis for the discussion at the fifth meeting of the Conference of the Parties. The draft also offered the Conference of the Parties a menu of options from which to decide on ways to improve the operations of the Convention. He recommended that those parts of the text that were bracketed should remain so until a decision was taken by the Conference of the Parties.

38. During the ensuing discussion on the draft recommendation, a number of representatives introduced amendments to the text or made statements for inclusion in the report of the Meeting.

39. The representative of the Philippines stated that there was no doubt about the need for the Conference of the Parties to review the institutional linkages of the Secretariat, as suggested in paragraph 9 of the draft recommendation. Indeed, at its fifth meeting, the Conference would consider a report on the administrative functioning of the Secretariat. The issue was an important one in view of the need for the effective functioning of the Secretariat and the past decisions of the Conference of the Parties on the autonomy of the Secretariat, such as decision III/23. In addition, she considered that the Subsidiary Body on Implementation proposed in the penultimate operative paragraph of the recommendation needed to review the effectiveness of the financial mechanism itself, rather than the Memorandum of Understanding with the GEF Council, as proposed in subparagraph (c) (iii) of that paragraph.

40. Some representatives stressed the need for the timely distribution of documents of the Conference of the Parties in all working languages.

41. The representative of Canada stated that it was his delegation's understanding that the first paragraph in section D of the draft recommendation was not intended to change the scope of the clearing-house mechanism as decided in previous decisions of the Conference of the Parties.

42. The representative of Ecuador said that a paragraph should be added to the draft recommendation by which the Conference of the Parties would recognize the importance of maintaining relations and promoting mutual support among other international conventions, bodies and organizations of relevance for the objectives of the Convention on Biological Diversity and would request the Executive Secretary to decide on appropriate mechanisms to collect information on those bodies that was relevant to the implementation of the Convention and the adoption of resolutions and recommendations in a proactive manner.

43. The representative of Peru, speaking on behalf of the Latin American and Caribbean Group, said that the Group considered that the sixth version of paragraph 25 of the draft recommendation* was the most appropriate one.

44. With regard to the standing items proposed for inclusion on the agenda of the Conference of the Parties, the coordinator of the contact group explained, in response to a proposal by one representative, that pending issues and budgetary issues were subsumed under the broad headings of "organizational matters" and "review of the implementation of the programme of work", respectively, as could be seen from the provisional agenda that had been prepared for the fifth meeting of the Conference of the Parties (UNEP/CBD/COP/5/1).

45. One representative stressed the importance of taking into account the principle of equitable geographical balance in the selection of experts on the

* Following the adoption of the draft recommendation as amended, paragraph 25 became paragraph 26.

ad hoc technical expert groups. In response, the coordinator of the contact group explained that the participants in the group had noted that the principle was already included in the modus operandi of the Subsidiary Body and therefore considered that there was not need to refer to it explicitly in the draft recommendation. In response to another statement, the coordinator clarified that the Working Group on Implementation referred to in the second version of paragraph 25 of the draft recommendation* was intended to meet during sessions of the Conference of the Parties.

46. Several representatives stressed the importance of regional meetings in the implementation of the Convention in Biological Diversity and expressed the view that their importance was not fully reflected in the draft recommendation.

47. Following the discussion, the Meeting adopted the draft recommendation, as orally amended, as recommendation 1 in the annex to the present report.

AGENDA ITEM 4: ACCESS TO GENETIC RESOURCES AND BENEFIT-SHARING

48. On the recommendation of the Bureau, the Meeting agreed, at its 3rd session, on 29 June 1999, that the three sub-items under agenda item 4 should be taken up individually.

4.1. Review of access to genetic resources and benefit-sharing arrangements and consideration of options

49. The Meeting took up agenda item 4.1 at its 3rd session, on 29 June. In considering the item, the Meeting had before it a note by the Executive Secretary on the review of options for access and benefit-sharing mechanisms (UNEP/CBD/ISOC/3), together with three information documents:

(a) Submission by the United Kingdom: common policy guidelines for participating botanic gardens on access to genetic resources and benefit-sharing (UNEP/CBD/ISOC/Inf.2);

(b) The commercial use of biological diversity: access to genetic resources and benefit-sharing: submission by the European Community (UNEP/CBD/ISOC/Inf.4);

(c) Report of the European Workshop on Genetic Resources Issues and Related Aspects: submitted by Germany (UNEP/CBD/ISOC/Inf.5).

Also available were three related documents that had been prepared for the fourth meeting of the Conference of the Parties (UNEP/CBD/COP/4/21, UNEP/CBD/COP/4/23/Rev.1, and UNEP/CBD/COP/4/Inf.7).

50. Introducing the item, the representative of the Secretariat recalled that, in its decision IV/16, the Conference of the Parties had decided to include access to genetic resources as one of the topics for in-depth discussion at its fifth meeting, to held in May 2000, and to hold a preparatory discussion of the issue at the current Inter-Sessional Meeting. In addition, by its decision IV/8, the Conference of the Parties had requested the Meeting to explore options for access and benefit-sharing mechanisms. Through its

deliberations at previous meetings, the Conference of the Parties had considered the basic elements of access and benefit-sharing from different angles. The note by the Executive Secretary endeavoured to organize the available information and the consideration so far given, with a view to presenting options for access and benefit-sharing mechanisms. It offered an opportunity to streamline the consideration of the related areas, including access legislation, measures to promote fair and equitable benefit-sharing arrangements, the issues related to intellectual property rights, the issue of transfer of technology, and ex situ collections. The document also highlighted the importance of differentiating between access and benefit-sharing arrangements for research purposes and for commercial purposes. The Inter-Sessional Meeting was also invited to consider the modalities and the elements to be included in the agenda of the meeting of the Panel of Experts on Access and Benefit-sharing to be held in October 1999 pursuant to decision IV/8 of the Conference of the Parties, and to provide the Executive Secretary with guidance on organizing it. The proposed agenda items for the meeting were contained in section III of the note by the Executive Secretary.

51. During the discussion on the item, statements were made by the following Contracting Parties and countries: Argentina, Australia, Bolivia, Brazil, Bulgaria, Cameroon, Canada, China, Colombia, Costa Rica, Côte d'Ivoire, Djibouti, Germany (on behalf of the European Community and its member States), India, Indonesia, Kenya, Madagascar, Malaysia, Mali (on behalf of the African Group), Mexico, Morocco, Norway, Peru, (on behalf of the Latin American and Caribbean Group) Republic of Korea, Russian Federation, Singapore, South Africa, Switzerland, Turkey, United States of America. The representative of the Rural Advancement Foundation International (RAFI) also made a statement.

52. Many representatives stressed the urgent need to address the issues of access to genetic resources and benefit-sharing, and a number considered them to be at the very core of the Convention. It was pointed out that many of the providers of such resources had placed high expectations on the Convention as a framework within which controlled access to their genetic resources could be facilitated on a basis that would ensure some benefits for them. However, to date their expectations had not been met. It was also noted that, while many countries were in the process of preparing national legislation on access and benefit-sharing and many user institutions had developed policies that were in line with the provisions of the Convention, such legislation in itself was considered to be insufficient. The user countries also needed to provide an enabling environment and confidence through legislative and other measures so as to ensure compliance with prior informed consent (PIC) stipulations. A number of representatives believed there was a need for binding international and multilateral regulations to ensure adequate implementation of the provisions of the Convention on access and benefit-sharing.

53. One representative was of the opinion that contractual arrangements, based on mutually agreed terms, represented an effective and flexible instrument to guide benefit-sharing and, if carried out properly, to minimize the transaction costs of establishing international partnerships.

54. Several representatives highlighted the importance of an effective clearing-house mechanism at national and regional levels, through which resource

users and other stakeholders could be informed of the provisions and requirements of those providing genetic resources.

55. One representative, speaking on behalf of a regional economic integration organization and its member States, said that, from a long-term perspective, the Conference of the Parties should integrate the subject of access and benefit-sharing into its work programme in an appropriate way, in order to allow for its examination at regular intervals.

56. Many representatives pointed to the importance of the upcoming meeting of the Panel of Experts on Access and Benefit-sharing and congratulated Costa Rica and Switzerland for their efforts to co-host it. The representatives of those two organizing countries submitted to the Meeting a detailed proposal on the operation of the Panel of Experts and its Executive Committee. One representative sought clarification on whether the Panel would hold only one meeting.

57. Many representatives emphasized that the selection of members of the Panel had to be carried out in a transparent way, taking full account of the principle of geographic representation, with specific terms of reference that avoided duplication of the efforts of other bodies, and with the involvement of all stakeholders, especially the private sector and indigenous communities. One representative believed that the World Health Organization should be invited to nominate an expert for the Panel. A number of representatives proposed that the Panel should also include experts from regional and subregional groupings, and examine regional approaches to the issue. One representative described progress by the countries of her region in their initiative to prepare a legal framework to harmonize questions of access to genetic resources at the regional level.

58. Many representatives expressed satisfaction at the note prepared by the Executive Secretary to review options for access and benefit-sharing mechanisms (UNEP/CBD/ISOC/3), and a number of them considered that the points outlined in its paragraph 40 provided a good basis for the agenda of the upcoming meeting of the Panel of Experts. Others considered that the agenda needed to follow a three-step approach: identifying the benefits of the use of genetic resources on a sectoral basis, perhaps using input to the meeting from sectoral experts, and permitting identification of sectors using genetic resources that had not yet been considered under the Convention; identifying and inventorying the wide range of mechanisms currently used to share the benefits; and considering the need for new and improved measures and their implementation. Several representatives pointed to the importance of considering case-studies at the meeting of the Panel.

59. A number of representatives drew attention to other issues which they believed the Panel should address, including: capacity-building; technology transfer; legal and policy measures in user countries to ensure compliance with the principle of PIC; training, and its possible funding under GEF; the use of the clearing-house mechanism to assist in the negotiation of bilateral agreements; review of the decisions under the Convention on access and benefit-sharing; experience with and identification of various types of contractual arrangements; and modalities for monitoring the application of contracts or procedures for access and benefit-sharing. One representative wished the Panel to give consideration to ex situ collections, particularly the large number of

private ex situ collections, which had received little attention to date. Another suggested that the Panel examine modalities by which the benefits obtained were used to support the conservation and sustainable use of biological diversity.

60. One representative, speaking on behalf of a regional group, said that, in the period up to the convening of the Panel of Experts, the Secretariat should prepare a draft of a protocol or instrument along the lines of the FAO International Undertaking on Plant Genetic Resources for Food and Agriculture, taking into account all aspects of genetic resources; illicit transfer of genetic resources and the issue of PIC; protection of communal and indigenous property rights in the developing countries with regard to access and benefit-sharing; recognition of the origin of resources; public awareness-raising, using the clearing-house mechanism and contributions from GEF; and technology transfer.

61. One representative drew attention to the need to adequately define the parameters of the term "equitable" sharing of benefits at the current Meeting and to develop and refine them at the meeting of the Panel of Experts.

62. Several representatives said that the Panel would need to examine the question of how to make a clear distinction between access-derived and user-derived benefits from genetic resources used for scientific research purposes and those that were for commercial purposes, and in that connection noted that there were grey areas. One noted that access regimes needed to be capable of accommodating and facilitating the basic research which served an understanding of all the components of biological diversity and their interactions, while promoting benefit-sharing on mutually agreed terms.

63. Many representatives noted that, as there was a clear relationship between the issue of benefit-sharing and the preservation and maintenance of the practices of indigenous and local communities, the Panel of Experts should pay special attention to the implementation of Article 8(j). One believed that the Panel should include an indigenous specialist. Another considered that indigenous and local training programmes should be encouraged.

64. A number of representatives considered that the Panel of Experts should take fully into account the developments in the ongoing intergovernmental negotiations within the FAO Commission on Genetic Resources for Food and Agriculture to revise the International Undertaking on Plant Genetic Resources for Food and Agriculture in line with the Convention.

65. For the action taken under this sub-item, see paragraphs 94-95 below.

4.2. Ex situ collections which were acquired prior to the entry into force of the Convention on Biological Diversity and which are not addressed by the Commission on Genetic Resources for Food and Agriculture of the Food and Agriculture Organization of the United Nations

66. The Meeting took up agenda item 4.2 at its 3rd session, on 29 June 1999. In considering the item, the Meeting had before it a note by the Executive Secretary reporting on information on ex situ collections in accordance with

decision IV/8 adopted by the Conference of the Parties at its fourth meeting (UNEP/CBD/ISOC/4). Also available was an information document containing the submissions received by the Executive Secretary in response to paragraph 2 of decision IV/8 (UNEP/CBD/ISOC/Inf.1).

67. Introducing the item, the representative of the Secretariat said that the note by the Executive Secretary summarized the information called for in paragraph 2 of decision IV/8 of the Conference of the Parties and transmitted to the Secretariat to date from Parties and relevant organizations in respect of ex situ collections which were acquired prior to the entry into force of the Convention on Biological Diversity and which were not addressed by the Commission on Genetic Resources for Food and Agriculture of the Food and Agriculture Organization of the United Nations. Although the information received had not been sufficient to undertake a full analysis, some directions regarding the future work on resolving the issue of ex situ collections specified in decision IV/8, paragraph 2, could be inferred. The Secretariat proposed that future work on ex situ collections could initially focus on the plant genetic resources other than those addressed by the FAO Commission on Genetic Resources for Food and Agriculture (CGRFA) and on microorganisms. The criteria to guide the response were also proposed and contained in the annex to the document.

68. Following the introduction by the Secretariat, the Meeting heard statements under this item from the representatives of the following Parties and countries: Australia, Burkina Faso, Cameroon, Canada, Colombia, Ethiopia (on behalf of the African Group), Germany (on behalf of the European Community and its member States), Guinea, India, Mali, Norway, South Africa, Togo, United Kingdom of Great Britain and Northern Ireland. The representative of the Third World Network also made a statement.

69. Many of the representatives who took the floor expressed appreciation for the note by the Executive Secretary and generally endorsed the proposals for future work on the subject. Many representatives, however, stressed that, in addition to focusing on plants, adequate emphasis should be placed on microbial organisms, especially in view of their increasing value with the advent of biotechnology. One representative said that the Conference of the Parties should not duplicate existing efforts and therefore, given the work already under way by the World Federation for Culture Collections, the Secretariat's recommendation in paragraph 40 (i) of the note should not extend to microbial collections. Several representatives pointed to the need for further information-gathering on the subject, one of them suggesting that the Secretariat should submit an updated note to the Conference of the Parties at its fifth meeting.

70. Several representatives considered the questionnaire in the annex to the note by the Executive Secretary to be a useful way of gathering information on how the Convention on Biological Diversity could be implemented by ex situ collections, and offered their assistance for structuring the questionnaire more effectively. One representative suggested that the questionnaire should not be too restrictive and should allow respondents to provide any additional information that they considered relevant.

71. One representative, speaking on behalf of a group of countries, said that the recognition of sovereign rights of States over their biological resources by the Convention on Biological Diversity could be substantially undermined if the same rights were not accorded for crop genetic resources collected from their countries before the entry into force of the Convention. The same representative said the group of countries on whose behalf he was speaking proposed that: ex situ materials collected prior to the entry into force of the Convention on Biological Diversity should fall retroactively under its provisions; provision should be made for the establishment, strengthening and enhancement of the manpower and infrastructural capacity of gene banks in developing countries; additional funding should be generated from GEF to facilitate collection, evaluation, documentation, conservation, and utilization of ex situ collections; and technology transfer for the utilization of ex situ collections should be initiated and strengthened in developing countries. Finally, he said that the benefits obtained from utilizing ex situ collections should be shared in a fair, equitable and transparent manner between countries providing collections and countries utilizing them.

72. One representative, having stressed the need for unified guidelines for accessing resources in ex situ collections in order to ensure benefit-sharing in line with the provisions of the Convention, reiterated the recommendation of the workshop of the South Asian Association for Regional Cooperation (SAARC), held in New Delhi in March 1999, regarding the need to explicitly recognize the country of origin of the material as the provider in the benefit-sharing arrangements for ex situ collections acquired both before and after the entry into force of the Convention, including those held in international agricultural research centres.

73. One representative cautioned that the issue was fraught with pitfalls and was so complex that it needed to be dealt with either by an expert or specialist group or an ad hoc working group with clearly defined terms of reference. Another representative said that consideration should be given to whether future work on ex situ collections should be done by the Conference of the Parties or whether a working group would be set up on the subject. The representative suggested that the Meeting could request the Conference of the Parties to study the mechanism or modality appropriate for the purpose.

74. One representative, speaking on behalf of a regional economic integration organization and its member States, said that the purpose of the Meeting should be: to restate that, in accordance with international law, the Convention on Biological Diversity had no retroactive effect, including with regard to ex situ collections; to establish a scope for the issue of ex situ collections on the basis of information provided by the Secretariat of the Convention on Biological Diversity and other inputs at the Meeting; to exchange information on initiatives by Parties and others in the conservation, sustainable use and equitable sharing of benefits related to the use of ex situ collections, such as in the field of policy development, instruments and cooperation between the public and private sector; and to make recommendations for future work under the Convention on Biological Diversity to the fifth meeting of the Conference of the Parties, clearly focusing on cooperation between the Convention on Biological Diversity and other relevant international forums, and specifying the distinctive role and functions of the roster of experts developed for the issue, following the revised modus operandi of the Subsidiary Body on Scientific,

Technical and Technological Advice and making use of experience in the use of the roster of experts in the field of marine and coastal biological diversity.

75. The same representative voiced strong support for the projects and efforts of the institutions which contained ex situ collections to participate in the further implementation of the Convention on Biological Diversity, given that such institutions could play a major role in the ex situ conservation of biological diversity, could contribute to fostering public awareness for the intrinsic value of biological diversity, and could offer skills, methods, practices and information of relevance for the implementation of the Convention.

76. Another representative also stressed that the retroactive application of the provisions of the Convention could not serve as a basis for benefit-sharing arrangements. The representative of Australia stated for the record that his Government's position on the decision IV/8 had not changed since the fourth meeting of the Conference of the Parties.

77. A number of representatives stressed the need for increased capacity-building, technology transfer and funding from GEF for improved access and utilization of ex situ collections by developing countries.

78. One representative pointed out the problem of the lack of knowledge of the components of biological diversity in his country and voiced support for access to ex situ collections as one way of surmounting this problem.

79. One representative saw the need to propose general guidelines for the Conference of the Parties in its decision-making. Those would extend to such issues as property rights in ex situ collections, the establishment of ways of identifying countries of origin of ex situ collections, the relationship between the Convention and national and international centres housing ex situ collections and the repatriation of information.

80. A number of representatives stressed the need to distinguish between collections used for commercial purposes and those used for research or simply conservation. One of those representatives drew attention in that connection to the book The Commercial Use of Biodiversity: Access to Genetic Resources and Benefit Sharing, an outline of which was contained in information document UNEP/CBD/ISOC/Inf.4.

81. The representative of the Third World Network said that there should be an intergovernmental multilateral system to guide the development of ex situ collections. She said that the ownership status of collections remained unresolved, and that voluntary efforts were inadequate to ensure that ex situ collections would not be controlled by holding parties who might limit access and claim intellectual property rights. She called for the inclusion of microorganisms and microbial collections, a thorough reevaluation of intellectual property rights as a mechanism for equitable benefit-sharing, and consideration of the grey area between research and commercial use. The Conference of the Parties and other relevant bodies should look to the work of the FAO and the Consultative Group on International Agricultural Research (CGIAR) for direction, and then provide input to the World Trade Organization (WTO) on those issues.

82. For the action taken under this sub-item, see paragraphs 96-97 below.

4.3. The relationship between intellectual property rights and the relevant provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights and the Convention on Biological Diversity

83. The Meeting took up agenda item 4.3 at its 4th session, on 29 June. In considering the item, the Meeting had before it a note by the Executive Secretary on the relationship between intellectual property rights and the relevant provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs Agreement) and the Convention on Biological Diversity (UNEP/CBD/ISOC/5 and Corr.1). Also available to the Meeting under this item were the final report of the International Conference on Trade-Related Aspects of Intellectual Property Rights and the Convention on Biological Diversity, submitted by UNEP (UNEP/CBD/ISOC/Inf.3), and two papers that had been prepared for the third meeting of the Conference of the Parties, on the Convention on Biological Diversity and the Agreement on Trade-Related Intellectual Property Rights (TRIPs): relationships and synergies (UNEP/CBD/COP/3/23), and the impact of intellectual property rights systems on the conservation and sustainable use of biological diversity and on the equitable sharing of benefits from its use (UNEP/CBD/COP/3/22).

84. Introducing the item, the representative of the Secretariat said that, the note by the Executive Secretary had been prepared under the item to provide a brief overview of activities under the auspices of the Convention on Biological Diversity and the TRIPs Agreement, as well as developments in other relevant forums. Some case-studies on access and benefit-sharing arrangements and on the implementation of Article 8(j) provided particularly relevant information on alternative forms of protection of knowledge that were not covered by the conventional intellectual property rights systems. Some examples were discussed in the note by the Executive Secretary. The Secretariat had not yet received, however, any study or information specifically regarding the impacts of intellectual property rights on the achievements of the objectives of the Convention, including technology transfer. Before attempting any conclusions, further analysis was therefore needed. A work programme regarding the relationship between intellectual property rights and the relevant provisions of the TRIPs Agreement and the Convention on Biological Diversity was proposed for consideration by the Inter-Sessional Meeting. It took into account the work programme of the Conference of the Parties, as well as the proposed work programme for the Subsidiary Body on Scientific, Technical and Technological Advice. It was also proposed that the Inter-Sessional Meeting recommend that the Conference of the Parties reaffirm the importance of sui generis systems of intellectual property rights in implementing the provisions of the Convention regarding equitable sharing of the benefits arising from the use of genetic resources. Therefore, it was further proposed that the Meeting recommend that the Conference of the Parties continue gathering information on the experience of the Parties and relevant case-studies, in accordance with decision IV/8 and IV/9. That reaffirmation and further findings should be transmitted to the World Trade Organization.

85. Following the introduction by the Secretariat, the Meeting heard statements under this item by the representatives of the following Parties and

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countries: Brazil, Cameroon (on behalf of the African Group), Canada, China, Colombia, Ecuador, Germany (on behalf of the European Community and its member States), Guinea, Guyana (on behalf of the Group of 77 and China), India, Malawi, Mexico, Niger, Norway, South Africa, Switzerland, Togo, United States of America. Statements were also made by the representatives of the World Wide Fund for Nature (WWF) and the Third World Network.

86. A number of representatives stressed that care should be taken to ensure that, in following the initiatives of WTO, Parties did not compromise their positions with regard to the Convention on Biological Diversity. One representative called for a clear mechanism to guide the Executive Secretary on how to handle the issues of relations between WTO and the Convention on Biological Diversity.

87. One representative, speaking on behalf of a group of countries and supported by others, referred to Article 16 of the Convention on Biological Diversity in support of his statement that the application of world trade agreements in general and of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), in particular, would endanger the traditional rights of farmers all over the world. He considered that the application of such trade agreements was a recipe for conflict between the technologically advanced and the less technologically advanced societies, and recommended that the Conference of the Parties invite the Council of the TRIPs Agreement to consider the right of countries to exclude from it plants, animals, as well as cells and genes and microbiological processes. Governments should undertake not to grant intellectual property rights and to cancel those already granted. The rights of farmers, particularly their right to continue with their traditional practice to save, use and sell farm-saved seed, should be recognized in any sui generis system for the protection of plant varieties. In conclusion, he called upon the Executive Secretary to request the Council of the TRIPs Agreement to defer any decision on the review of Article 27, paragraph 3 (b), of the Agreement until after the fifth meeting of the Conference of the Parties.

88. One representative, speaking on behalf of a regional economic integration organization and its member States, welcomed the work initiated by the World Intellectual Property Organization (WIPO) in the legal protection of indigenous knowledge, and suggested that further work be carried out to help develop a common appreciation of the relationship between intellectual property rights and the relevant provisions of the TRIPs Agreement and the Convention on Biological Diversity. Acknowledging the mutually supportive nature of that relationship, he called for support for interactive policy development between the Convention and the TRIPs Agreement, and endorsed the inclusion of issues related to intellectual property rights on the agenda of the Panel of Experts on Access and Benefit-sharing. Many others supported that view. It was proposed that the Inter-Sessional Meeting seek to develop ways and options for closely monitoring work done by WIPO and WTO with a view to the submission of a report thereon to the Conference of the Parties at its fifth meeting. WTO should also be asked to acknowledge relevant provisions of the Convention on Biological Diversity and give special attention to the protection of knowledge, innovations and practices of indigenous and local communities for the conservation and sustainable use of biological diversity. Many representatives agreed that implementation of Article 8(j) was a priority under those agreements.

89. With respect to the composition and agenda of the Panel of Experts, one representative, speaking on behalf of the Group of 77 and China, stressed the need to ensure equitable and geographical representation and proposed that the Panel gather information and analyse and suggest options on ex situ collections and the harmonization of intellectual property rights with the Convention on Biological Diversity.

90. One representative took issue with the tone of the note by the Executive Secretary contained in document UNEP/CBD/ISOC/5 under consideration, which he said gave the impression that intellectual property rights were the main mechanism for attaining equitable sharing of benefits arising from the use of genetic resources. He believed that the document overlooked instances of biopiracy of resources and knowledge, contrary to the Convention's objectives of equitable sharing of benefits. It was only by operationalizing Article 15 and giving effect, for example, to PIC arrangements through national legislation that that objective could be attained. Noting that decision IV/15, paragraph 10, called for a common appreciation of the relationship between intellectual property rights and relevant provisions of the TRIPs Agreement and the Convention on Biological Diversity, he expressed disappointment that the crucial issues highlighting this relationship had not been touched upon. While the Convention on Biological Diversity clearly recognized the sovereign rights of States over their biological resources, seeking to ensure a fair and equitable sharing of benefits derived from the use of genetic resources, the TRIPs Agreement recognized intellectual property rights as private rights. It was therefore necessary to provide for enabling provisions in patent laws and other systems of intellectual property rights to facilitate implementation of access regulations. He also proposed that intellectual protection seekers disclose the country of origin, as well as the prevalent use of the resource at the source point, and that such information be made open to public scrutiny. He believed that the element of discretion provided for in Article 27, paragraph 3(b), was not to be rendered mandatory.

91. A number of representatives stated that intellectual property rights should not apply to microorganisms and that they could not be patented. One representative, while opposing the patenting of living organisms which could not be considered as inventions, said that microorganisms resulting from transgenic manipulation should be patented if they were new, resulting from inventions, and for industrial purposes. Another representative said that it would be appropriate to make specific references to which microorganisms were covered by intellectual property rights and which were not.

92. Representatives of environmental non-governmental organizations expressed their opposition to the patenting of life forms and their concern about the conflicting interpretation of provisions under the TRIPs Agreement of WTO and the Convention on Biological Diversity regarding intellectual property rights.

93. At the conclusion of the debate on item 4 of the agenda, at its fourth session, on 29 June 1999, the Meeting agreed to establish an open-ended contact group, to be coordinated by Ms. Elaine Fisher (Jamaica), to prepare a recommendation concerning the Panel of Experts on Access and Benefit-sharing, as well as recommendations on issues falling under agenda item 4.

94. At the 6th session of the Meeting, on 30 June 1999, the coordinator of the contact group reported back to the plenary on the deliberations of the contact group concerning agenda item 4.1 (Review of access to genetic resources and benefit-sharing arrangements and consideration of options), which were reflected in a draft recommendation submitted by the President (UNEP/CBD/ISOC/L.3), entitled "Panel of Experts on Access and Benefit-sharing".

95. The Meeting adopted the recommendation, without amendment, as recommendation 2 in the annex to the present report.

96. Also at the 6th session of the Meeting, the coordinator of the contact group reported on the group's deliberations concerning agenda item 4.2 (Ex situ collections which were acquired prior to the entry into force of the Convention on Biological Diversity and which are not addressed by the Commission on Genetic Resources for Food and Agriculture of the Food and Agriculture Organization of the United Nations). The outcome of those deliberations was reflected in a draft recommendation on the item submitted by the President (UNEP/CBD/ISOC/L.5), to which she made some oral corrections.

97. Following a proposal by one representative, supported by another representative, the Meeting adopted the recommendation, as amended, as recommendation 3 in the annex to the present report.

98. Also at the 6th session of the Meeting, the coordinator of the contact group reported on the group's deliberations concerning agenda item 4.3 (The relationship between intellectual property rights and the relevant provisions of the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPs Agreement) and the Convention on Biological Diversity). The results of those deliberations were reflected in a draft recommendation submitted by the President (UNEP/CBD/ISOC/L.4).

99. The Meeting adopted the recommendation, without amendment, as recommendation 4 in the annex to the present report.

AGENDA ITEM 5: OTHER MATTERS

Meeting of the Council for Trade-related Aspects of Intellectual Property Rights

100. At the 6th session of the Meeting, on 30 June 1999, one representative sought clarification concerning how the outcome of the deliberations of the Inter-Sessional Meeting that were of relevance to the TRIPs Agreement would be brought to the attention of the Council for Trade-related Aspects of Intellectual Property Rights, which would be holding a meeting in the coming week. In reply, the Acting Executive Secretary said that the Secretariat would consider sending its representative to that meeting to provide a briefing for the Council. In that connection, he pointed to the need to make it clear that, with respect to TRIPs, the Inter-Sessional Meeting had approved draft elements of a recommendation that were for the consideration of the Conference of the Parties at its fifth meeting.

Handbook on the Convention on Biological Diversity

101. At the 6th session of the Meeting, on 30 June 1999, the representative of the Secretariat announced the distribution to delegates of a sample draft of some sections of the Handbook on the Convention on Biological Diversity, currently under preparation by the Executive Secretary in accordance with decision IV/16, paragraph 10, of the Conference of the Parties. Pointing out the draft was not intended to be final or comprehensive, he invited Parties and observers to send any comments on the format, structure and/or content of the Handbook to the Secretariat by 1 October 1999. He said that the Handbook would be made available to participants at the fifth meeting of the Conference of the Parties, to be held in Nairobi in May 2000.

Roster of experts

102. Also at the 6th session of the Meeting, the Acting Executive Secretary drew attention to the need for the Secretariat to have at its disposal a comprehensive list of experts from which to select the members of the Panel of Experts on Access and Benefit-sharing. He urged those that had not yet done so to submit the names of experts to the Secretariat no later than 15 July 1999.

AGENDA ITEM 6: ADOPTION OF THE REPORT

103. The present report was adopted by the Meeting at its 6th (closing) session, on 30 June 1999, on the basis of the draft report that had been circulated as document UNEP/CBD/ISOC/L.1 and Add.1 and on the understanding that the Secretariat would be entrusted with the incorporation of the proceedings of the final two sessions of the Meeting, under the authority of the Rapporteur.

AGENDA ITEM 7: CLOSURE OF THE MEETING

104. Following the customary exchange of courtesies, the President declared the Inter-Sessional Meeting on the Operations of the Convention closed at 6 p.m. on Friday, 30 June 1999.

Annex

RECOMMENDATIONS ADOPTED BY THE INTER-SESSIONAL MEETING
ON THE OPERATIONS OF THE CONVENTION

1. Review of the operations of the Convention
and the programme of work

The Inter-Sessional Meeting on the Operations of the Convention

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

"The Conference of the Parties

[A. Conference of the Parties]

1. Decides to amend rule 4 of its rules of procedure by replacing paragraph 1 with the following paragraph:

"1. Ordinary meetings of the Conference of the Parties shall be held every [two] year[s]. The Conference of the Parties shall from time to time review the periodicity of its ordinary meetings in the light of the progress achieved in the implementation of the Convention."

[2. Decides that meetings of the Subsidiary Body on Scientific Technical and Technological Advice should take place every year;]

3. Decides that its provisional agenda should include the following standing items:

(a) Organizational matters;

(b) Reports from subsidiary bodies, the financial mechanism and the Executive Secretary;

(c) Review of the implementation of the programme of work;

(d) Priority issues for review and guidance; and

(e) Other matters;

4. Decides that, to the extent possible, its decisions should identify expected outcomes, activities to achieve those outcomes, those to whom the decisions are directed and timetables for action and follow-up;

5. Also decides to review its previous decisions periodically in order to assess their status of implementation;

6. Further decides to revise its procedures for decision-making regarding administrative and financial matters with a view to ensuring

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transparency, participation and full consideration of other decisions that are being considered by the Conference of the Parties;

7. Decides that guidance to the financial mechanism should be incorporated into a single decision, including the identification of priority issues which will provide support for cross-cutting issues and capacity-building, especially for developing countries, in a manner that is transparent and allows participation and full consideration of other decisions that are being considered by the Conference of the Parties;

8. Requests the Executive Secretary to limit the number of pre-session documents for any of its meetings, to keep them as short as feasible, if possible less than 15 pages and to include an executive summary;

9. Decides to consider whether there is a need to review the institutional linkages of the Secretariat;

[B. Strategic Plan for the Convention]

10. Requests the Executive Secretary, under the guidance of the Bureau of the Conference of the Parties and, as appropriate, the Bureau of the Subsidiary Body on Scientific, Technical and Technological Advice, to develop options for a strategic plan, based on the programme of work contained in decision IV/16, for consideration and adoption at the sixth meeting of the Conference of the Parties. For this purpose, it:

(a) Invites Parties to make submissions to guide the Executive Secretary in this task;

(b) Requests the Subsidiary Body on Scientific, Technical and Technological Advice at its sixth meeting to develop the elements of the strategic plan regarding scientific, technical and technological matters as mentioned in recommendation IV/1 of the Subsidiary Body; *

[C. Improvement in the operations of the Subsidiary Body on Scientific, Technical and Technological Advice]

11. Decides that the Chair of the Subsidiary Body on Scientific, Technical and Technological Advice or other members of the Bureau authorized by him or her may represent the Subsidiary Body at meetings of the scientific bodies of other conventions and relevant biological-diversity-related conventions, institutions and processes;

12. Encourages the Bureau of the Subsidiary Body on Scientific, Technical and Technological Advice to hold meetings with equivalent bodies of other relevant biological-diversity-related conventions, institutions and processes;

* Note The procedure is to be considered and determined at the fifth meeting of the Conference of the Parties, including the possibility of making use of an open-ended inter-sessional mechanism or other option as mentioned in paragraphs 25 and 26 of this recommendation.

13. Recognizes that in certain cases it will be appropriate for the Subsidiary Body on Scientific, Technical and Technological Advice to make recommendations that include options or alternatives;

14. Decides that the Subsidiary Body on Scientific, Technical and Technological Advice may establish ad hoc technical expert groups and adopt terms of reference for them, and shall seek ways to ensure transparency in the choice of experts, and the rationalization of meetings and to give effect to this by amending paragraph 12 (c) of the modus operandi of the Subsidiary Body (decision IV/16, annex I) to read:

'(c) The Subsidiary Body on Scientific, Technical and Technological Advice will determine the exact duration and specific terms of reference when establishing such expert groups under the guidance of the Conference of the Parties;'

15. Confirms that the Subsidiary Body on Scientific, Technical and Technological Advice may request the Executive Secretary and utilize the clearing-house mechanism to assist in the preparation of its meetings;

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

17. Decides that the guidance to the Subsidiary Body on Scientific, Technical and Technological Advice contained in specific decisions of a meeting of the Conference of the Parties should take into account the need for a coherent and realistic programme of work for the Subsidiary Body, including the identification of priority issues;

18. Decides, in line with paragraph 21 of its decision IV/16 and recommendations IV/1 B and V/... of the Subsidiary Body on Scientific, Technical and Technological Advice, to undertake sound scientific assessments based on the use of ad hoc technical expert groups, rosters of experts, extensive in-depth peer-reviews and the clearing-house mechanism under the guidance of the Subsidiary Body on Scientific, Technical and Technological Advice, in order to mobilize national and international scientific, technical and technological expertise for in-depth assessments of the state of knowledge on issues critical for the implementation of the Convention and calls on the Subsidiary Body on Scientific, Technical and Technological Advice to propose a mechanism for undertaking such assessments, including the preparation of the Global Biodiversity Outlook report, as provided for in decision II/1, and to reflect properly the findings of in-depth assessments in its recommendations;

[D. Miscellaneous]

19. Decides that every effort should be made to promote the development of the clearing-house mechanism with respect to its role in the transfer of technology and know-how and in enhancing capacity-building, especially at the national level, taking into account the review of the mechanism;

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[20. Recognizes that regional-level activities, including existing regional processes established for other biological-diversity-related purposes, have an important role to play in preparing for Convention meetings and enhancing implementation of the Convention and calls on Parties to actively participate in suitable regional-level activities as well as on the Executive Secretary, subject to necessary voluntary contributions, to facilitate the involvement in such regional-level activities of developing country Parties, in particular the least developed and small island developing States, and other Parties with economies in transition;]

21. Requests the Executive Secretary to enhance communication with the Parties by introducing a notification system for the Convention with respect to: inter-sessional activities, documents received, selection of experts for technical panels, peer-review processes initiated by the Executive Secretary, liaison groups and other expert bodies, and to make such information available through the clearing-house mechanism save to the extent that an expert objects to the release of information concerning him or her;

22. Decides to improve the functioning of the existing operational procedures for the conduct of meetings under the Convention to allow small delegations to participate more effectively, including in relation to the scheduling of agenda items and dealing with timetable changes;

23. Calls on the Executive Secretary to use national reports, as appropriate, to gather focused information as part of the preparatory process for issues in the work programme, and decides to reflect this approach in its decisions on national reports arising from work agreed to in decision IV/14;

24. Requests the Executive Secretary to designate a theme each year for the International Day for Biological Diversity;

[E. Implementation]

25. Decides that it is necessary to enhance the review and facilitation of implementation of the Convention;*

[26. Decides to review the implementation of the Convention within its existing institutions and procedures [which could include limitation of and clearer guidance to ad hoc inter-sessional mechanisms such as expert panels and workshops];]

[26. Decides to change the organization of its meetings to include a Working Group on Implementation;]

* Note. A decision on the potential mechanism or combination of mechanisms which could be used to address this concern will be taken on the basis of a paper to be prepared by the Executive Secretary for the fifth meeting of the Conference of the Parties setting out the identified options building on document UNEP/CBD/ISOC/2.

[26. Decides to hold a second inter-sessional meeting on the operations and implementation of the Convention;]

[26. Decides to enhance further the functions of regional meetings in preparing for meetings under the Convention and in promoting the implementation of the Convention at the regional, subregional and national levels;]

[26. Decides that its Bureau [jointly with the Bureau of the Subsidiary Body on Scientific, Technical and Technological Advice] shall act as an inter-sessional executive body to guide the work and performance of the Convention in periods between meetings of the Conference of the Parties];

[26. Decides to establish, pursuant to paragraph 4(g) of Article 23 of the Convention, a Subsidiary Body on Implementation, with the following terms of reference. The Subsidiary Body shall:

- (a) Assist the Conference of the Parties in the assessment and review of the effective implementation of the Convention and shall report regularly to the Conference of the Parties on all aspects of its work;
- (b) Be open to participation by all Parties;
- (c) Under the guidance of the Conference of the Parties, have authority to:
 - (i) Consider the information communicated in accordance with Article 26 of the Convention (National reports) for the purpose of assessing the overall effectiveness of the measures taken by Parties to meet the objectives of the Convention;
 - (ii) Elaborate and review the [programme of work] [strategic plan] of the Convention;
 - (iii) Review the Memorandum of Understanding between the Conference of the Parties and the Council of the Global Environment Facility as approved by decision III/8 of the Conference of the Parties and, in particular, the guidance given to the financial mechanism;
 - (iv) Consider ways in which to support implementation of the Convention by developing country Parties, in particular the least developed and small island developing States, and other Parties with economies in transition;
 - (v) Identify the most appropriate modalities for the transfer of appropriate technologies and know-how in accordance with the provisions of the Convention;
 - (vi) Assist the Conference of the Parties as appropriate in the preparation and implementation of its decisions; and

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- (vii) Consider administrative and financial matters;]

[26. Decides to establish a mechanism for voluntary review of national programmes and needs relating to implementation of the Convention.]"

2. Panel of Experts on Access and Benefit-sharing

The Inter-Sessional Meeting on the Operations of the Convention,

Recognizing the need to take into account relevant work on access to genetic resources and benefit-sharing in other forums, such as the negotiations on the revision of the International Undertaking on Plant Genetic Resources for Food and Agriculture, while avoiding unnecessary duplication,

1. Emphasizes the importance of the effective implementation of the provisions of the Convention relating to the fair and equitable sharing of benefits arising out of the use of genetic resources, including by appropriate access to those resources;

2. Recognizes the need to integrate access to genetic resources and benefit sharing into the long-term work programme of the Conference of the Parties;

3. Recommends, in relation to the meeting of the Panel of Experts on Access and Benefit-sharing provided for in decision IV/8, that:

I. Preparations for the meeting of the Panel of Experts

(a) Documentation to be provided to the meeting of the Panel of Experts should include a synthesis of case-studies submitted to the Secretariat on access to genetic resources and benefit-sharing;

II. Composition of the Panel of Experts

(b) The participating experts, as defined in paragraph 3 of decision IV/8, should not exceed 50 in number. Representatives of competent intergovernmental organizations, including regional organizations, should participate as observers;

III. Items for the agenda of the meeting of the Panel of Experts

(c) In addressing the issues identified in paragraph 3 and in the annex to decision IV/8 of the Conference of the Parties, the Panel of Experts should consider the following items:

(i) Access and benefit-sharing arrangements for scientific and commercial purposes, including:

- a. Guiding principles or voluntary codes of conduct addressing prior informed consent, mutually agreed terms and ways to promote the disclosure of the country of origin; and

/...

- b. Review and evaluation of examples of existing contractual arrangements for access to genetic resources, including consideration of the benefits to be shared and the mechanisms by which they are shared, for example directly with indigenous and local communities in accordance with national legislation;
 - (ii) Review of legislative, administrative and policy measures at national and regional levels, including:
 - a. How to address prior informed consent when providing access to genetic resources and research and development;
 - b. Consideration of legal and policy measures for fair and equitable benefit-sharing in countries which are using or receiving genetic resources;
 - c. How to address mutually agreed terms for benefit-sharing arrangements, intellectual property rights and technology transfer, where appropriate; and
 - d. Consideration of legislation related to intellectual property rights and sui generis systems;
 - (iii) Review of regulatory procedures and incentive measures, including:
 - a. Efficient mechanisms that avoid burdensome procedures involving high transaction costs;
 - b. Incentive measures to encourage contractual partnerships;
 - c. Other measures to promote fair and equitable sharing of benefits; and
 - d. Identification of basic steps to achieve economic valuation of genetic resources;
 - (iv) Capacity-building. Modalities for capacity-building and training to enable developing countries to identify, assess and add value to genetic resources, as well as to enhance capacity for the negotiation of access and benefit-sharing arrangements. This should include consideration of access to and transfer of relevant technology;
- (d) The following should be considered during the discussions of the Panel of Experts:
 - (i) Identification of benefits arising out of the use of genetic resources in different sectors;
 - (ii) Identification and review of mechanisms currently used to share benefits;

- (iii) The need for new and improved measures for the sharing of benefits, and the implementation of such measures; and
- (iv) The facilitation of access.

3. The relationship between intellectual property rights and the relevant provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs Agreement) and the Convention on Biological Diversity

1. The Inter-Sessional Meeting considered decisions IV/8 and IV/15 of the Conference of the Parties on the need for further work to help develop a common appreciation of the relationship between intellectual property rights and the relevant provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights and the Convention on Biological Diversity.

2. The Inter-Sessional Meeting recognized the linkages, the need to ensure mutual supportiveness between the TRIPs Agreement and the Convention on Biological Diversity and the need to promote synergy between the two agreements.

3. The Inter-Sessional Meeting further recognized that intellectual property rights have implications for the conservation and sustainable use of biological diversity and the fair and equitable sharing of benefits arising from the utilization of genetic resources, and that these implications need to be further explored by the Convention on Biological Diversity to create a better knowledge base for decision making in relevant forums.

4. The Inter-Sessional Meeting further took note of ongoing intergovernmental processes addressing these issues (in forums such as the World Trade Organization, the World Intellectual Property Organization, the Food and Agriculture Organization of the United Nations, the Union for the Protection of New Varieties of Plants) and underlined the need for cooperation in order to avoid duplication of efforts.

5. The Inter-Sessional Meeting recognized the importance and urgency for the Convention on Biological Diversity to achieve observer status in the TRIPs Council of the World Trade Organization (WTO).

6. Possible follow-up activities for the consideration of the Conference of the Parties. The Inter-Sessional Meeting suggested that the Conference of the Parties may wish:

(a) To consider the issue of the relationship between intellectual property rights and the relevant provisions of the TRIPs Agreement and the Convention on Biological Diversity and to develop ways and options to closely follow work done by the World Intellectual Property Organization and the World Trade Organization, and provide inputs to this work when relevant. Such inputs should be based on information-gathering and assessments from the perspective of the Convention on Biological Diversity;

(b) To recognize the importance of systems such as sui generis and others for the protection of traditional knowledge of indigenous and local

communities and the equitable sharing of benefits arising from its use to meet the provisions of the Convention on Biological Diversity, taking into account the ongoing work on Article 8(j) and related provisions, and transmit its findings to the World Trade Organization and the World Intellectual Property Organization;

(c) To invite the World Trade Organization to acknowledge relevant provisions of the Convention on Biological Diversity and take into account the fact that TRIPS provisions and the objectives of the Convention on Biological Diversity are interrelated, and to further explore this interrelationship.

4. Ex situ collections which were acquired prior to the entry into force of the Convention on Biological Diversity and which are not addressed by the Commission on Genetic Resources for Food and Agriculture of the Food and Agriculture Organization of the United Nations

The Inter-Sessional Meeting on the Operations of the Convention,

Taking note of decision IV/8, paragraph 2, adopted at the fourth meeting of the Conference of the Parties to the Convention on Biological Diversity, and the importance of ex situ collections in safeguarding genetic resources, facilitating technology transfer and capacity-building,

Taking into consideration the provisions of Articles 9 and 15 of the Convention on Biological Diversity,

Recalling resolution 3 of the Nairobi Final Act, which recognized "the need to seek solutions to outstanding matters concerning plant genetic resources within the Global System for the Conservation and Sustainable Use of Plant Genetic Resources for Food and Agriculture, in particular (...) access to ex situ collections not acquired in accordance with this Convention", and

Encouraging cooperation with relevant organizations and forums in order to avoid duplication of work and efforts,

1. Recommends to the Conference of the Parties to continue the information-gathering exercise by requesting the Executive Secretary to gather available information of the type described in the annexes to the present recommendation, as appropriate, the result of which will be reported to the Conference of the Parties. This exercise would be carried out through, inter alia, asking relevant organizations and forums (such as the World Federation for Culture Collections and the Botanic Gardens Conservation International), which are already involved in consideration of these issues to provide this information and, where necessary, through a questionnaire*, which will be developed by the Executive Secretary, based on the annexes to the present recommendation;

* The Inter-Sessional Meeting notes that responses to the questionnaire are voluntary. The Inter-Sessional Meeting recommends that any questionnaire developed by the Executive Secretary would be piloted before being distributed.

2. Further recommends to the Conference of the Parties that it may wish to consider for application on a voluntary basis by the holders of such collections:

(a) The facilitation of capacity-building and technology development and transfer for the maintenance and utilization of ex situ collections;

(b) The development on a sectoral basis of principles of access and benefit-sharing;

3. Recommends that, based on the information-gathering exercise as set out in paragraph 1 of the present recommendation, the Conference of the Parties may wish to consider this matter further.

Annex I

ELEMENTS FOR A QUESTIONNAIRE ON EX SITU COLLECTIONS

A questionnaire to solicit the relevant information may contain the following elements:

1. Number, types and status, including legal status and institutional links, of relevant collections;

2. Approximate number of accessions acquired, prior to the entry into force of or not in accordance with the Convention on Biological Diversity (<100; >100; >1000; other);

3. Whether the following information is likely to be available: country of origin; name of depositor; date of deposit; terms of access under which the material is available (All available; Some available; None available);

4. Any relevant policies regarding collections that are not addressed by the FAO Commission on Genetic Resources for Food and Agriculture, where appropriate, in particular those addressing the issue of access to the relevant collections, including matters relating to repatriation of information and repatriation of duplicates of germplasm collections;

5. Information regarding the number of requests for information and the exchange of germplasm;

6. Details of the benefits from shared germplasm and information on costs of maintaining such collections;

7. Any other relevant information.

Annex IIQUESTIONNAIRE ON EX SITU COLLECTIONSObjective

To inform consideration of the implementation of the Convention on Biological Diversity by ex situ collections

1. Information on collections

	<u>Number of accessions</u>			
	<u>Pre-Convention on Biological Diversity</u>		<u>Post-Convention on Biological Diversity</u>	
	<u>Public</u>	<u>Private</u>	<u>Public</u>	<u>Private</u>
PLANT GENETIC RESOURCES seed gene banks: field collections: (e.g. botanic gardens and arboreta) other: (e.g. DNA, pollen in cold storage, tissue cultures, herbaria)				
ANIMAL GENETIC RESOURCES Whole animal collections: (e.g. zoological gardens; rare breed collections) other: (e.g. DNA, semen, ova in cold storage)				
MICROBIAL GENETIC RESOURCES culture collections: other:				

2. Information on pre-Convention on Biological Diversity collections

(Information to be differentiated between plant genetic resources, animal genetic resources and microbial genetic resources.)

/...

Is information available on:					
	For all accessions	For most accessions	For some accessions	For few accessions	For no accessions
country of origin					
name of depositor					
date of deposit					
user institution/country					

3. Conditions/restrictions on access and use

(Information to be differentiated between plant genetic resources, animal genetic resources and microbial genetic resources.)

- a. Description of the main conditions/restrictions (including those contained in national law, those set by the collections themselves and those set by depositors) on access to and use of genetic resources identified separately, if appropriate, for pre-Convention on Biological Diversity and post-Convention on Biological Diversity material.
- b. What limitations, if any (legal or practical), are there on applying the provisions of the Convention on Biological Diversity to the supply of pre-Convention on Biological Diversity materials for collections in your country?

4. Use of collections

(Information to be differentiated between plant genetic resources, animal genetic resources and microbial genetic resources.)

Information on the number of requests for genetic resources and for information differentiated by type of collection (public/private) and by the source of the request (national/foreign; public/private).

5. Additional information

(Information to be differentiated between plant genetic resources, animal genetic resources and microbial genetic resources.)

Any additional relevant information on other key characteristics of collections, for example:

- Focus on medicinal plants, certain families/genera/species, emphasis on economic importance, certain ecosystems (e.g. drylands);

/...

- Whether the accessions are duplicated elsewhere (for conservation purposes and to determine the genetic diversity of collections world-wide).
