



# United Nations Environment Programme



Distr.  
GENERAL

UNEP/Bio.Div/N4-INC.2/5  
2 October 1991

ORIGINAL: ENGLISH

## INTERGOVERNMENTAL NEGOTIATING COMMITTEE FOR A CONVENTION ON BIOLOGICAL DIVERSITY

Fourth Negotiating Session/Second Session of INC  
Nairobi, 23 September - 2 October 1991

### REPORT OF THE INTERGOVERNMENTAL NEGOTIATING COMMITTEE FOR A CONVENTION ON BIOLOGICAL DIVERSITY ON THE WORK OF ITS FOURTH NEGOTIATING SESSION/SECOND SESSION

#### I. INTRODUCTION

1. Pursuant to Governing Council (GC) decision 14/26, the Ad Hoc Working Group of Experts on Biological Diversity was established and held three sessions between November 1988 and July 1990. In accordance with the GC decision 15/34, the Ad Hoc Working Group of Legal and Technical Experts was established with a mandate to negotiate an international legal instrument for the conservation and rational use of biological diversity. The Ad Hoc Working Group held two negotiating sessions in Nairobi in November 1990 and in February/March 1991.<sup>1</sup> By decision 16/42 of 31 May 1991, the UNEP Governing Council renamed the Ad Hoc Working Group of Legal and Technical Experts on Biological Diversity the "Intergovernmental Negotiating Committee (INC) for a Convention on Biological Diversity", and the third negotiating session was held in Madrid, Spain, from 24 June to 3 July 1991. The report of this session is contained in document UNEP/Bio.Div/INC.3/11.

2. The fourth negotiating session/second session of INC was convened at the Headquarters of the United Nations Environment Programme (UNEP) in Nairobi, Kenya, from 23 September to 2 October 1991. Pursuant to the request of the third negotiating session/first session of INC, the UNEP Secretariat had prepared the second revised draft Convention (UNEP/Bio.Div/INC.4/2) based on the discussions held at the Madrid session and the review carried out by the regionally balanced group of lawyers which met in Geneva from 8 to 11 July 1991. In addition, the UNEP Secretariat, as requested by the INC, had prepared the Note on the interpretation of the phrases "Adequate, New and Additional", "New and Additional" and "Adequate and Additional" Financial Resources (UNEP/Bio.Div/INC.4/4) and the Note on additional financial resources, in the context of the conservation and rational use of biological resources (UNEP/Bio.Div/INC.4/4/Add.1). The session was also provided with a Note by the Executive Director of UNEP (UNEP/Bio.Div/INC.4/3).

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<sup>1</sup> The documents of these sessions may be found under the series UNEP/Bio.Div/WG.1 and UNEP/Bio.Div/WG.2.

## II. FIRST PLENARY MEETING

### A. Opening of the session

3. The Chairman of the Intergovernmental Negotiating Committee for a Convention on Biological Diversity, H.E. Dr. V. Sanchez, opened the session, thanked the Minister for Foreign Affairs and International Co-operation of Kenya for his encouraging presence and the Government of Kenya for its interest and hospitality and said that there had recently been a clear move towards a new world order in which lasting peace seemed more possible and which must lead to a civilization less destructive towards the natural world.

4. All had a part to play in acknowledging responsibility for action producing environmental degradation: the poor could learn new ways leading to a more rational use of natural resources and conservation of biological diversity and the rich - better equipped to make efforts and even sacrifices - could provide an enormous contribution to solving the many problems. He warned against the poor taking the same path as the developed countries had done, which did not lead to sustainable development.

5. There is an increasing gulf between rich and poor and a new style of negotiating is needed in the light of the new global framework and the realization that the conservation and rational use of biodiversity was the collective responsibility of all.

6. More appropriate use of natural resources, the selection of non-destructive technologies and the establishment of protected areas and national conservation plans would be greatly instrumental in solving the problems facing mankind but changes in the international trade order would also help by providing more equitable terms for the developing countries.

7. Important changes regarding intellectual property systems were being proposed in GATT and he urged that national delegations should ensure that their approach in the various negotiations was consistent, as it was difficult to reach agreements when there were differing standpoints from the same government in different fora and unnecessary tensions were produced.

8. Referring to the Consultative Group on International Agricultural Research (CGIAR), he noted that its capacity to patent research results meant that it would collaborate only with countries having appropriate intellectual property protection systems and that, furthermore, it appeared that consideration was being given to the notion that Research Centres should be free to sell their genetic material in the private sector without sharing profits with the providers of the material.

9. Additionally, some private sector industries had proposed that, if biotechnologies were transferred to developing countries, the latter would only be allowed to market their production locally; that would be a disincentive to developing countries to acquire biotechnology. The situation was further aggravated by the sale of substitutes for natural products by private companies.

10. Although there had been a slackening of East-West tension, the problems caused by inequality between North and South remained, threatening the stability and progress of the world as a whole.

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11. Furthermore, until recent times, local communities had been the users and custodians of biological richness and he felt that their knowledge and rights should be respected to ensure that the Convention was firmly rooted. Indeed, many people considered it unfair that biodiversity should be seen as the "common heritage of mankind" and he was convinced that inequalities and imbalance had to be remedied in order to achieve a more stable new world order and to ensure that democracy prevailed in connection with the natural world and trade relations, as well as in the political order.

12. In conclusion, he appealed to all countries and special interest groups to aim for an improved style of negotiation and greater solidarity as a contribution to the establishment of a new international order characterized by peace, cooperation and the strengthening of democracy in all aspects of relations between individuals and between States.

13. Dr. M.K. Tolba, Executive Director of the United Nations Environment Programme, in his opening statement said that in less than nine months the INC expected to build a meaningful, flexible and fair Convention to bring to Brazil, but that tight timetables could not create any short cuts or compromises that sacrificed content.

14. He stressed that while roughly 1.4 million plant and animal species had been scientifically identified, 5-30 or even 80 million species shared and contributed to our ecological balance. Species richness generally increased in magnitude as we move from the poles to the equator. In one 15 hectare area of Borneo rain forest, for example, approximately 700 species of trees had been identified. That was equivalent to the total number of tree species in North America. Yet, tropical forests -- home to roughly one-half of our planet's entire biodiversity inventory -- were being dismembered by as much as some 17 million hectares per year; more than one-half of all US coastal and freshwater wetlands had been destroyed. Many parts of Europe had lost nearly all natural wetlands. In the tropics developing countries as diverse as Chad, Bangladesh, India and Vietnam, wetlands destruction had exceeded 80 to 90 per cent.

15. Dr. Tolba expressed deep gratitude to the lawyers who had done an outstanding job in clarifying and cleaning up the language of the unnegotiated part of the draft Convention.

16. Turning to the question of financial resources, he said that various estimates had been made of the financial cost of biodiversity conservation, ranging from \$500 million to \$50 billion per year. The GEF was estimating costs of biodiversity protection from the early projects financed by it at up to \$35,000 per square kilometer. Countries with the richest diversity of life on Earth were also the ones least able to afford conservation measures.

17. Progress could not be made regarding additional resources and technology transfer until there was a consensus on two basic questions: firstly, the question of value; the viability of the present economic system was increasingly dependent on access to biological resources, yet the means of assessing the value of biodiversity was lacking. Economic systems were as yet unable to recognize the value of the unknown or undiscovered. The second question was that of technology: progress was measured in terms of development and use of sophisticated technologies, yet the way in which new technologies were regulated hindered their dissemination where they were most urgently needed. One hundred or perhaps more species were being made extinct every day as a result of human action. Intensified scientific monitoring and assessment would help to fill in the gaps in knowledge, but it would take years if not decades. Dr. Tolba appealed to delegates not to use lack of

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comprehensive information as an excuse for policy procrastination. Nationally protected areas had increased considerably, but often they represented little more than lines on a map and were hampered by lack of funds and trained personnel. A priority of the future Convention should therefore be the strengthening of the finances and infrastructure of existing conservation sites. Additional financing and technical cooperation would also be needed for training, institutional strengthening, development and enforcement of legislation, policing and field surveys, as well as to cover the cost of transfer of technology and compensation for the owners of biological resources.

18. The Honourable Wilson Ndolo Ayah, Kenya's Minister for Foreign Affairs and International Co-operation, addressed the session and conveyed to the participants the warmest greetings and best wishes of the President of the Republic of Kenya, Hon. Daniel T. Arap Moi, a strong supporter of environmental conservation, who was keen to see the negotiations conclude successfully. The speaker expressed his appreciation of the role of UNEP under its untiring Executive Director, Dr. Mostafa K. Tolba, in creating international concern regarding the environment.

19. The issues before the Negotiating Committee were of crucial importance not only at global but also at regional and national levels and the proposed Convention would remain a living testimony by the world community of its determination to conserve the biological diversity of the Earth.

20. Paradoxically, the world was growing poorer every day owing partly to human activities which resulted in losses of biological diversity, posing an increasing threat to the quality of life for present and future generations, and yet genetic diversity was what enabled man to adapt to the ever-changing conditions of the environment. He therefore hoped sincerely that the negotiating process would result in arresting the continued loss of that asset.

21. In establishing the Convention, however, the interests of the North and the South must be embraced in mutual respect; he had no doubt that if that were done the ultimate objectives of the negotiations would be achieved, once the basic issues such as access to genetic material and satisfactory transfer and development of appropriate technology had been solved.

22. He pointed out that genetic resources were concentrated mostly in the developing countries which had allowed relatively unrestricted access to them, whereas the technology to exploit them had generally been protected by intellectual property rights. Since the value of genetic resources frequently depended on the necessary technology to use them, he advocated that measures to protect biological diversity should be related to safeguarding both the resources and the means to develop them. It was essential to reach agreement and provide realistic mechanisms for so doing, particularly in view of the impact of including intellectual property rights in GATT.

23. A further matter of fundamental importance was the provision of financial resources for implementation of the Convention and he hoped that those with plentiful economic resources would contribute generously for that purpose.

24. Furthermore, he stressed that Kenya supported efforts to conserve biological diversity in a joint global partnership approach in mutual respect of national sovereignty over resources, for the benefit of mankind, and was pleased to report that his country had embarked on a study on the state of its biodiversity, thanks to the assistance of the United Kingdom, which would

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enable it to strengthen research and development as well as training in the conservation and sustainable utilization of biological resources.

25. Kenya would be very appreciative if the final meeting of the present negotiations before the UNCED summit were held in Nairobi, thereby conferring the city's name on the Convention.

26. Finally, he declared the session open, wishing the Committee success in its deliberations, which should bring the world a step closer to a strong legal instrument for the conservation of biological diversity.

#### B. Attendance

27. The session was attended by delegations from the following countries: Argentina, Australia, Austria, Bahamas, Bangladesh, Barbados, Belgium, Benin, Bolivia, Brazil, Bulgaria, Burkina Faso, Canada, Central African Republic, Chile, China, Colombia, Congo, Costa Rica, Cuba, Czechoslovakia, Denmark, Ecuador, Egypt, Ethiopia, Finland, France, Gambia, Germany, Ghana, Greece, Guinea, Guyana, India, Indonesia, Italy, Japan, Kenya, Lesotho, Malawi, Malaysia, Maldives, Mauritania, Mauritius, Mexico, Morocco, Myanmar, Netherlands, Nigeria, Norway, Pakistan, Panama, Papua New Guinea, Peru, Philippines, Poland, Portugal, Republic of Korea, Romania, Rwanda, Sao Tome and Principe, Saudi Arabia, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Thailand, Trinidad and Tobago, Tunisia, Turkey, Uganda, Union of Soviet Socialist Republics, United Kingdom, United Republic of Tanzania, United States of America, Uruguay, Venezuela, Zaire, Zambia and Zimbabwe.

28. The following United Nations bodies, specialized agencies and other international organizations were present: Food and Agriculture Organization of the United Nations (FAO), United Nations Educational, Scientific and Cultural Organization (UNESCO), United Nations Industrial Development Organization (UNIDO), the World Bank, United Nations Conference on Environment and Development (UNCED), United Nations Sudano-Sahelian Office (UNSO), and the European Communities (EC).

29. The following organizations were also present: Asian-African Legal Consultative Committee (AALCC), African Centre for Technology Studies (ACTS), Agrotechnology Resource Centre (ARC), Environmental Defense Fund (EDF), Environment Liaison Centre International (ELCI), International Board for Plant Genetic Resources (IBPGR), Instituto Nicaraguense de Recursos Naturales y del Ambiente (IRENA), IUCN - World Conservation Union, Nature Conservation Society for Africa, Pro Scientia Colombia, Third World Network (TWN), World Conservation Monitoring Centre (WCMC), World Resources Institute and the World Wide Fund for Nature - International (WWF).

#### C. Officers

30. The Bureau of the fourth negotiating session/second session of INC (elected at the second negotiating session) was as follows:

Chairman: H.E. Mr. V. Sanchez (Chile)

Vice-Chairmen: Mr. V. Koester (Denmark)  
Mr. J. Muliuro (Kenya)  
Mr. G. Zavarzin (USSR)

Rapporteur: Mr. J. Hussain (Pakistan)

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D. Adoption of the agenda

31. The Plenary adopted the following agenda:

1. Opening of the session.
2. Organizational matters:
  - (a) Adoption of the agenda;
  - (b) Organization of work.
3. Consideration of the second revised draft Convention on biological diversity:
  - (a) Second revised draft;
  - (b) Note by the Executive Director;
  - (c) Note requested from the Secretariat by the Intergovernmental Negotiating Committee at its third session.
4. Other matters.
5. Adoption of the report.
6. Closure of the session.

E. Organization of Work

32. The Chairman referred to the request by the Madrid session that he should consult with the Executive Director of UNEP and the Rapporteur regarding the numbering of the negotiating sessions on biological diversity in the light of UNEP Governing Council decision 16/42 on renaming the Ad Hoc Working Group of Legal and Technical Experts the "Intergovernmental Negotiating Committee for a Convention on Biological Diversity" and affirming that the change of name did not mean a new negotiating body nor affect the continuity of the process of elaborating the Convention. Agreement was reached that this session would be the "Fourth Negotiating Session for a Convention on Biological Diversity/Second Session of the Intergovernmental Negotiating Committee". The symbol would be N4-INC.2 and symbols for further meetings would follow in sequence.

33. The Chairman introduced and briefly reviewed the documents for the session:

- (a) Second Revised Draft Convention on Biological Diversity  
(UNEP/Bio.Div/INC.4/2 and Corr.1)

The Chairman thanked the regionally balanced group of lawyers for its work in reviewing and revising the draft articles of the Convention. He noted the addition of three new articles, namely Articles 23 bis, 32, and 41, and explained that footnotes had been included for those revised sections which required additional explanation.

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(b) Note by the Executive Director (UNEP/Bio.Div/INC.4/3)

The Chairman referred to paragraphs 14 and 15 of this Note and emphasized that the informal note by the Chairman of the Negotiating Committee for a Convention on Biological Diversity - Some Preliminary Draft Definitions - which had been prepared and distributed at the end of the Madrid session was considered as a non-paper of an informal character. In this context, the Chairman proposed that definitions/use of terms should be taken up by both Working Groups I and II as appropriate at the later stages of negotiation.

(c) Note by the Secretariat on "Adequate, New and Additional", "New and Additional" and "Adequate and Additional" Financial Resources (UNEP/Bio.Div/INC.4/4) and a Note by the Secretariat on Additional Financial Resources, in the Context of the Conservation and Rational Use of Biological Resources (UNEP/Bio.Div/INC.4/4/Add.1)

34. The Chairman then turned to the organization of work for Working Groups I and II. The Plenary agreed that Working Group I would start its deliberations with Article 5 (Implementation Measures) and for the time being leave the remaining paragraphs of Articles 3 (Fundamental Principles) and 4 (General Obligations) for consideration after Working Group II had finished its discussions on related articles assigned to it since several of the fundamental principles and general obligations contained in these articles were closely connected with the outcome of negotiations in Working Group II. The Plenary agreed that Working Group II would start with deliberations on Article 20 (International Cooperation) and then consider Articles 15-19 (15: [Regulated] Access to Technology; 15 bis: Exchange of Information; 16: [Transfer of Technology]; 17: Technical and Scientific Cooperation; 17 bis: Handling of Biotechnology and Distribution of its Benefits; 18: Financial Needs and Means; 19: Financial Mechanisms) in sequence and subsequently Article 14 ([Regulated] Access to [Biological Diversity] [Genetic Material]).

35. The Plenary was apprised of the need for agreement on a way in which the two Working Groups could communicate, particularly when it was necessary for one Working Group to consider articles or their parts transmitted to it by the other Working Group.

36. The Chairman recalled that proposals and amendments to draft articles should be introduced in accordance with Rule 28 of the Rules of Procedure adopted at the second negotiating session (Nairobi, 25 February-6 March 1991, UNEP/Bio.Div/WG.2/2/5, Annex).

37. The Chairman reported that at the recent meeting of the UNCED Preparatory Committee, held from 12 August 1990 to 2 September 1991, he had been invited to open the discussion on biological diversity and to comment on the progress of work on a Convention on biological diversity. He indicated that the decisions regarding biological diversity adopted by UNCED at the third session of the Preparatory Committee would be distributed as soon as a final version had been made available to the UNEP Secretariat in all languages. The Chairman also referred to a meeting with the Director-General of WHO and reported that the proposals presented by WHO to INC had been made available to the meeting.

38. The Chairman thanked the United Kingdom delegation for making available to participants in the meeting a report for the United Nations Conference on Environment and Development and the UNEP Intergovernmental Negotiating

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Committee for a Convention on Biological Diversity entitled, "Conservation of Biological Diversity - The Role of Technology Transfer".

39. The Chairman stated that, in view of the absence of the Vice-Chairman and the Rapporteur of Working Group I, Working Group I regional groups should present candidates to replace these two officers.

40. The Chairman then referred to other issues that needed to be considered before the end of the session, including the dates of future INC meetings, taking into account the dates and venues of the UNCED and climate change meetings.

### III. SECOND PLENARY MEETING

41. At its second plenary meeting on 26 September 1991, the Committee reviewed the progress of work in Working Groups I and II.

42. The Chairman of Working Group I, Mr. J. Muliro, informed the Committee that progress had been achieved during the four meetings so far held by the Group. He also stated that the following officers had been elected by the Group: Vice-Chairman: Mr. Pavel Suian (Romania); Rapporteur: Mr. Nordahl Roaldsoy (Norway).

43. In accordance with the decision taken by the Plenary, WGI had continued its first reading of the Articles which had not been considered at the third negotiating session. WG.I had started with consideration of Article 5, paragraph 1. Following a general debate, an open-ended drafting group had been established to draft the text of paragraph 1. The informal group had drafted a text of paragraph 1, with one formulation in square brackets, and this had been accepted, by WG.I. WG.I had further agreed:

- (i) to delete paragraph 2 of Article 5 on the understanding that the relevant issues were reflected in paragraph 1 of Article 4;
- (ii) to move paragraphs 3 and 4 of Article 5 to Article 26 because they mainly dealt with reporting.

44. A new Article 5 bis - Identification and Monitoring - had been presented and discussed by WG.I. WG.I had also discussed Article 6, subparagraphs (a), (b), (c) and (d), and would continue its work on this article.

45. The Chairman of Working Group II, Mr. V. Koester, reported that WG.II had completed its first reading of Article 20 and had proposed an amended text that would be submitted to WG.I for possible placement in Article 4. WG.II had requested that no substantive changes be made to the text of Article 20, but that WG.I only deal with its proper placement and the bracketed formulations. The Chairman also announced that WG.II discussions on Article 20 would be transmitted to WG.I for information.

46. WG.II had completed its second reading of Article 15, paragraphs 1-3, and had condensed paragraphs 1 and 2 into one paragraph. The number of square brackets had been reduced from ten to three. The Chairman reported that WG.II was currently working on the last paragraph of Article 15.

47. The Chairman then gave the floor to the representative of UNCED, who read out a statement from Mr. M. Strong, Secretary-General of UNCED. The representative conveyed Mr. Strong's regret at not being able to attend the

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fourth negotiating session of the INC due to previous commitments. The Secretary-General was encouraged by the work of the INC thus far and continued to hope that a convention would be ready for the 1992 Conference on Environment and Development in Rio de Janeiro. The work of the INC and UNCED were complementary: INC's work was to develop a legal framework to conserve biological diversity, and UNCED's work was to develop Agenda 21 as an action programme for the conservation and sustainable use of biological diversity. At the third session of the Preparatory Committee, the Secretariat had been requested to place even greater emphasis on sustainable use and conservation of biological diversity. In addition, the cross-linkages to such areas as climate change, forests, oceans and coastal areas, environmental education and the relevant aspects of biotechnology would continue to be studied for the fourth session of the Preparatory Committee. The Secretary-General's statement outlined the major programme areas for that part of Agenda 21 which focused on the conservation of biological diversity: A - information on biological diversity; B - maximizing and spreading the benefits of biological diversity; C - improving conservation of biological resources; and D - enhancing the capacity to manage the conservation and sustainable use of biological diversity. The Secretary-General concluded by wishing continued success to the INC and assured it of the continuing cooperation of UNCED.

48. The representative of UNCED also reported on the decisions taken at PrepCom III. In the areas of conservation of biological diversity and biotechnology, it had been decided that the Secretary-General would transmit the Chairman's summary and proposals for action to the INC. In addition, the Secretary-General had been requested to follow the work of the INC and keep PrepCom informed of its activities and progress so that efforts in these areas could be concerted and not duplicated. The representative informed the Committee that copies of the draft decisions of the PrepCom would be made available to this meeting prior to incorporation into the final report of PrepCom III.

49. The Chairman of INC said that further consideration should be given to the question of communication between the two Working Groups. The problem had been referred to at the first plenary meeting (see paragraph 35 above) and there was a need to clarify and establish procedures which would allow one Working Group to transfer its findings/draft articles/recommendations to another Working Group. The procedure was not clearly defined in the Rules of Procedure and therefore guidance from the Plenary was required. The Bureau considered that, although a procedure for communication between the two Working Groups should not be too formal, it would be useful to establish such a procedure as guidance for the operation of both Working Groups. The Chairman said that the Bureau had identified three possible situations to be covered:

- (a) "direct" transmittal of an article or any part thereof from one Working Group to another Working Group when the Working Group which is supposed to consider the article in accordance with the Plenary's decision regarding the allocation of the articles of the Convention to the two Working Groups is of the opinion that this article or part thereof does not belong to it and should be transferred for consideration by the other Working Group;
- (b) transfer of any article or part thereof, after it has been discussed and agreed upon by the transferring Working Group, to another article or place within the competence of the other Working Group, when the transferring Working Group believes that the article or part thereof is out of place in its present place in the text of the Convention. The transferring Working Group, having already

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discussed the article or part thereof and having agreed upon its wording, could request that the recipient Working Group should not further discuss or change the agreed language;

- (c) cases where the advice of one Working Group is sought by the other with regard to consideration of the article. In some cases, the advice could be followed by transfer of consideration of the article by one Working Group to the other.

50. The Bureau suggested that the procedure for the three cases identified should be the same. It further suggested that such cases should be reported by the Chairman of one Working Group to the Chairman of the other Group in writing, with copies to the Chairman of the INC and the Executive Director of UNEP. The matter should only be taken up by the Plenary when the case was controversial and had been refused by the other Working Group. This method of correspondence between the chairmen of subsidiary bodies had proved very effective at meetings of the Governing Council of UNEP over a number of years and could constitute a precedent for the INC, which was a subsidiary body of the UNEP Governing Council.

51. After the "non-paper" by the Chairman on selected terms had been made available, the Chairman asked for comments on the proposal to establish an Open-Ended Working Group to discuss and define the terms used in the Convention. After discussion of the issue by the Plenary, the Chairman indicated his willingness to carry out additional work on the "non-paper" and invited experts from delegations to collaborate with him on the draft definitions/use of terms. The subsequent "non-paper" would be made available at the conclusion of the Fourth Negotiating Session.

52. The Chairman then addressed a procedural question in WG.I regarding the introduction of new texts to the draft Convention. The Chairman reaffirmed every delegate's right to submit new texts, amendments, etc. according to the Rules of Procedure. However, he emphasized that the submission of too many lengthy texts could hamper the negotiating process. The Chairman referred resolution of the issue to WG.I, indicating that the Bureau would resolve the matter if WG.I was unable to do so.

#### IV. THIRD PLENARY MEETING

53. The third plenary meeting was held on 2 October 1991.

##### A. Other matters

54. The Plenary accepted the Bureau's proposal that the fifth negotiating session/third session of INC should be held in Geneva from 25 November to 4 December 1991. The Plenary also agreed with the proposal that the sixth negotiating session/fourth session of INC should be held in Nairobi from 6 to 14 February 1992. The invitation by the Government of Kenya to hold the final negotiating session and the meeting of plenipotentiaries in Nairobi was welcomed by the Plenary and the tentative dates of 18 to 22 May and 25 to 27 May 1992 respectively were agreed.

55. Regarding new, extensive proposals coming from the delegates during the meeting, it was stated that while every delegation has, in accordance with the rules of procedure, a right to present proposals and amendments until the last day of the negotiations, the procedure has to be set up to make sure that the new proposals, as far as possible, should be put in front of the delegates

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within a sufficient period of time, to allow them to come to the meetings with the agreed position within their country regarding these proposals and amendments. It was agreed that the deadline should be set up for the presentation of new proposals for the articles of the Convention which were not yet subject of the first reading. The deadline was set for 20 October 1991 which would allow the Secretariat to translate these proposals into languages and distributed to governments as soon as possible - as background materials - to allow them to consider them before the November meeting. The proposals which were circulated during this session but not discussed will be included in that background material.

56. Any proposal to the articles which were already subject to negotiations during the first reading by the Working Groups and proposals which were of "amendment character", or would be the reaction for new proposals distributed by the Secretariat should be presented to the meeting at the latest by the 27 November 1991 (by the end of the third day of Geneva session).

57. These procedures would allow for a more organized way of proceeding with the negotiations and under no condition should be understood as a limitation on the right of every delegation to put through its amendments and proposals at any stage, if necessary.

58. The Plenary also requested the Bureau to prepare a Note on the interpretation of Rules 28 and 38 of the Rules of Procedure for submission to the fifth negotiating session/third session INC.

59. The Chairman recognized the common feeling that during the meeting informal contacts and consultations were not used enough. Thus, priority should be given to set up mechanisms of informal negotiations to get better co-operation between the regional groups. It is hoped that at these informal negotiations the difficult issues would be discussed.

60. It was requested that the Secretariat should prepare the draft of Article 2 for (Use of Terms for the Purpose of this Convention) for the next meeting in Geneva.

61. The Chairman announced that the next meeting of the Bureau will be held in UNEP Regional Office for Europe on 24 November 1991 at 5.00 pm.

#### B. Consideration of the Reports of Working Groups I and II

62. The Chairmen of Working Groups I and II introduced their reports. The Plenary took note of the reports and agreed to incorporate them in the body of the present report. The articles of the draft Convention as revised by the Working Groups are attached as Annex.

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#### C. Report of Working Group I

##### I. Organizational matters

##### A. Opening of the session

63. Working Group I (WG.I), established by decision of the second negotiating session of the Ad Hoc Working Group of Legal and Technical Experts on Biological Diversity, met from 23 September to 2 October 1991 and held 14 meetings.

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64. The Chairman, Mr. Joseph Muliro (Kenya), opened the proceedings. He informed WG.I that the Vice-Chairman, Ms. Joanna Gliwicz (Poland), and the Rapporteur, Mr. Craig Ferguson (Canada), would not attend the session. The Chairman asked the respective regional groups to nominate candidates to be elected as the Vice-Chairman and Rapporteur of WG.I.

65. The following persons were elected:

Vice-Chairman: Mr. Pavel Suian (Romania)

Rapporteur: Mr. Nordahl Roaldsoy (Norway)

#### B. Attendance

66. The meetings were attended by representatives of the following countries: Argentina, Australia, Austria, Bahamas, Bangladesh, Belgium, Benin, Brazil, Bulgaria, Burkina Faso, Canada, Central African Republic, Chile, China, Colombia, Congo, Costa Rica, Cuba, Czechoslovakia, Denmark, Ecuador, Egypt, Ethiopia, Finland, France, Gambia, Germany, Ghana, Guyana, India, Indonesia, Italy, Japan, Kenya, Lesotho, Malawi, Malaysia, Maldives, Mauritania, Mauritius, Mexico, Morocco, Myanmar, Netherlands, Nigeria, Norway, Pakistan, Panama, Papua New Guinea, Peru, Philippines, Portugal, Republic of Korea, Romania, Rwanda, Sao Tome and Principe, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Trinidad and Tobago, Tunisia, Uganda, Union of Soviet Socialist Republics, United Kingdom, United Republic of Tanzania, United States of America, Uruguay, Venezuela, Zaire, Zambia and Zimbabwe.

67. The following United Nations bodies, specialized agencies and other international organizations were represented: FAO, UNESCO, UNCED and the EC.

68. Observers from the following non-governmental organizations were represented: AALCC, IBPGR, IUCN, WWF.

#### C. Organization of work

69. The Chairman suggested that WG.I should follow the recommendations from the Plenary and start its deliberations with Article 5 (Implementation Measures), leaving the remaining paragraphs of Articles 3 (Fundamental Principles) and 4 (General Obligations) for later consideration after WG.II finished its discussions on related Articles.

70. It was agreed that if not otherwise decided the Articles would be considered paragraph by paragraph.

#### II. Substantive matters

71. WG.I started with consideration of paragraph 1 of Article 5 (Implementation Measures). The Chairman of WG.I convened an open-ended informal drafting group to develop a concise text of paragraph 1 on the basis of major proposals made.

72. The informal group drafted a text of paragraph 1, with one formulation in square brackets, that was accepted by WG.I.

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73. WG.I agreed to delete paragraph 2 of Article 5 on the understanding that the relevant issues are reflected in paragraph 1 of Article 4 (General Obligations).

74. WG.I agreed that paragraphs 3 and 4 of Article 5 would be more appropriately placed in Article 26 (Reports), since the provisions of those paragraphs and of Article 26 deal with the same subject. It was decided to return to the issue of how to accommodate the relevant texts when discussing Article 26.

75. One delegation proposed the addition of a paragraph to Article 5 on the topic of regional or international strategies, plans or programmes. Some delegations thought that this might be better considered in the context of Article 20 (International Cooperation), which fell within the mandate of WG.II. While maintaining the view that such a provision was better placed in Article 5, the delegation agreed to withdraw it until it was clearer whether it would be more appropriately dealt with in WG.II.

76. WG.I discussed a new Article 5 bis (Identification and Monitoring), for which several delegations submitted a written proposal. One delegation asked to be added as a co-sponsor. Many delegations considered that Article 5 bis did not constitute an adequate basis for discussion. They considered that the draft Convention contained in document UNEP/Bio.Div/INC.4/2 already provided the necessary elements for the debate of the matters that Article 5 bis was intended to deal with. Many other delegations expressed positive views about the draft article, some noting that it consisted largely of a re-ordering of existing provisions. Some delegations, therefore, asked the sponsors to circulate texts showing how subsequent articles would be affected. This was done informally. One delegation submitted an alternative text of Article 5 bis. Many delegations, as they considered that massive and unclear obligations were contained in Article 5 bis which could, if retained in its present form, require extensive financial outlays and other resources, and in view of the fact that only a general discussion of Article 5 bis took place, accordingly jointly submitted a text for a new Article 7 bis for appropriate consideration at the next session. WG.I accepted at its last meeting that the proposed Articles 5 bis and 7 bis be incorporated in brackets in the draft Convention.

77. WG.I next moved on to Article 6 (In situ Conservation). A general discussion was held on Article 6, subparagraphs (a), (b), (c), (d) and (e) and a number of proposals were made. One delegation submitted a written proposal for the whole of Article 6.

78. At the suggestion of the Chairman, an informal drafting group met and prepared texts for Articles 6 (a), (b), (c) and (e). Subparagraph (d) was placed in square brackets to await the result of deliberations in WG.II on financial resources and technology transfer, which might affect subparagraph (d).

79. After presentation of the drafted subparagraphs, WG.I accepted the text with some additions in square brackets.

80. WG.I held a general discussion on subparagraphs (f), (g) and (h) of Article 6 and assigned them to an open-ended informal drafting group.

81. This informal drafting group met and prepared texts for Article 6, subparagraphs (f), (g) and (h), which were accepted by WG.I.

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82. WG.I then considered subparagraphs (i) and (j) of Article 6.

83. In relation to subparagraph 6(i), one delegation noted that it had proposed a new draft Article 8 bis (Incentive Measures) to address the issue of economic and other policies.

84. After general discussion, WG.I assigned subparagraphs (i) and (j) of Article 6 to two informal drafting groups which met simultaneously. The texts prepared were accepted by the Working Group.

85. Several delegations proposed additional subparagraphs to Article 6 for discussion at the next session of INC.

86. Several delegations suggested to the Chairman that it was necessary to adopt, as soon as possible, definitions of the main technical terms since lack of agreement among delegations regarding their meaning resulted in unnecessarily complicated and lengthy discussions. The consequence was that, once definitions were drawn up, the texts would have to be revised again to ensure that the articles relating to new concepts reflected the interests of all parties.

87. After general discussion on Article 7(a), the relevant proposals were referred to an informal drafting group which prepared a text then accepted by WG.I.

88. The texts of the articles, as prepared by WG.I, are attached to this report.

89. The Chairman reported that Article 20 (International Cooperation) had been transferred to WG.I by WG.II. The substance of the article had been dealt with and WG.I was requested to resolve several bracketed clauses.

### III. Recommendations to the plenary

90. The texts of Articles 5, 5 bis, 6 including new subparagraphs, the chapeau and subparagraph (a) of Article 7, and Article 7 bis are recommended by WG.I for inclusion in the third revised draft Convention on Biological Diversity as the basis for further negotiations.

91. WG.I recommends the relocation of paragraphs 3 and 4 of Article 5 in Article 26 (Reports).

### IV. Adoption of the report

92. After considering the text paragraph by paragraph, WG.I adopted its draft report as amended.

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D. Report of Working Group II

I. Organizational matters

A. Opening of the session

93. The Chairman of Working Group II (WG.II), Mr. Veit Koester (Denmark), opened the proceedings. The following Bureau established by decision of the second session of the Ad Hoc Working Group of Legal and Technical Experts on Biological Diversity continued in office at this session: Mr. A. Vaish (India), Vice-Chairman, with Mr. S. Samba (Gambia) as Rapporteur.

94. The Chairman welcomed the delegations and expressed his hope that the spirit of cooperation shown in Madrid would continue in Nairobi.

B. Attendance

95. The meetings were attended by representatives of the following countries: Argentina, Australia, Austria, Bahamas, Barbados, Belgium, Bolivia, Brazil, Burkina Faso, Canada, Chile, China, Colombia, Costa Rica, Cuba, Czechoslovakia, Denmark, Ecuador, Egypt, Ethiopia, Finland, France, Germany, Ghana, Greece, Guinea, Guyana, India, Indonesia, Italy, Japan, Kenya, Lesotho, Malawi, Malaysia, Mauritania, Mauritius, Mexico, Morocco, Myanmar, Netherlands, Nigeria, Norway, Pakistan, Peru, Philippines, Portugal, Republic of Korea, Romania, Rwanda, Spain, Sweden, Switzerland, Thailand, Tunisia, Uganda, Union of Soviet Socialist Republics, United Kingdom, United Republic of Tanzania, United States of America, Uruguay, Venezuela, Zaire, Zambia and Zimbabwe.

96. The following United Nations bodies, specialized agencies and other international organizations were represented: FAO, UNESCO, UNIDO, UNCED, UNSO, World Bank and the EC.

97. In addition, observers from AALCC and IBPGR attended the meetings.

C. Organization of work

98. The Chairman noted the Plenary's decision that Working Group II begin its negotiations with Article 20, turning then to Articles 15, 16, 15 bis, 17, 17 bis, 18 and 19 before returning to Article 14.

99. Working Group II agreed to use the same working procedure used in Madrid, namely, to consider the text paragraph by paragraph. In considering Articles 14 and 15-19, the Chairman urged the Group to work within the framework established by the text negotiated in Madrid.

II. Substantive matters

100. Working Group II completed a first reading of Article 20 and a second reading of Articles 15, 16, 15 bis, 17 and the first paragraph of Article 17 bis. In addition, an Article 14 bis was introduced but not discussed.

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101. After considering Article 20 - International Cooperation - there was general consensus that the text as amended by Working Group II at its present session would be more appropriately placed in the articles dealt with by Working Group I, probably in Article 4. The Working Group therefore decided to transmit this text to Working Group I for consideration of its appropriate placement. Working Group II further felt that the substance of the article had been dealt with and need not be re-opened by Working Group I. Several bracketed clauses would, however, need to be resolved by Working Group I because there was agreement that there was no need for further readings of this article in Working Group II.

102. In discussing Article 15 - Access to Technology - two options were proposed for paragraph 4 dealing with the issue of patents and other intellectual property rights. Several delegations stated that they would have to consult their governments on the subject. After the discussion on Article 15, a statement was made on the subject of "access to and transfer of technology" by the European Community, and a statement in response to this was made by the Group of 77 and China.

### III. Recommendations to the Plenary

103. As a result of its deliberations on the articles mentioned in paragraph 8 above, as well as a new Article 14 bis, which was introduced but not discussed, Working Group II recommended the general understanding of the draft articles contained in document UNEP/Bio.Div/N4-INC.2/WG.II/L.1/Add.1 to the Plenary for adoption as the basis for future negotiations.

104. In discussing Article 16, the basic issue of what was meant by the words "fair and favourable", "fair and most favourable", "equitable", "preferential and non-commercial", "preferential", "non-commercial" and "concessional" kept arising. Working Group II therefore recommended to the Plenary that the Secretariat be requested to prepare a Note on the interpretation of these words in other relevant fora.

### IV. Adoption of the report

105. After considering the text paragraph by paragraph, WG II adopted its report as amended.

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#### E. Recommendations

106. The Plenary adopted the recommendations made by Working Groups I and II to the Plenary contained in paragraphs 90-91 (WG.I) and 103-104 (WG.II) above.

#### F. Adoption of the Report

107. The Committee adopted its report.

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G. Closure of the Session

108. Following the customary exchange of courtesies, the Chairman declared the fourth negotiating session/second session of INC closed.

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ANNEX

DRAFT ARTICLES ADOPTED BY THE PLENARY  
AS THE BASIS FOR FUTURE NEGOTIATIONS

A. Articles prepared by Working Group I following the first reading as  
the basis for further negotiations

Article 5 - Implementation Measures

1. Each Contracting Party shall [, in accordance with the particular conditions in each country,] develop national strategies, plans or programmes for the conservation and sustainable use of biological diversity or shall adapt for this purpose its existing strategies, plans or programmes.<sup>2</sup>

Article 6 - In situ Conservation<sup>3</sup>

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

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

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

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<sup>2</sup> Paragraph 2 of Article 5 was deleted on the understanding that the relevant issues are reflected in paragraph 1 of Article 4 (General Obligations). It was felt that paragraphs 3 and 4 of Article 5 would be more appropriately placed in Article 26 (Reports), since the provisions of those paragraphs and of Article 26 deal with the same subject.

<sup>3</sup> One delegation considered that the whole of Article 6, including its title, should be revised since it was discussed without the definition of the words used. In order to work effectively, an agreement should be reached as soon as possible on the definitions. This will save a great deal of work.

/...

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

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

[(d) Provide financial and other assistance for new and existing programmes supporting the protection of ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings, with particular attention to technology and the needs of developing countries;]<sup>4</sup>

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

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

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

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

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

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<sup>4</sup> A first reading of this subparagraph was postponed and was not undertaken by Working Group I during the fourth negotiating session/second session of INC since it was felt advisable to consider it only after the articles relating to funding and technology transfer had been agreed to by Working Group II. The square brackets around subparagraph (d) do not imply any disagreement on the text, but only that Working Group I has agreed not to consider it at this time.

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

#### Article 7 - Ex situ Conservation

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

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

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

[(viii) Identified on any other relevant basis as requiring conservation measures;]]

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

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#### B. Articles submitted by delegations for first reading at the Fifth Negotiating Session of the INC

##### [Article 5 bis - Identification and Monitoring]

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

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- (a) Ecosystems<sup>5</sup> containing:
    - (i) high diversity;
    - (ii) endemic species;
    - (iii) habitats of rare or endangered species;
    - (iv) habitats used and required by migratory species;
    - (v) wilderness; or
    - (vi) biological diversity of social, economic and cultural importance.
  - (b) Species<sup>6</sup> which are:
    - (i) rare or endangered;
    - (ii) wild relatives of domestic or cultivated species;
    - (iii) of medicinal, agricultural or other economic value;
    - (iv) of social or cultural importance; or
    - (v) important for research into the conservation of biological diversity, such as indicator species; and
  - (c) Described genomes and genes of social and economic importance.
2. In identifying the ecosystems and species pursuant to paragraph 1, Contracting Parties shall have regard to ecosystems and species which are identified pursuant to any other international convention as requiring conservation measures and shall pay particular attention to ecosystems and species which require urgent conservation and ecosystems which have become degraded.
3. The Contracting Parties shall identify processes and activities which adversely affect or which are likely adversely to affect biological diversity, including:
- (a) pollution;
  - (b) habitat degradation;
  - (c) unsustainable harvesting of biological diversity; and
  - (d) release or spread of alien species or genetically modified organisms.
4. The Contracting Parties shall:
- (a) monitor the components of biological diversity identified pursuant to paragraph 1, with particular attention to ecosystems and species under threat; and
  - (b) monitor the activities and processes identified pursuant to paragraph 3.
5. The Contracting Parties shall establish and maintain data banks containing data derived from identification and monitoring pursuant to paragraphs 1-4 of this Article, individually or jointly with other States directly or through international organizations.]

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<sup>5</sup> The term "ecosystem" is understood to include natural and culturally influenced ecosystems.

<sup>6</sup> The term "species" is intended to cover populations and varieties within species.

Article 6 - In situ Conservation

- [(k) Develop necessary legislation for the protection of threatened species, populations and varieties, as identified in Article 5 bis;]
- [(l) Regulate human impacts, as identified in Article 5 bis, which adversely affect or which are likely to adversely affect biological diversity;]

[Article 7 bis

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

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C. Draft Articles on which there is a General Understanding in Working Group II

[Article 14 bis - Traditional Indigenous and Local Knowledge<sup>7</sup>

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

Article 15 - Access to Technology

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

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<sup>7</sup> This text, based upon an intervention by Peru and proposed by Canada on the basis of consultations with Australia, Bolivia, Brazil, Colombia, Costa Rica, Denmark, Ecuador, Kenya, Peru, Sweden, United Republic of Tanzania, Uruguay and Venezuela, was not discussed during the deliberations of Working Group II at the Fourth Negotiating Session/Second Session of the Intergovernmental Negotiating Committee (INC).

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

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

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

Alternative text for paragraph 4:

5. [The Contracting Parties, recognizing that patents and intellectual property rights exist and are regulated by national legislation and international agreements, also recognizing that such rights have an influence on the implementation of the present Convention, shall cooperate in this regard in accordance with national legislation and existing international law in order to ensure that these legal arrangements are supportive of and do not run counter to the objectives of this Convention.]<sup>8</sup>

Article 15 bis - Exchange of Information

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

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

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

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<sup>8</sup> The text of this paragraph, introduced as a compromise proposal by Norway, was not discussed during the deliberations of Working Group II at the Fourth Negotiating Session/Second Session of INC.

#### Article 16 - Transfer of Technology

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

2. The Contracting Parties, [within their competences] shall [endeavour to encourage] [ensure that] [through legislative, administrative [or] [and] general policy measures] as appropriate the private sector [to transfer] [transfers] on a [fair, equitable and [most] favourable] [preferential and non-commercial] basis the technologies referred to in Article 15, paragraph 1, and in the same manner as provided for in Article 16, paragraph 1, [in particular to developing countries Parties to this Convention] [notwithstanding patents and other intellectual property rights] [having due regard for patents and other intellectual property rights].

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

#### Article 17 - Technical and Scientific Cooperation

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

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

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

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

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

Paragraph 1 of [Article 17 bis - Handling of  
Biotechnology and Distribution of Its Benefits

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

Article 20 - International Cooperation<sup>9</sup>

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

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<sup>9</sup> This article was transmitted to Working Group I in conformity with the procedure established by the Plenary. (See paragraph 101 of the Working Group's report.)

