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Biological Diversity

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SECOND REVISED DRAFT CONVENTION  
ON BIOLOGICAL DIVERSITY

Explanatory Note

A revised draft convention on biological diversity was presented to the third session of the Intergovernmental Negotiating Committee for a Convention on Biological Diversity (INC) (Madrid, 24 June - 3 July 1991).

The second revised draft convention on biological diversity contains articles revised by the Working Groups I and II at the Madrid meeting. Specifically, Working Group I revised Articles 1, 3 and 4. Working Group II, revised Articles 14-19 and drafted two new articles, Article 15 *bis* - Exchange of Information - and Article 17 *bis* - Handling of Biotechnology and Distribution of Benefits. These articles were adopted by the meeting in Madrid as the basis for future negotiations.

The third session of the INC requested the regionally balanced group of lawyers (the Lawyers' Meeting) to continue their work and review and revise the articles not discussed at their previous meeting (Geneva, 11-13 April 1991) and not discussed in Madrid. The Lawyers' Meeting met in Geneva from 8-11 July 1991 and completed its task of reviewing and revising Articles 7-13 and 20-39 of the revised draft convention. Three new articles were added: Article 23 *bis* - Procedures for Global Lists; Article 32 - Right to Vote - and Article 41 - Authentic Texts. Where explanation for a revision was considered desirable the Lawyers' Meeting inserted a footnote.

In reviewing the remaining articles the Lawyers' Meeting felt the following terms require further elaboration on their definition or usage:

- Conservation;
- Endangered species;
- Threatened species;
- Species;
- Indigenous populations;
- Customary/traditional use;
- Global List of Biogeographic Areas of Particular Importance for the Conservation of Biological Diversity;
- Global List of Species Threatened with Extinction at the Global Level;
- Development of the components of biological diversity;
- Regional economic integration organization.

The Lawyers' Meeting noted that discussion of the usage or definition of the above terms did not necessarily mean that it would be desirable to include these terms in Article 2 in the final version of the convention. However, they were of the opinion that the working definitions for the above terms would be useful even for the purpose of negotiations.

Preamble

The Contracting Parties,

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

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

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

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

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

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

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

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

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

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

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

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

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

/...

*Acknowledging* that special provision is required to meet the needs of developing countries, including the provision of additional financial resources and access to relevant technologies, bearing in mind that the funds can be expected to make a substantial difference in the world's ability to address the loss of biodiversity;

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

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

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

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

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

Have agreed as follows:

#### Article 1. Objectives

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

Article 2. Use of Terms for the Purpose of this Convention. <sup>1</sup>

#### Article 3. Fundamental Principles

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

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

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<sup>1</sup> To be elaborated at a later stage.

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

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

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

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

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

5. While recognizing that remedying damage to biological diversity is important, it is vital to anticipate, prevent and attack the causes of reduction or loss of biological diversity at source.

6. Where there is a threat of [serious or irreversible damage to] [significant reduction or loss of] biological diversity, lack of full scientific certainty shall not be used as a reason for postponing [measures] [actions] to avoid or minimize such a threat.

7. The value of the contribution of biological resources and of maintenance of biological diversity and the uneven distribution of these resources among countries are to be recognized and reflected in economic and financial arrangements among them, with the countries benefiting most from biological diversity carrying the main responsibility for the cost of its conservation.

8. The benefits of research and development derived from biomaterial taken from developing countries are to be made available to those developing countries.

9. Technology related to conservation of biological diversity and the sustainable use and development of its components is to be transferred to developing countries on a preferential and noncommercial basis.

10. Technology related to conservation of biological diversity and the sustainable use and development of biological resources is to be developed jointly by the owners of the resources and those with financial, scientific and technical resources.

11. Those responsible for activities which threaten or could [damage] [cause significant loss of] biological diversity are responsible for the costs of avoiding that threat or damage and for remedial action directly or through financing where damage occurs.

12. Countries are to gain directly from all the contributions that biological resources within their jurisdiction or control make to environment protection, economic development and better health and quality of life in other countries.

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13. Practices and innovations developed in the course of traditional life and by indigenous [peoples] [communities] [populations] which contribute to the wise and sustainable use of biological resources and conservation of biological diversity are to be recognized and rewarded.

14. The additional burden on developing countries arising out of protection of their biological diversity requires new and additional funding to be provided by the developed countries through a new multilateral fund to be established under this convention.

15. Access to genetic material and substances and products derived from them or to technology related or contributing to the conservation of biological diversity which are within the jurisdiction or control of a State is to be [open] [on the basis of mutual agreements].<sup>2</sup>

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

17. Patent systems may have unwanted socioeconomic effects for developing countries and small farmers.

18. Biotechnology contributes to the conservation and sustainable use of biodiversity, which requires a wide genetic base.<sup>3</sup>

#### Article 4. General Obligations

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

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

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

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

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<sup>2</sup> The Lawyers' Meeting recommended that the term "biological resources" be replaced by "genetic material". This would be consistent with Article 14.

<sup>3</sup> As recommended by Lawyers' Meeting, if retained, paragraphs 20, 21 and 22 should be relocated in the Preamble since they are statements of facts.

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Article 5. Implementation Measures

1. Each Contracting Party shall develop a national action plan in fulfilment of its obligations under this Convention, which should include [so far as possible, and as appropriate for each State] the measures set out in Articles 5-12.<sup>4</sup>
2. In considering the adoption and method and rate of implementation of specific measures, the Contracting Parties may adjust their actions to take account of national plans and priorities.<sup>5</sup>
3. Each Contracting Party shall report [as requested by the Secretariat] [as agreed by the Conference of the Parties] [regularly] on [its action plan and progress with its implementation] [which measures it is adopting for the conservation of biological diversity and progress with their implementation].
4. The Contracting Parties shall monitor and report on the state of biological diversity, including specific references to endangered species within their jurisdiction and control.

#### Article 6. In-situ Conservation

The Contracting Parties shall:

- (a) Identify areas requiring conservation measures which include, *inter alia*, most representative or peculiar ecosystems, contain substantial biological diversity, large numbers of species or endemic, rare or endangered species and wild relatives of domesticated or cultivated species, and species identified pursuant to any international agreement, including this Convention, as requiring conservation measures or which a migratory species inhabits, stays in temporarily, crosses or overlies at any time on its normal migratory route, and establishment of corresponding protected areas;<sup>6</sup>
- (b) Develop guidelines where appropriate and necessary for the selection, establishment and management of systems of protected areas, including wildlife corridors and networks of protected areas;
- (c) Regulate the use of biological resources, including wild species, to ensure their conservation and sustainable use and development whether within or outside protected areas;
- (d) Provide financial and other assistance for new and existing programmes supporting the protection of ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings, with particular attention to technology and the needs of developing countries;
- (e) Establish special areas for economic development around or associated with protected areas, to facilitate compliance with the protection arrangements;

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<sup>4</sup> The presence of the bracketed language in article 5, paragraph 1, allowed the streamlining of the chapeau of articles 6-12.

<sup>5</sup> In the view of Lawyers' Meeting, if the phrase "subject to national plans and priorities" is to be retained in Article 4.1 (a) and (b), it would no longer be necessary to retain this paragraph.

<sup>6</sup> In the view of the lawyers' meeting consideration should be given to a shorter version of this paragraph which covers the same material but without a specific list. For example, "Identification of areas requiring conservation measures for the conservation of biological diversity and the establishment of corresponding protected areas."

(f) Adopt [appropriate] plans for the recovery, rehabilitation, management and sustainable use and development of ecosystems, natural habitats and species [as far as possible, and as appropriate for each Contracting Party];

(g) Regulate the development and release of genetically modified organisms and of the release and use of alien species;

(h) Eradicate or control of alien species which threaten ecosystems, habitats or species;

(i) Provide legal and economic conditions favouring land uses and management compatible with the conservation of biological diversity and the sustainable use and development of its components, including comprehensive land use plans and financial and other support to developing countries to foster these conditions;

(j) Establish systematic recording and use of the knowledge of indigenous [populations] [peoples] [communities] relevant to the conservation of biological diversity and the sustainable use and development of its components.

#### Article 7. Ex-situ Conservation

The Contracting Parties shall:

(a) Adopt individually or jointly with other States directly or through international organizations policies, strategies and programmes for the conservation of species *ex-situ*, with particular regard to species which are:<sup>7</sup>

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

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<sup>7</sup> Article 7, paragraph (a) uses the term "States" unlike the use of the phrase "Contracting Parties" in original paragraph (b) of the same article and article 8 (b). The Lawyers' Meeting felt the different references were probably not intentional and therefore not meant to convey different meanings. The language of the provisions was made consistent.

(viii) Identified on any other relevant basis as requiring conservation measures;<sup>8</sup>

to complement *in-situ* measures;

(b) Establish individually or jointly with other States directly or through international organizations facilities for research *ex-situ* conservation, including museums, botanic gardens, zoos, seed and gene banks;

(c) Collect information in local and [indigenous] communities and among indigenous [populations] [peoples] of the uses and values of species;<sup>9</sup>

(d) Adoption of policies, strategies and programmes individually or jointly with other States directly or through international organizations for the recovery and rehabilitation of endangered species, and for the reintroduction of species into natural habitats, particularly where providing adequate *ex-situ* facilities to conserve the species is impracticable or not feasible;

(e) Regulation of the surveying and collection of biomaterial from natural habitats for *ex-situ* conservation purposes so as not to threaten ecosystems and *in-situ* populations of species;

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

#### Article 8. Sustainable Use of Components of Biological Diversity<sup>10</sup>

The Contracting Parties shall:

(a) Establish procedures, including use of national strategies and other suitable measures, for the integration of conservation of biological resources into domestic decision making both governmental, including national plans and sectoral policies, and private;

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<sup>8</sup> The Lawyer's Meeting notes that items (vii) and (viii) may overlap with item (i). Indeed, items (vii) and (viii) would be completely redundant if the expression "endangered species" were defined to mean all species recognized, under any international agreements or on any other relevant basis, to be in danger of extinction. The key to what requires conservation measures leads back to what is meant by "endangered". The Lawyers' Meeting comments:

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

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

<sup>9</sup> Article 6, paragraph (j) and this paragraph use different language and the Lawyers' Meeting was uncertain if this was meant to convey a different concept. Elaboration on the provisions' relationship to *in-situ* and *ex-situ* conservation respectively may be desirable.

<sup>10</sup> According to the Lawyers' Meeting the text of this article may need to be cleaned up to use the phrases "components of biological diversity" and "biological resources" in a consistent manner. See, for example the use of these terms in the present article paragraphs (a) and (b) and in Article 9, paragraphs (a) and (b).

(b) Adopt individually or jointly with other States directly or through international organizations, of standards for the production, processing, use and disposal of biological resources, to avoid or minimize adverse impacts on biological diversity;

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

(d) Provide financial and other assistance for local populations to develop and implement remedial action in degraded areas where biological diversity has been reduced. <sup>11</sup>

#### Article 9. Research and Training

The Contracting Parties shall:

(a) Establish and maintain programmes for education and training in the identification, conservation, management and sustainable use and development of biological diversity and its components;

(b) Provide support for education and training for the specific needs of developing countries in the identification, conservation, management, and sustainable use and development of biological diversity and its components;

(c) Promote and encourage research individually or jointly with other States directly or through international organizations which contributes to the:

- (i) Increased understanding concerning the role of biological diversity in the functioning of ecosystems;
- (ii) Improved knowledge about the maintenance and restoration of ecosystems;
- (iii) Development of technologies for the conservation of biological diversity, the development of biotechnology;
- (iv) Conservation of biological diversity as well as sustainable use and development of its components;
- (v) Application of knowledge about biological diversity and the functioning of ecosystems for sustainable agriculture and fisheries;
- (vi) Increased understanding of the impact of natural and human factors affecting the conservation of biological diversity, including *inter alia*, human population growth and distribution, poverty, the introduction of alien species, human changes to natural processes and economic activity including trade, and natural processes such as wildfire, soil erosion and extreme climate events; and <sup>12</sup>
- (vii) Identification of products derived from biological resources which may have economic value.

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<sup>11</sup> Eventually there will need to be an alignment of the expression "local populations" in this provision with the language of paragraph (c).

<sup>12</sup> The Lawyers' Meeting felt that a list may not be necessary because inclusion of the phrase "natural and human" would have broad coverage.

#### Article 10. Education and Public Awareness

The Contracting Parties shall:

(a) Promote and encourage understanding of the importance of and the measures required for the conservation of biological diversity and the sustainable use and development of its components through *inter alia*, awareness and education programmes for schools and other educational institutions, industry, local communities and the general public, with particular regard for those likely to be directly affected by conservation measures or who can contribute to their acceptance and effectiveness; and

(b) Co-operate in developing educational and public awareness programmes with other States and international organizations, particularly with respect to conservation requirements for shared ecosystems, migratory species and areas beyond the limits of national jurisdictions.

#### Article 11. Environmental Impact Assessment

The Contracting Parties shall:

(a) Introduce procedures that require consideration of the environmental consequences, whether within or beyond the limits of national jurisdiction, of proposed projects, programmes or policies;

(b) Require, where significant effects on the environment are likely, a comprehensive environmental impact assessment;

(c) Develop guidelines for the application of environmental impact assessment procedures, and for their integration into national planning processes;

(d) Develop bilateral, regional or multilateral arrangements, as appropriate, to promote, on the basis of reciprocity, notification, exchange of information and consultation about the potential environmental effects of activities under their jurisdiction or control which are likely significantly to affect other States or areas beyond the limits of national jurisdiction; and

(e) Monitor and evaluate environmental impacts as the projects, programmes or policies are implemented.

#### Article 12. Surveys and Inventories

The Contracting Parties shall:

(a) Survey, monitor and maintain inventories of biological diversity within their jurisdiction, with particular attention to ecosystems, habitats and species that are under threat; and

(b) Establish a network of data banks of inventories of biological diversity in co-operation with other Contracting Parties and international organizations;

#### Article 13. Global Lists

1. A Global List of Biogeographic Areas of Particular Importance for the Conservation of Biological Diversity and a Global List of Species Threatened<sup>13</sup> with Extinction on a Global Level shall be established pursuant to the procedures set down in Article 23 bis.

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<sup>13</sup> The INC may wish to consider whether the terms "endangered" and "threatened" are used consistently throughout the text.

2. Inclusion of an area on the List of Biogeographic Areas of Particular Importance requires the consent of the State or States concerned.<sup>14</sup>

3. Contracting Parties, in fulfilling their obligations under this Convention shall [, so far as possible, and as appropriate for each Contracting Party,] give priority to areas and species on the Global Lists.<sup>15</sup>

4. Inclusion of areas or species on the Lists shall not prejudice the rights of States over areas in respect of which more than one State claims sovereignty or jurisdiction.

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

1. Each Contracting Party [undertakes] [shall endeavour] to provide on mutually agreed terms and subject to the provisions of this article access to *in-situ* and *ex-situ* genetic material [genetic resources] from wild, domestic and migratory terrestrial and non-terrestrial species, within its national jurisdiction for purposes of research and development, training, surveying and monitoring and for other environmentally sound uses for the collective benefit of humankind including economic benefit.

2. In affirmation of the national sovereignty of states over their natural [and genetic] resources the authority to determine access to genetic material [genetic resources] rests with national governments in accordance with national legislation.

3. Each Contracting Party [undertakes] [shall endeavour] to create conditions to facilitate access to genetic material [genetic resources] for other Contracting Parties on mutually agreed terms and not to impose restrictions that run counter to the principles of this convention.

4. Access to genetic material [genetic resources] shall be based upon the prior [informed] consent of the Contracting Party providing such material.

5. The Contracting Party shall [endeavour as appropriate to] develop and carry out the scientific research referred to in paragraph 1 of this article in and with the full participation of the countries of origin of genetic material [genetic resources].

6. The Contracting Party shall [take appropriate measures] [undertake] to [promote fair] [equitable and preferential] access by the countries of origin of genetic material to the results of research, the products developed and the benefits and profits arising from the commercial exploitation of the relevant genetic material [genetic resources]. [Access shall be subject to mutual agreement between Contracting Parties concerned].<sup>16</sup>

Alternative 2 [to replace all of alternative 1]

1. Access to *in-situ* and *ex-situ* genetic material for purposes of scientific research, training, surveying and monitoring shall be in accordance with Protocols adopted by Contracting Parties or bilateral and multilateral agreements in co-operation with relevant research institutions.

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<sup>14</sup> The INC will also need to consider a mechanism for inclusion of species on the Global List, including the question of consent for inclusion, in particular, as is usually the case, where species are found in more than one State.

<sup>15</sup> The INC may wish to consider whether the purpose of the Global Lists requires further elaboration.

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

Article 15. [Regulated] Access to Technology

1. Contracting Parties, in furtherance of the principles of this convention, undertake to provide on mutually agreed terms and subject to the provisions of this article, access to technology [including biotechnology] relevant to conservation and sustainable utilization of biological diversity as well as technologies that make use of genetic material [for environmentally sound purposes] [including biotechnology] [or for other purposes such as production of pharmaceuticals on a preferential and non-commercial basis] [with due regard to patents and intellectual property rights derived from genetic material].

2. Contracting Parties undertake to create conditions to facilitate access to technology [including biotechnology] referred to in paragraph 1 on mutually agreed terms [and to eliminate] [to the extent possible in conformity with international law] and not impose restrictions [such as patents and intellectual property rights] that run counter to the principles of this convention.

3. Access to technology [including biotechnology] shall be provided taking into consideration the special needs of developing countries [and in accordance with the financial mechanism established by article 19.]

4. The Contracting Parties, [~~within their competences~~] shall endeavour through legislative, administrative and general policy measures [as appropriate] to stimulate the private sector [~~within their jurisdiction~~] to facilitate [~~not to restrict~~] access to and joint development of <sup>reference to a panel</sup> environmentally sound technologies [including biotechnologies] for conservation and sustainable utilization of biological diversity [and the use of genetic material] on a preferential basis to governmental institutions and [or] the private sector particularly in developing countries. Due regard shall be given to the interests of the private sector to receive fair and equitable returns on its investment in developing countries.

Article 15 bis. Exchange of Information

1. The Contracting Parties shall facilitate exchange of information and specialized knowledge pertinent for the conservation and sustainable use of biological diversity, in accordance with relevant national legislation, through bilateral and multilateral exchange of information, making suitable use of established institutions in accordance with Article ... of the present convention.

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

3. Exchange of such information shall include exchange of [published results of] scientific research, training and surveying, specialized knowledge, traditional knowledge as such and in combination with technologies [including biotechnology].

Article 16. [Transfer of Technology].

1. The Contracting Parties [, in particular those which are developed countries,] undertake to [promote and facilitate the] the transfer of the [~~best available~~] technologies referred to in paragraph 1 of Article 15 in particular to developing countries Parties to this Convention on a [fair and favourable] [preferential and non-commercial] basis. The Contracting Parties [, in particular those which are developed countries,] further undertake to [make special efforts to promote and facilitate] transfer of technologies that make use of genetic material in particular to developing countries Parties to this Convention [which provide such material].

2. The Contracting Parties [within their competences] shall [~~endeavour to stimulate~~] <sup>or</sup> [ensure that] [through legislative, administrative and general policy measures] the private sector [~~under their jurisdiction~~] [to

*encourage*

Emend]

transfer] [transfers] on a [fair and favourable] [preferential and non-commercial] basis the ~~best available~~ technologies referred to in Article 15, paragraph 1 and in the same manner as provided for in Article 16, paragraph 1, in particular to developing countries Parties to this Convention.

3. [The transfer of technology referred to in this Article shall be in accordance with the financial mechanism established under Article 19].

#### Article 17. Technical and Scientific Cooperation

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

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

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

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

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

#### Article 17 bis. Handling of Biotechnology and Distribution of its Benefits

[1. The Contracting Parties shall respect the rights of the country of origin of [genetic material] [species] which are the subject of biotechnological research, [with the effect that they shall not require royalties on patents in transactions relating to the products that result from biotechnological research.]

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

3. The Contracting Parties shall [subject to mutual agreement] endeavour to ensure that the countries of origin of [genetic material] [species] ~~shall~~ have priority in making use of and benefiting from the species that result from biotechnological research processes [which make use of] [those species] [the genetic material]].

#### Article 18. Financial Needs and Means

1. The Contracting Parties, consistent with their capabilities [and their national plans, priorities and programmes] undertake to provide financial support for the conservation and sustainable use of their biological diversity in accordance with Articles [5-12] of the present convention.

[2. Fulfilment by developing countries, Parties to the convention, of the obligations established in Articles [5-12] of the present convention shall be subject to the effective provision of adequate, [new] and additional financial resources and technology transfer [by developed countries] in accordance with Articles [15, 16, 17] and paragraphs [2-6] of this Article.]

[paragraph 3 as an alternative to paragraph 2]

[3. The developed countries, Parties to this convention, undertake, in accordance with their capabilities, to provide adequate, new and additional financial resources for the conservation and sustainable use of biological diversity including financial resources to ensure access to and transfer of technology in accordance with Articles 15, 16 and 17 of this convention to enable developing countries Parties to this convention to fulfil the objectives of this convention in accordance with these countries' national priorities.]

4. The Contracting Parties, [in particular] [which are] developed countries, have an obligation to provide [genuine] [adequate, new] and additional resources on a grant or concessionary basis as appropriate to developing countries Parties to this convention to enable them to cover the agreed incremental costs [in accordance with national legislation and policies] to comply with the provisions contained in the present convention [and to benefit from the provisions of paragraph 6, Article 14]. These financial resources shall be provided according to criteria to be decided upon by the Contracting Parties [at the first meeting of the Conference of the Contracting Parties] [inter alia, on the basis of country studies.]

[5. The Contracting Parties shall, on a regular basis and in accordance with national legislation and policies, examine economic incentives which may operate in an efficient and equitable manner to induce changes contributing to the conservation and sustainable use of biological diversity.]<sup>17</sup>

#### Article 19. Financial Mechanisms

1. The Contracting Parties, pursuant to the objectives of the present convention and taking into consideration the special needs of developing countries, shall [establish a financial mechanism to provide the resources which Contracting Parties that are developing countries require to meet the agreed incremental costs for complying with the provisions of this convention, access to and transfer of technology referred to in Articles 15 and 16 and the benefits of the provisions of paragraph 6 of Article 14] [establish a multilateral trust fund for the conservation and sustainable use of biological diversity] [consider the case for co-operative arrangements with existing bilateral and multilateral sources of funding and shall examine the need for a special fund.]

[2. The detailed provisions of [the] financial mechanism shall be [decided by the Parties at their first meeting] [the subject of a special protocol to the present convention.]

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<sup>17</sup> Some delegations pointed out that this paragraph would fit better in a separate article on measures. Taking that point of view some delegations expressed that they therefore did not want to comment on the substance of the paragraph.

3. The Contracting Parties shall [strengthen] [also consider the possibility of strengthening] the existing [and consider the creation of new innovative] financial institutions and mechanisms to provide necessary financial resources [to Parties that are developing countries] [for bilateral and multilateral assistance with special emphasis on the needs of developing countries.]

4. The Contracting Parties when considering existing and creating innovative financial institutions and mechanisms shall take into account [that the developing countries require [sustained public sector investments] assistance by national governments, bilateral donors and international organizations in order to benefit from all relevant technologies including biotechnology, and mitigate negative impacts.] [the special needs of developing countries].

#### Article 20. International Co-operation

1. The Contracting Parties shall cooperate with each other and with the competent international organizations, with a view to coordinating their activities in the field of conservation and sustainable use of biological diversity and in assisting each other in fulfilling their obligations under the present Convention.

2. To this end the Contracting Parties shall cooperate, *inter alia*, in:

(a) Intensifying, international activities for the conservation and sustainable use of biological resources, in particular with regard to their evaluation and documentation and through exchange of genetic material and information;

(b) Supporting those countries which do not have the economic or technical capacity to conserve or use the potential of their biological diversity; and<sup>18</sup>

(c) Supporting national and international organizations working in the field of biological diversity.

#### Article 21. Relationship with other International Conventions

1. The provisions of the present Convention shall not affect the rights and obligations of any Contracting Party deriving from any existing international agreement relating to the conservation and sustainable use of biological diversity.<sup>19</sup>

2. Any existing international agreement relating to the conservation and sustainable use of biological diversity may be renegotiated as protocols to the present Convention.<sup>20</sup>

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<sup>18</sup> The Lawyers' Meeting felt that paragraph (b) of Article 20 overlaps with Articles 17 and 18.

<sup>19</sup> The language in paragraph 1 leaves open the question of the relationship of this Convention with future agreements. The Committee may want to make an express provision for this.

<sup>20</sup> The Lawyers' Meeting felt that this paragraph has the character of a recommendation and would invite the Committee to consider the necessity of retaining it.

3. The Contracting Parties shall invite the Parties to any international agreement relating to the conservation and sustainable use of biological diversity to agree on arrangements for facilitating joint actions, coordination, and exchange of information.<sup>21</sup>

Article 22. Institutional Measures on National Level

1. The Contracting Parties shall:

(a) Designate national bodies to implement the provisions of the present Convention and coordinate activities related to the conservation and sustainable use of biological diversity;

(b) Identify financial institutions which might assist in the establishment of specialized bodies dealing with the conservation and sustainable use of biological diversity;<sup>22</sup>

(c) Taking into consideration the special needs of developing countries, cooperate with the aim of ensuring the capacity of developing countries to implement the provisions of the present Convention through national institutions and legislation.<sup>23</sup>

2. The Contracting Parties may adopt stricter regulations than those provided by the present Convention.<sup>24</sup>

Article 23. Conference of the Parties

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

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

3. The Conference of the Parties shall by consensus agree upon and adopt rules of procedure for itself and for any subsidiary body it may establish, as well as financial rules to determine in particular the financial participation of the Parties under this Convention and the funding of the Secretariat. At each ordinary meeting, it shall adopt a budget for the next financial period.<sup>25</sup>

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<sup>21</sup> If retained, the Lawyers' Meeting felt this paragraph might more appropriately be located in Article 23 as a function of the Conference of the Parties.

<sup>22</sup> While this paragraph is included in the Article on Institutional Measures on National Level it does not specify that it is referring to the creation of specialized bodies at this level or with this focus. This should be clarified.

<sup>23</sup> The Lawyers' Meeting calls the attention of the Committee to the close relationship of this provision to Article 17, paragraphs 1 and 2.

<sup>24</sup> The Lawyers' Meeting felt that this paragraph should be moved to Article 5 as its last paragraph.

<sup>25</sup> This sentence will need to be considered further in light of the provisions in Article 23.1 concerning the frequency of its ordinary meeting.

4. The Conference of the Parties shall receive through the Secretariat requests for international assistance formulated by the Contracting Parties to the present Convention. The purpose of such requests shall be to secure conservation and sustainable use of biological diversity.

5. The Conference of the Parties upon the recommendations made on the matter by the Scientific Committee shall decide on the action to be taken with regard to these requests, determine where appropriate the nature and extent of the assistance required, and authorize the Secretariat [and the Biological Diversity Fund] to conclude the necessary arrangements with the government concerned.<sup>26</sup>

6. The Conference of the Parties shall at its second meeting consider and adopt:

(a) A mechanism to manage and coordinate the transfer of technology and technical co-operation pursuant to the provisions of Articles 16 and 17; and

(b) A clearing-house mechanism pursuant to the provisions of Article 17.<sup>27</sup>

7. The Conference of the Parties shall keep under continuous review the implementation of the present Convention, and, in addition, shall:

(a) Establish the form and the intervals for transmitting the information to be submitted in accordance with Articles 5 and 26 and consider such information as well as reports submitted by any subsidiary body;

(b) Promote the harmonization of policies, strategies and measures for the conservation and sustainable use of biological diversity;

(c) Review scientific information on biological diversity provided by the Scientific Committee in accordance with Article 25;

(d) Consider and adopt, as required, in accordance with Articles 30 and 31, amendments to this Convention and its annexes;

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

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<sup>26</sup> The Lawyers' Meeting felt the provisions of paragraphs 4 and 5 should be located in Article 19.

<sup>27</sup> The Lawyers' Meeting felt that the content of paragraph 6 should be expressed either as a direct task of the Scientific Committee and therefore placed in Article 25 or as a direct task of the Conference of the Parties to remain as currently placed in this Article. If the INC considers it preferable to deal with this matter as a direct task of the Scientific Committee it could, as an alternative to paragraph 6, use the following or similar language in Article 25:

The Scientific Committee shall submit to the second meeting of the Conference of the Parties:

(a) Proposals for the creation of a mechanism to manage and coordinate the transfer of technology and technical cooperation pursuant to the provisions of Articles 16 and 17; and

(b) Proposals for the creation of a clearing-house mechanism pursuant to the provisions of Article 17.

(f) Consider and adopt, as required, in accordance with Article 31, additional annexes to this Convention;

(g) Consider and adopt, as required, protocols in accordance with Article 29;

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

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

8. The United Nations, its specialized agencies and IAEA, as well as any State not Party to this Convention, may be represented as observers at meetings of the Conference of the Parties. Any other body or agency, whether governmental or non-governmental, qualified in fields relating to conservation and sustainable use of biological diversity which has informed the Secretariat of its wish to be represented as an observer at a meeting of the Conference of the Parties, may be admitted unless at least one third of the Parties present object. The admission and participation of observers shall be subject to the rules of procedure adopted by the Conference of the Parties.

Article 23 bis. Procedures for Global Lists

The Conference of the Parties shall:

(a) Receive from the Contracting Parties inventories of biogeographic areas within the limits of their national jurisdiction of particular importance for the conservation of biological diversity and inventories of species found within the limits of their national jurisdiction which are threatened <sup>28</sup> with extinction on a global level; <sup>29</sup>

(b) Select, taking into account the recommendations of the Scientific Committee, from the inventories forwarded pursuant to sub-paragraph (a), areas and species to be included in the Global Lists; <sup>30</sup>

(c) Publish the Global Lists;

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

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

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

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<sup>28</sup> See footnote to Article 13.1.

<sup>29</sup> The INC may wish to consider whether the Global Lists should include areas and species beyond the limits of national jurisdiction and/or within the limits of the national jurisdiction of non-Contracting States. The content of the obligations in relation to areas and species included in the Global Lists will of course be relevant to this question. See footnote to Art. 13.1.

<sup>30</sup> See footnote 1 bis to Article 13.

(g) Establish and publish guidelines for the provision of financial and other assistance to Contracting Parties where it considers this desirable or necessary in connection with areas and species on the Global Lists; and <sup>31</sup>

(h) Ensure that arrangements <sup>32</sup> made in relation to the Global Lists complement and strengthen the conservation activities of Contracting Parties and international organizations developed and implemented under other international agreements.

#### Article 24. Secretariat

1. The functions of the Secretariat shall be:

(a) To arrange for and service meetings of the Conference of the Parties provided for in Article 23;

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

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

(d) To prepare and transmit reports based upon information received in accordance with Article 5, as well as upon information derived from meetings of any subsidiary bodies established under Article 23;

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

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

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

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

2. The secretariat functions will be carried out on an interim basis by the Secretariat of United Nations Environment Programme until the completion of the first ordinary meeting of the Conference of the Parties held pursuant to Article 23. At its first ordinary meeting, the Conference of the Parties shall designate the secretariat from amongst those existing, competent international organizations which have signified their willingness to carry out the secretariat functions under this Convention. At this meeting, the Conference of the Parties shall also evaluate the implementation by the interim Secretariat of the functions assigned to it, in particular under paragraph 1, above, and decide upon the structure as appropriate for those functions.

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<sup>31</sup> This provision should be considered in the context of Articles 17 and 19.

<sup>32</sup> It is unclear what "the arrangements" referred to are.

Article 25. Scientific Committee <sup>33</sup>

1. A Scientific Committee to provide advice on scientific and technological matters to the Conference of the Parties is hereby established.
2. Any Contracting Party may appoint a qualified expert as a member of the Scientific Committee. In addition, the Scientific Committee shall include as members qualified experts selected and appointed by the Conference of the Parties. The number of the experts appointed by the Conference of the Parties, the criteria for their selection and the terms of their appointments shall be determined by the Conference of the Parties.
3. The Scientific Committee shall meet as required by the Conference of the Parties.
4. Subject to the approval of the Conference of the Parties, the Scientific Committee shall establish its own rules of procedure.
5. The functions of the Scientific Committee shall be:
  - (a) To provide scientific and technological advice to the Conference of the Parties and, where approved by the Conference of the Parties, to any subsidiary body established under this Convention or any protocol to this Convention or to any Contracting Party;
  - (b) To recommend and coordinate research on conservation and sustainable use of biological diversity as well as to evaluate the results of such research and to report to the Conference of the Parties;
  - (c) To make recommendations to the Conference of the Parties as to the guidelines and criteria to be established pursuant to sub-paragraphs (d) and (e) of Article 23 bis and, on the basis of such criteria once established, the areas and species to be included pursuant to paragraph (b) of Article 23 bis in the Global Lists referred to in Article 13; and
  - (d) To perform such other functions as may be determined by the Conference of the Parties.

Article 26. Reports

The Contracting Parties shall submit to each ordinary meeting of the Conference of the Parties for its consideration reports on the actions which they have taken for the implementation of this Convention, together with details of the experiences they have acquired in this field.

Article 27. Operational Cost <sup>34</sup>

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

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<sup>33</sup> The Lawyers' Meeting felt consideration should be given to changing the title of Article 25 to Scientific and Technological Committee to make it consistent with the functions defined in paragraphs 1 and 5. The Committee may also wish to consider if a single committee can satisfactorily deal with both scientific and technological matters.

<sup>34</sup> The Lawyers' Meeting noted that the scope of this Article is not entirely clear. It considers that according to the way in which Article 19 is negotiated there may be a case for merging the content of this Article with the content of Article 19.

2. The Conference of the Parties may, by a two-thirds majority, institute a system of contributions to finance expenses incurred in respect of matters which do not relate to the operation of the Biological Diversity Fund. The scale of such contributions or modifications thereof shall also be adopted by a two-thirds majority.

#### Article 28. Settlement of Disputes

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

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

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

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

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

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

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

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

#### Article 29. Adoption of Protocols

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

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

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

#### Article 30. Amendment of the Convention or Protocols

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

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

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

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

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

#### Article 31. Adoption and Amendment of Annexes

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

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

(a) Annexes to this Convention or to any protocol shall be proposed and adopted according to the procedure laid down in Article 30, paragraph 2 and 3;

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

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

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

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

Article 32. Right to Vote

1. Except as provided for in paragraph 2 below, each Contracting Party to this Convention or to any protocol shall have one vote.
2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote with a number of votes equal to the number of their member States which are Contracting Parties to the Convention or the relevant protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs, and vice versa.

Article 33. Relationship Between the Convention and Its Protocols

1. A State or a regional economic integration organization may not become a Contracting Party to a protocol unless it is, or becomes at the same time, a Contracting Party to the Convention.
2. Decisions concerning any protocol shall be taken only by the Contracting Parties to the protocol concerned.

Article 34. Signature

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

Article 35. Ratification, Acceptance or Approval

1. This Convention and any protocol shall be subject to ratification, acceptance or approval by States and by regional economic integration organizations. Instruments of ratification, acceptance or approval shall be deposited with the Depositary.
2. Any organization referred to in paragraph 1 above which becomes a Contracting Party to this Convention or any protocol without any of its member States being a Contracting Party shall be bound by all the obligations under the Convention or the protocol, as the case may be. In the case of such organizations, one or more of whose member States is a Contracting Party to the Convention or relevant protocol, the organization and its member States shall decide on their respective responsibilities for the performance of their obligation under the Convention or protocol, as the case may be. In such cases, the organization and the member States shall not be entitled to exercise rights under the Convention or relevant protocol concurrently.
3. In their instruments of ratification, acceptance or approval, the organizations referred to in paragraph 1 above shall declare the extent of their competence with respect to the matters governed by the Convention or the relevant protocol. These organizations shall also inform the Depositary of any substantial modification in the extent of their competence.

Article 36. Accession

1. This Convention and any protocol shall be open for accession by States and by regional economic integration organizations from the date on which the Convention or the protocol concerned is closed for signature. The instruments of accession shall be deposited with the Depositary.
2. In their instruments of accession, the organizations referred to in paragraph 1 above shall declare the extent of their competence with respect to the matters governed by the Convention or the relevant protocol. These organizations shall also inform the Depositary of any substantial modification in the extent of their competence.
3. The provisions of Article 35 paragraph 2, shall apply to regional economic integration organizations which accedes to this Convention or any protocol.

#### Article 37. Entry Into Force

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

#### Article 38. Reservations

No reservations may be made to this Convention.

#### Article 39. Withdrawals

1. At any time after ... years from the date on which the present Convention has entered into force for a Contracting Party, that Contracting Party may withdraw from the Convention by giving written notification to the depositary.
2. Except as may be provided in any protocol, at any time after .... years from the date on which such protocol has entered into force for a Contracting Party that Contracting Party may withdraw from the protocol by giving written notification to the Depositary.
3. Any such withdrawal shall take place upon expiry of one year after the date of its receipt by the Depositary, or on such later date as may be specified in the notification of the withdrawal.
4. Any Contracting Party which withdraws from this Convention shall be considered as also having withdrawn from any protocol to which it is party.

#### Article 40. Depositary

1. The Secretary-General of the United Nations shall assume the functions of Depositary of this Convention and any protocols.
2. The Depositary shall inform the Contracting Parties, in particular, of:
  - (a) The signature of this Convention and of any protocol, and the deposit of instruments of ratification, acceptance, approval or accession in accordance with Articles 35 and 36;
  - (b) The date on which the Convention and any protocol will come into force in accordance with Article 37;
  - (c) Notifications of withdrawal made in accordance with Article 39;

(d) Amendments adopted with respect to the Convention and any protocol, their acceptance by the Contracting Parties and their date of entry into force in accordance with Article 30;

(e) All communications relating to the adoption and approval of annexes and to the amendment of annexes in accordance with Article 31;

(f) Notifications by regional economic integration organizations of the extent of their competence with respect to matters governed by this Convention and any protocols, and of any modifications thereof in accordance with Article 35 and 36;

(g) Declarations made in accordance with Article 28 paragraph 3.

Article 41. Authentic Texts

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

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

Done at ..... on the ..... day of .....

Annex I

ARBITRATION <sup>35</sup>

Article 1

Unless the agreement referred to in Article 28 of the Convention provides otherwise the arbitration procedure shall be conducted in accordance with articles 2 to 16 below.

Article 2

The claimant Party shall notify the Secretariat that the Parties are referring a dispute to arbitration pursuant to Article 28, paragraph 3, of the Convention. The notification shall state the subject-matter of arbitration and include, in particular the articles of the Convention or the Protocol, the interpretation or application of which are at issue. The Secretariat shall forward the information thus received to all Contracting Parties to the Convention or to the Protocol concerned.

Article 3 <sup>36</sup>

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

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

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

Article 4

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

2. If one of the Parties to the dispute does not appoint an arbitrator within two months of receipt of the request, the other Party may inform the Secretary-General of the United Nations who shall designate the other arbitrator within a further two months' period. <sup>37</sup>

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<sup>35</sup> This arbitration procedure is based upon the procedure adopted by the first Conference of the Parties to the Vienna Convention for the Protection of the Ozone Layer (UNEP/OzL.Conv.1/5 Annex II). The Lawyers' Meeting requested that the differences between this procedure and that provided by Annex VI of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal be identified in the form of footnotes.

<sup>36</sup> Article 3, paragraphs 2 and 3 are not included in Annex VI of the Basel Convention.

<sup>37</sup> The procedure to follow if a Party does not appoint an arbitrator is more streamlined than the Basel Convention's Article 4, paragraph 2.

Article 5

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

Article 6<sup>38</sup>

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

Article 7

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

- (a) Provide it with all relevant documents, facilities and information; and
- (b) Enable it when necessary to call witnesses or experts and receive their evidence.

Article 7 bis<sup>39</sup>

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

Article 8

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

Article 9

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

Article 10

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

Article 11

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

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<sup>38</sup> The caveat that the tribunal's procedure assure "each Party has a full opportunity to be heard and present its case" is not present in the equivalent Basel Convention provision (Article 5, paragraph 2).

<sup>39</sup> Article 7 and 7 bis are more explicit than the article in Basel with similar coverage (Article 6, paragraphs 2 and 3).

Article 12

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

Article 13

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

Article 14 <sup>40</sup>

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

Article 15 <sup>41</sup>

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

Article 16

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

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<sup>40</sup> Article 14 is similar but more explicit than the Basel Convention's article 10, paragraph 2. For example, Article 14 explicitly states that the arbitral's decision is to be confined to the subject matter of the dispute. It also provides for dissenting opinions.

<sup>41</sup> The Basel Convention does state that the tribunal's decision is final but does not go further to state "unless the Parties to the dispute have agreed in advance to an appellate procedure" as is the case with this Article.