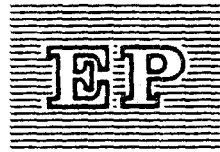




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AD HOC WORKING GROUP OF LEGAL AND
TECHNICAL EXPERTS ON BIOLOGICAL
DIVERSITY

Third session

Madrid, 24 June - 3 July 1991

UNISA COLLECTION

REVISED DRAFT CONVENTION
ON BIOLOGICAL DIVERSITY

Explanatory Note

A draft Convention on Biological Diversity, prepared by the UNEP secretariat, was discussed by the Ad hoc Working Group of Legal and Technical Experts on Biological Diversity at its second session (Nairobi, 25 February - 6 March 1991).

The draft has been revised and completed by including articles that were not in the original draft in accordance with:

(a) The instructions of the Ad hoc Working Group of Legal and Technical Experts on Biological Diversity at its second session, in particular Sub-Working Groups I and II (SWG I and SWG II); and

(b) The proposals of the Bureau (see UNEP/Bio.Div/WG.2/2/5, paragraphs 55, 74 and 82).

The revised draft was reviewed in Geneva 11-13 April 1991 by a group of lawyers representing a balance between the different regions, as requested by the Ad hoc Working Group of Legal and Technical Experts on Biological Diversity at its second session (UNEP/Bio.Div/WG.2/2/5, paragraph 82 (b)). As time did not allow for consideration of the revised draft in its entirety, the lawyers' meeting focused on the Preamble and Articles 1, 2, 3, 4-6 and 14-17. The lawyers' meeting placed emphasis on cleaning up the legal language, placing provisions in the appropriate articles and attempting to make the revised draft a more coherent whole. The paper "Points Identified by the Secretariat as Repetitions and Inconsistencies in the Draft Convention" (UNEP/Bio.Div/WG.2/2/L.4) was considered, in order to facilitate the deletion, merging or relocating of provisions. At their meeting the lawyers respected their limited mandate and were careful not to make substantive changes to the revised draft. Changes and recommendations from the lawyers' meeting are footnoted throughout the present text. In the interest of internal consistency, the lawyers' meeting retained the format of Articles 14-17 and recommended that the Articles not be divided into the subheadings of scope, purpose, principles, conditions and measures (see UNEP/Bio.Div/WG.2/2/5, paragraph 74 (1)). Such a division is available in the Note to Facilitate Understanding of Issues Contained in Articles Under Consideration by Sub-Working Group II (UNEP/Bio.Div/WG.2/3/7) to aid the discussion of Sub-Working Group II and was referred to by the lawyers' meeting when clarification was desired concerning the focus of a particular provision.

The lawyers' meeting felt it is premature to elaborate the provisions of Article on Definitions. The Preliminary Note on the Concepts Contained in Some of the Key Terms and Phrases in the Articles Assigned to Sub-Working Group II (UNEP/Bio.Div/WG.2/3/6) may provide a useful starting point for this Article.

The lawyers' meeting further recommended that chapter headings be removed in the revised draft and to instead give each article a proper title. The lawyers' meeting also felt that the Ad hoc Working Group while elaborating the revised draft Convention should pay attention to further restructuring the Convention including relocation of articles with the aim of achieving better structural consistency.

Articles 18 and 19 on Financial Mechanisms, though renumbered, remain as they were in the original draft Convention. Instead of revising the text, the secretariat, as instructed by the Ad hoc Working Group of Legal and Technical Experts on Biological Diversity at its second session, has provided a Note in Treaty Language Containing the Different Options for a Financial Mechanism Based on Solutions Adopted in Other Conventions and Other Multilateral Financial Mechanisms (UNEP/Bio.Div/WG.2/3/8). A background document on existing financial mechanisms and their relevance to biological diversity has also been prepared by the Secretariat (UNEP/Bio.Div/WG.2/3/4).

The following Articles have been drafted on the basis of relevant parts of the elements considered by the Ad hoc Working Group of Legal and Technical Experts on Biological Diversity at its first session (UNEP/Bio.Div/WG.2/1/3) as well as the relevant provisions of existing legal instruments and drafts:

- The Effect of International Conventions (Article 20);
- International Co-operation (Article 22);
- Conference of the Parties (Article 23);
- Secretariat (Article 24);
- Scientific Committee (Article 25);
- Reports (Article 26);
- Operational Costs (Article 27);
- Settlement of Disputes (Article 28);
- Adoption of Protocols (Article 29);
- Amendment of the Convention or Protocols (Article 30);
- Adoption and Amendment of Annexes (Article 31);
- Relationship between the Convention and its Protocols (Article 32);
- Signature (Article 33);
- Ratification, Acceptance, Approval (Article 34);
- Accession (Article 35);
- Entry into Force (Article 36);
- Reservations (Article 37);
- Withdrawal (Article 38); and
- Depository (Article 39).

To ease review all direct reference to source material has been removed.

The goal of this and subsequent revisions is to arrive at a concise, coherent legal text.

Preamble

The Contracting Parties,

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

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

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

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

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

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

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

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

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

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

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

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