

# **SECTION VIII**

## DECLARATIONS



# Declarations

*Unless otherwise indicated, the declarations were made upon ratification, accession, acceptance or approval.*

## **Algeria and Niger**

*Declaration: (Upon adoption)*

1. The Saharo-Sahelian region hosts several species of wild animals. Currently, there is little information and knowledge on the status and distribution of these rare and endangered species.
2. Some of these species such as the addax, the algazel oryx, the maned moufflon, the dam gazelle and the slender-horned gazelle are considered to be disappearing.
3. In this light, it appears necessary to take an initiative to protect them.
4. With this in mind, Algeria and the Niger are proposing to hold a seminar on the protection of Saharo-Sahelian fauna with a view to considering the possibility of adopting a protocol on the subject.
5. The countries that may be interested are those that share the arid and semi-arid areas of West and North Africa.
6. This protocol of agreement would be of great importance for the conservation of biological diversity and could offer prospects for cooperation among the States concerned through regional projects.

## **Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Italy, Japan, Malta, Netherlands, New Zealand, Portugal, Spain, Switzerland, United Kingdom and United States.**

*Declaration: (Upon adoption)*

Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Italy, Japan, Malta, Netherlands, New Zealand, Portugal, Spain, Switzerland, the United Kingdom and the United States of America state their understanding that the decision to be taken by the Conference of the Parties under Article 21, paragraph 1, of the Convention refers to the “amount of resources needed” by the financial mechanism, not to the extent or nature and form of the contributions of the Contracting Parties.

## **Argentina**

*Declaration:*

The Argentine Government considers that this Convention represents a step forward in that it establishes among its objectives the sustainable use of biological

diversity. Likewise, the definitions contained in article 2 and other provisions of the Convention indicate that the terms ‘genetic resources’, ‘biological resources’ and ‘biological material’ do not include the human genome. In accordance with the commitments entered into in the Convention, the Argentine Nation will pass legislation on the conditions of access to biological resources and the ownership of future rights and benefits arising from them. The Convention is fully consistent with the principles established in the ‘Agreement on trade-related aspects of intellectual property rights’, including trade in counterfeit goods, contained in the Final Act of the Uruguay Round of GATT.

## **Austria**

### *Declaration:*

The Republic of Austria declares in accordance with article 27, paragraph 3 of the Convention that it accepts both of the means of dispute settlement mentioned in this paragraph as compulsory in relation to any Party accepting an obligation concerning one or both of these means of dispute settlement.

## **Chile**

### *Declaration: (Upon adoption)*

The delegation of Chile wishes to state that its agreement to Article 22, on the relationship with other international conventions, was based on a desire not to block the existing consensus, although it would have preferred that the Article did not appear in this Convention. The Government of Chile hopes that the content and scope of this Article will be thoroughly studied within the framework of the Conference of the Parties.

### *Declaration:*

The Government of Chile, on ratifying the Convention on Biological Diversity of 1992, wishes to place on record that the pine tree and other species that the country exploits as one of its forestry resources are considered exotic and are not taken to fall within the scope of the Convention.

## **Colombia**

### *Declaration: (Upon adoption)*

1. A thorough review of the text we are adopting today by a consensus to which Colombia was party reveals areas on which we must confirm and specify our position, with a view to strengthening the Convention in the near future and making it more useful with respect to the concerns of developing countries such as our own.
2. First, with respect to the principle laid down in the third article of the Convention, our country shares its spirit but interprets the text to mean that no country shall be responsible for activities carried out beyond the control of its Government, within its national jurisdiction, which cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

3. Secondly, our country welcomes the full recognition within the Convention of the knowledge, innovations and practices of indigenous communities, but considers that such communities must be fully guaranteed participation in the benefits arising from the use of such knowledge, innovations and practices and not only that such participation should be encouraged, as the text of the Convention rather weakly states. We therefore believe a future instrument under the Convention should endeavour to improve on this point.

4. Furthermore, Colombia questions the inclusion in the Convention of an article laying down the relationship with other international treaties, since this matter falls under the Vienna Convention on the Law of Treaties and also because the Article refers to another legal instrument that has still not entered into force.

## Cuba

### *Declaration:*

The Government of the Republic of Cuba declares, with respect to article 27 of the Convention on Biological Diversity, that as far as the Republic of Cuba is concerned, disputes that arise between Parties concerning the interpretation or application of this international legal instrument shall be settled by negotiation through the diplomatic channel or, failing that, by arbitration in accordance with the procedure laid down in Annex II on arbitration of the Convention.

## Denmark, Finland, Sweden and Norway

### *Declaration: (Upon adoption)*

1. The Nordic countries stress that concept and idea of national action plans for the conservation and sustainable use of biological diversity is an important implementation tool to fulfill the obligations under the Convention. Without strong national commitments, the Convention will not achieve its objectives.

2. The Nordic countries would also like to stress the special obligations of developed countries to contribute financially and technologically to enable developing countries to fulfill their obligations under the Convention. The highly different socio-economic conditions and the enormous differences in the amount of biological diversity found in various countries, must be taken into account. A fair international burden sharing according to each country's means and needs is therefore absolutely crucial for the ultimate achievement of the objectives of the Convention.

3. The Nordic countries will continue full participation in and contribution to the work for the conservation and sustainable use of biological diversity worldwide. The Nordic countries urge all countries of the world to sign the Convention in Rio de Janeiro and to ratify it as soon as possible.

## European Community

### *Declaration:*

Within their respective competence, the European Community and its Member States wish to reaffirm the importance they attach to transfers of technology and

to biotechnology in order to ensure the conservation and sustainable use of biological diversity. The compliance with intellectual property rights constitutes an essential element for the implementation of policies for technology transfer and co-investment.

For the European Community and its member States, transfers of technology and access to biotechnology, as defined in the text of the Convention on Biological Diversity, will be carried out in accordance with article 16 of the said Convention and in compliance with the principles and rules of protection of intellectual property, in particular multilateral and bilateral agreements signed or negotiated by the Contracting Parties to this Convention.

The European Community and its Member States will encourage the use of the financial mechanism established by the Convention to promote the voluntary transfer of intellectual property rights held by European operators, in particular as regards the granting of licences, through normal commercial mechanisms and decisions, while ensuring adequate and effective protection of property rights.

## France

### *Declaration: (Upon adoption)*

1. France expected practical and sound provisions to strengthen the conservation of biodiversity. Such provisions are few and too vague. In this respect, it seemed to stand to reason to include a provision existing in several conventions (World Heritage and Biosphere Reserve of UNESCO, Ramsar, CITES) in a convention on biological diversity: we refer to global lists. France regrets that the manner in which the text of the Convention was adopted did not allow it to make a compromise proposal on the question of the global approach to biological diversity.

2. The difference of outlook on the part of some delegations towards a provision that France regarded as essential, together with the way in which the text of the Convention under-values the scientific approach, force France to refrain from initiating the Final Act of the Conference.

### *Declaration: (Upon signature)*

With reference to article 3, that it interprets that article as a guiding principle to be taken into account in the implementation of the Convention;

With reference to article 21, paragraph 1, that the decision taken periodically by the Conference of the Parties concerns the ‘amount of resources needed’ and that no provision of the Convention authorizes the Conference of the Parties to take decisions concerning the amount, nature or frequency of the contributions from Parties to the Convention.

### *Declaration:*

With reference to article 3, that it interprets that article as a guiding principle to be taken into account in the implementation of the Convention;

The French Republic reaffirms its belief in the importance of the transfer of technology and biotechnology in guaranteeing the protection and long-term utilization

of biological diversity. Respect for intellectual property rights is an essential element of the implementation of policies for technology transfer and co-investment.

The French Republic affirms that the transfer of technology and access to biotechnology, as defined in the Convention on Biological Diversity, will be implemented according to article 16 of that Convention and with respect for the principles and rules concerning the protection of intellectual property, including multilateral agreements signed or negotiated by the Contracting parties to the present Convention.

The French Republic will encourage recourse to the financial mechanism established by the Convention for the purpose of promoting the voluntary transfer of intellectual property rights under French ownership, *inter alia*, as regards the granting of licences, by traditional commercial decisions and mechanisms while ensuring the appropriate and effective protection of property rights.

With reference to article 21, paragraph 1, the French Republic considers that the decision taken periodically by the Conference of the Parties concerns the ‘amount of resources needed’ and that no provision of the Convention authorizes the Conference of the Parties to take decisions concerning the amount, nature or frequency of the contributions from Parties to the Convention.

## Georgia

### *Declaration:*

The Republic of Georgia will use both means for dispute settlement referred to in the Convention:

1. Arbitral consideration in accordance with the procedure given in the enclosure II, Part I.
2. Submitting of disputes to the International Court.

## India

### *Declaration: (Upon adoption)*

1. The Government of India is of the view that the issue of liability and compensation for damage to biological diversity, referred to in Article 14, paragraph 2, of the Convention, is not a priority area of work to be addressed by the Conference of the Parties. There is lack of clarity as regards the subject matter and the scope of the studies referred to in that Article. It also believes that the focus of the studies referred to and relating to liability and compensation should be on subjects such as biotechnology products, the environmental impacts or effects of genetically modified organisms, and acid rain.
2. As regards Article 22, paragraph 1, of the Convention, it is the clear understanding of the Government of India that reference to “any existing international agreement means “any existing international agreement compatible with the conservation and sustainable use of biological diversity.”
3. It is also the understanding of the Government of India that the “institutional structure” referred to in Article 39 of the Convention and the “mechanism” referred

to in Article 21 are identical. Moreover, the phrase “Provided that it has been fully restructured in accordance with the requirements of Article 21” implies that for the Global Environment Facility to be the interim institutional structure per Article 39 would require that it shall (a) function under the authority and guidance of, and be accountable to, the Conference of the Parties; (b) operate within a democratic and transparent system of governance; and (c) have universal membership.

## **Ireland**

### *Declaration:*

Ireland wishes to reaffirm the importance it attaches to transfers of technology and to biotechnology in order to ensure the conservation and sustainable use of biological diversity. The compliance with intellectual property rights constitutes an essential element for the implementation of policies for technology transfer and co-investment. For Ireland, transfers of technology and access to biotechnology, as defined in the text of the Convention on Biological Diversity and in compliance with the principles and rules of protection of intellectual property, in particular multilateral and bilateral agreements signed or negotiated by the contracting parties to this Convention. Ireland will encourage the use of the financial mechanism established by the Convention to promote the voluntary transfer of intellectual property rights held by Irish operators, in particular as regards the granting of licences, through normal commercial mechanisms and decisions, while ensuring adequate and effective protection of property rights.

## **Italy**

### *Declaration made upon signature and confirmed upon ratification:*

The Italian Government [...] declares its understanding that the decision to be taken by the the Conference of the Parties under article 21.1 of the Convention refers to the ‘amount of resources needed’ by the financial mechanism, not to the extent or nature and form of the contributions of the Contracting Parties.

## **Latvia**

### *Declaration:*

The Republic of Latvia declares in accordance with article 27 paragraph 3 of the Convention that it accepts both the means of dispute settlement mentioned in this paragraph as compulsory.

## **Liechtenstein**

### *Declaration:*

The Principality of Liechtenstein wishes to reaffirm the importance it attaches to transfers of technology and to biotechnology in order to ensure the conservation and sustainable use of biological diversity. The compliance with intellectual property rights constitutes an essential element for the implementation of policies for technology transfer and co-investment.

For the Principality of Liechtenstein, transfers of technology and access to biotechnology, as defined in the text of the [said] Convention, will be carried out in accordance with article 16 of the said Convention and in compliance with the principles and rules of protection of intellectual property, in particular multilateral and bilateral agreements signed or negotiated by the Contracting Parties to this Convention.

The Principality of Liechtenstein will encourage the use of the financial mechanism established by the Convention to promote the voluntary transfer of intellectual property rights held by Liechtenstein operators, in particular as regards the granting of licenses, through normal commercial mechanisms and decisions, which ensuring adequate and effective protection of property rights.

## Malawi

*Declaration: (Upon adoption)*

1. Malawi will sign the Convention on Biological Diversity because she strongly believes that this instrument will save the ever-declining conservation and sustainable utilization of biological diversity, especially in the developing countries. We feel that the mechanisms that have been developed in the various articles of this Convention, namely, access to and transfer of relevant technologies, provision of new and additional financial resources to developing countries, and fair and equitable sharing of the benefits arising out of the utilization of genetic resources will achieve the underlying aims of the Convention.

2. Malawi attaches great importance to the protection and sustainable use of all forms of biological resources. We agree with the policy of involving the public in the protection of the country's biological resources, especially those communities living near protected areas (national parks and forest reserves) where a number of conservation economic activities have been initiated.

3. Malawi endorses the sovereign right of each state to exploit its own biological resources in accordance with its policies, but each Contracting Party as a State has a responsibility for the Conservation and sustainable use of its biological resources.

## Malaysia

*Declaration: (Upon adoption)*

1. My delegation wishes to state that the terms of reference of technology referred to in Article 16, paragraph 2, do not fully reflect the position of my country which requires that such transfer should be specifically on concessional and preferential terms.

2. Our reservation on Article 39, on financial interim arrangements, are recorded in the draft report of the sixth plenary meeting in document UNEP/Bio.Div/N7-INC.5/L.1/Add.3 and reads as follows:

“The Malaysian delegation always maintained that we do not see any role for the GEF in this Convention. It has always been our clear position that the Convention should have its own specific funds, called the Biological Diversity Fund. In view of that, we wish to express our reservations in the strongest terms that the GEF has been accepted into the

draft of the Convention, even on an interim basis. As we all know, in spite of our best efforts and intentions, these interim measures have the habit of becoming permanent features.”

3. While concurring with the consensus on Article 19 of the Convention dealing with handling of biotechnology and distribution of its benefits, the delegation of Malaysia understands the term “living modified organisms” to mean “genetically modified organisms.”

## **Papua New Guinea**

### *Declaration:*

The Government of the Independent State of Papua New Guinea declares its understanding that ratification of the Convention shall in no way constitute a renunciation of any rights under International Law concerning State responsibility for the adverse effects of Biological Diversity as derogating from the principles of general International Law.

## **Peru**

### *Declaration: (Upon adoption)*

1. Article 2 lacks a definition of the term “conservation of biological diversity,” which should cover the preservation of integral protection, maintenance, sustainable use and recovery of its components.
2. In Article 19, paragraph 3, there is no express mention of the human being within the scope of this paragraph, that is, the protection of the human being from the adverse effects that may be produced by living organisms modified by biotechnology.
3. In paragraph (j) of Article 8 (“*In situ* Conservation), the equitable distribution of the benefits should be stipulated, with a change in the word “encourage.”

## **Saudi Arabia**

### *Declaration: (Upon adoption)*

1. The delegation of my country would like to extend its congratulations and thanks to your Excellency, the Executive Director, the bureau, the secretariat and to our colleagues in the INC, for what they have achieved. We would like also to extend our thanks to the Kenyan Government for its hospitality.
2. Due to the fact that the weekend in my country is on Thursday and Friday, it was very difficult for me to communicate the changes made, particularly on Article 21 of the Convention, to my Government. Hence, I could not manage to obtain instructions from it. Therefore, I would like to put the following on record.
3. My acceptance to adopt the text of this Convention to be open for signature in Rio de Janeiro is my sole personal responsibility. However, this does not imply that the Government would not sign the Convention.

## Sudan

### *Understanding:*

‘With respect to the principle stipulated in Article 3, the Government of the Sudan agrees with the spirit of the article and interprets it to mean that no state is responsible for acts that take place outside its control even if they fall within its judicial jurisdiction and may cause damage to the environment of other states or of areas beyond the limits of national judicial jurisdiction.’

‘The Sudan also sees as regards Article 14(2), that the issue of liability and redress for damage to biological diversity should not form a priority to be tackled by the Agreement as there is ambiguity regarding the essence and scope of the studies to be carried out, in accordance with the above-mentioned article. The Sudan further believes that any such studies on liability and redress should shift towards effects of areas such as biotechnology products, environmental impacts, genetically modified organisms and acid rains.’

## Switzerland

### *Declaration: (Upon signature)*

The Swiss Government wishes to emphasize particularly the progress made in establishing standard terms for cooperation between States in a very important field: research activities and activities for the transfer of technology relevant to resources from third countries.

The important provisions in question create a platform for even closer cooperation with public research bodies or institutions in Switzerland and for the transfer of technologies available to governmental or public bodies, particularly universities and various publicly-funded research and development centres.

It is our understanding that genetic resources acquired under the procedure specified in article 15 and developed by private research institutions will be the subject of programmes of cooperation, joint research and the transfer of technology which will respect the principles and rules for the protection of intellectual property. These principles and rules are essential for research and private investment, in particular in the latest technologies, such as modern biotechnology which requires substantial financial outlays. On the basis of this interpretation, the Swiss Government wishes to indicate that it is ready, at the opportune time, to take the appropriate general policy measures, particularly under articles 16 and 19, with a view to promoting and encouraging cooperation, on a contractual basis, between Swiss firms and the private firms and governmental bodies of other Contracting Parties.

With regard to financial cooperation, Switzerland interprets the provisions of articles 20 and 21 as follows: the resources to be committed and the management system will have regard, in an equitable manner, to the needs and interests of the developing countries and to the possibilities and interests of the developed countries.

### *Declaration:*

Switzerland wishes to reaffirm the importance it attaches to transfers of technology and to biotechnology in order to ensure the conservation and sustainable use

of biological diversity The compliance with intellectual property rights constitutes an essential element for the implementation of policies for technology transfer and co-investment.

For Switzerland, transfers of technology and access to biotechnology, as defined in the text of the Convention on Biological Diversity, will be carried out in accordance with article 16 of the said Convention and in compliance with the principles and rules of protection of intellectual property, in particular multilateral and bilateral agreements signed or negotiated by the Contracting Parties to this Convention.

Switzerland will encourage the use of the financial mechanism established by the Convention to promote the voluntary transfer of intellectual property rights held by Swiss operators, in particular as regards the granting of licences, through normal commercial mechanisms and decisions, while ensuring adequate and effective protection of property rights.

### **Syrian Arab Republic**

*Declaration: (Upon signature)*

It is being understood that the signing of this Convention shall not constitute recognition of Israel or leading to any intercourse with it.

### **United Kingdom of Great Britain and Northern Ireland**

*Declaration made upon signature and confirmed upon ratification:*

The Government of the United Kingdom of Great Britain and Northern Ireland declare their understanding that article 3 of the Convention sets out a guiding principle to be taken into account in the implementation of the Convention.

The Government of the United Kingdom of Great Britain and Northern Ireland also declare their understanding that the decisions to be taken by the Conference of the Parties under paragraph 1 of article 21 concern ‘the amount of resources needed’ by the financial mechanism, and that nothing in article 20 or 21 authorises the Conference of the Parties to take decisions concerning the amount, nature, frequency or size of the contributions of the Parties under the Convention.

### **United States of America**

*Declaration: (Upon adoption)*

1. In signing the Final Act, the United States recognizes that this negotiation has drawn to a close.
2. The United States strongly supports the conservation of biodiversity and, as is known, was an original proponent of a convention on this important subject. We continue to view international cooperation in this area as extremely desirable.
3. It is deeply regrettable to us that—whether because of the haste with which we have completed our work or the result of substantive disagreement—a number of issues of serious concern in the United States have not been adequately addressed in the course of this negotiation. As a result, in our view, the text is seriously flawed in a number of important respects.

4. As a matter of substance, we find particularly unsatisfactory the text's treatment of intellectual property rights; finances, including, importantly, the role of the Global Environment Facility (GEF); technology transfer and biotechnology.
5. In addition, we are disappointed with the development of issues related to environmental impact assessments, the legal relationship between this Convention and other international agreements, and the scope of obligations with respect to the marine environment.
6. Procedurally, we believe that the hasty and disjointed approach to the preparation of this Convention has deprived delegations of the ability to consider the text as a whole before adoption. Further, it has not resulted in a text that reflects well on the international treaty-making process in the environmental field.