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INTERGOVERNMENTAL NEGOTIATING COMMITTEE  
FOR A CONVENTION ON BIOLOGICAL DIVERSITY

Fifth Negotiating Session/Third Session of INC  
Geneva, 25 November - 4 December 1991

REPORT OF THE INTERGOVERNMENTAL NEGOTIATING COMMITTEE  
FOR A CONVENTION ON BIOLOGICAL DIVERSITY ON THE WORK  
OF ITS THIRD SESSION/FIFTH NEGOTIATING SESSION

## I. INTRODUCTION

1. By its decision 14/26, the Governing Council (GC) of the United Nations Environment Programme established the Ad Hoc Working Group of Experts on Biological Diversity which held three sessions between November 1988 and July 1990. On the basis of the final report of the Ad Hoc Working Group of Experts, the GC, pursuant to its decision 15/34, established the Ad Hoc Working Group of Legal and Technical Experts with a mandate to negotiate on an international legal instrument for the conservation and rational use of biological diversity. The Ad Hoc Working Group of Legal and Technical Experts held its first two negotiating sessions, on 19-23 November 1990 in Nairobi and on 25 February to 6 March 1991 in Nairobi. Pursuant to GC decision 16/42 of 31 May 1991, the Ad Hoc Working Group of Legal and Technical Experts on Biological Diversity was renamed the "Intergovernmental Negotiating Committee (INC) for a Convention on Biological Diversity" and held the third negotiating session in Madrid, Spain, from 24 June to 3 July 1991.\* The fourth negotiating session/second session of INC was held at Nairobi from 23 September to 2 October 1991. The report of that session is contained in document UNEP/Bio.Div/N4-INC.2/5.

2. The fifth negotiating session/third session of INC was held at the Palais des Nations, Geneva, from 25 November to 4 December 1991.

## 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.

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\* The documents of the first three negotiating sessions may be found in the series: UNEP/Bio.Div/WG.1; UNEP/Bio.Div./WG.2; and UNEP/Bio.Div./WG/INC.3/11.

4. He stated that the current session of INC was a very important one, since only one further working session, in February 1992, remained to complete preparation of the text of the draft Convention for finalization at the meeting in May 1992, immediately before the Diplomatic Conference in Nairobi. He suggested that no speeches would be made to the session, since time was short and many problems had yet to be solved and that, as at previous sessions, the Committee should divide into two working groups. Having wished the participants every success in their work, he invited the Executive Director of UNEP to make some preliminary comments.

5. Dr. M.K. Tolba, Executive Director of the United Nations Environment Programme, in his opening remarks, drew the attention of the Committee to a statement recently made by the representative of the Netherlands, speaking on behalf of the European Community, to the Second Committee of the United Nations General Assembly. The Netherlands representative indicated, *inter alia*, that the industrialized countries, recognizing their responsibility towards the environment, should commit themselves to reducing the burden they imposed upon it, to the extent of their legitimate share. He considered this a very positive move.

6. The Chairman said that the Global Biodiversity Strategy had been prepared by UNEP, the World Conservation Union (IUCN) and the World Resources Institute, in consultation with FAO and UNESCO and with inputs from many governmental and non-governmental organizations. Although the Strategy had not yet been officially published, its text had been made unofficially available to the INC. He invited the representative of the World Resources Institute to introduce the document.

7. Kenton Miller, World Resources Institute, said that the Global Biodiversity Strategy had been prepared jointly by the organizations that the Chairman had mentioned, with the support of 45 governmental institutions and NGOs around the world. Through a process of research, regional consultations and workshops, the Strategy had developed a set of 85 action proposals focusing on international and national policy, equitable benefits to local communities, conservation practices, and the development of local capacity. Five of the actions were catalytic in nature: negotiating the Convention on Biological Diversity; calling on the United Nations to establish an international biodiversity decade; creating an independent early warning system; establishing an international biodiversity panel to ensure continuing open dialogue and debate on concepts, principles and criteria; and fostering national biodiversity planning. The strengthening of NGOs could expand national abilities in research, information, awareness and support to governmental activities. He urged the participants in the session to consider the full scope of biodiversity and to ensure that the Convention became the centre-piece of a decade of international cooperation that would secure, respect and wisely develop the fundamental environment and resource base for humanity.

#### B. Attendance

8. The session was attended by representatives of the following countries: Argentina, Australia, Austria, Bahamas, Bangladesh, Barbados, Belgium, Bolivia, Brazil, Bulgaria, Burkina Faso, Cameroon, Canada, Central African Republic, Chile, China, Colombia, Congo, Costa Rica, Czechoslovakia, Denmark, Ecuador, Egypt, Equatorial Guinea, Ethiopia, Finland, France, Germany, Ghana, Greece, Guinea, Guyana, India, Indonesia, Italy, Japan, Kenya, Republic of Korea, Malawi, Malaysia, Maldives, Mauritius, Mexico, Myanmar, Netherlands,

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Nicaragua, Niger, Norway, Pakistan, Papua New Guinea, Peru, Philippines, Poland, Portugal, Romania, Rwanda, Sao Tome and Principe, Senegal, Spain, Sweden, Switzerland, Tanzania, Thailand, Trinidad and Tobago, Tunisia, Turkey, Uganda, Union of Soviet Socialist Republics, United Kingdom, United States of America, Uruguay, Venezuela, Zaire, Zambia and Zimbabwe.

9. The following United Nations bodies, specialized agencies and other international organizations were represented: Commission of the European Communities (CEC), Food and Agriculture Organization of the United Nations (FAO), International Board for Plant Genetic Resources (IBPGR), International Union for the Protection of New Varieties of Plants (UPOV), United Nations Conference on Environment and Development (UNCED), United Nations Educational, Scientific and Cultural Organization (UNESCO), the World Bank, World Intellectual Property Organization (WIPO), World Meteorological Organization (WMO) and World Health Organization (WHO).

10. The following non-governmental organizations were represented by observers: Women's Foundation for the Environment, World Conservation Monitoring Centre (WCMC), World Conservation Union (IUCN), Netherlands National Committee for IUCN (NNC/IUCN), World Federation of United Nations Associations (WFUNA), World Wide Fund for Nature (WWF) and World Wide Fund/Natura-Ecuador.

#### C. Officers

11. The Bureau elected at the second negotiating session was continued in office. It comprises:

Chairman: H.E. Mr. V. Sanchez (Chile)  
Vice-Chairmen: Mr. V. Koester (Denmark)  
Mr. J. Muliro (Kenya)  
Mr. G. Zavarzin (USSR)  
Rapporteur: Mr. J. Hussain (Pakistan)

#### D. Adoption of the agenda

12. 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 third revised draft Convention on Biological Diversity:
  - (a) Third revised draft;
  - (b) Note from the secretariat requested by the Inter-governmental Negotiating Committee at its fourth negotiating session.
4. Other matters

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5. Adoption of the report.
6. Closure of the session.

*E. Organization of Work*

13. The Chairman proposed that the two working groups should meet daily, holding two three-hour meetings each, except when a meeting of the Plenary was scheduled. While he hoped that it would not be necessary to hold night meetings, arrangements had been made with the Secretariat to meet that eventuality.

*F. Documentation of the session*

14. The Chairman drew the attention of INC to the documentation prepared for the session, which was available in all the working languages.

15. The first document was the third revised draft Convention on Biological Diversity (UNEP/Bio.Div./N5-INC.3/2), dated 7 October 1991. It contained the articles revised by Working Groups I and II in Madrid and Nairobi, together with new texts that had been submitted. Specifically, Article 1, Article 3 (paragraphs 1-6), Article 4 (subparagraphs 1 and 2 (a-f)), Articles 5 and 6, Article 7 (*chapeau* and subparagraph (a)), and Articles 14-19, including Articles 15 *bis* and 17 *bis*, and Article 20 which had been discussed at the last session. He indicated that some proposals had been made for the relocation of Articles, some of which would mean transferring Articles from the competence of one working group to that of the other.

16. The third revised draft Convention contained a number of Articles that had not yet been given either a first or second reading. They were: Articles 8-13 and 20-28, as well as Articles 14 *bis*, 22 *bis*, 31 and 40. The third revised draft also contained footnotes which explained the history and background of certain articles.

17. In accordance with paragraph 60 of the report of Nairobi, September-October 1991 session, (UNEP/Bio.Div/N4-INC.2/5), the Secretariat had prepared a draft for Article 2 (Use of Terms for the Purpose of this Convention), which was based on the Informal Note: Use of Terms by the Chairman of the INC, circulated at the last negotiating session.

18. In accordance with paragraph 104 of the same report, the Secretariat had prepared a note on the interpretation of the words and phrases "fair and favourable", "fair and most favourable", "equitable", "preferential and non-commercial", "preferential", "non-commercial" and "concessional".

19. On the issue of some inconsistencies in the translations of the original versions of the documents into various languages, he asked representatives to compare the original English versions with those in their own working languages and to point out any inconsistencies to the Secretariat, to ensure that texts in all working languages are consistent.

20. He also drew attention to several conference room papers which contained new proposals submitted by the delegations of Australia and Switzerland, in accordance with paragraph 55 of the report of the last session.

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III. SECOND PLENARY MEETING

21. The Chairman invited the Secretary-General of UNCED to address the Committee.

22. Mr. Strong, Secretary-General of the United Nations Conference on Environment and Development (UNCED), said that, at the third session of the Preparatory Committee, encouraging progress had been made in the elaboration of both common and negotiating positions on a number of key issues, one of which was biological diversity. He emphasized that biological diversity, which was central to a variety of concerns, was one of the most sensitive and difficult issues before UNCED. The recognition of the role played by biological diversity in maintaining the health and stability of the Earth's environment had been accompanied by a growing concern on the part of a number of countries that their immediate economic interests, and indeed their sovereignty, might be compromised by measures to preserve biological diversity. In the circumstances, the Convention that INC was negotiating should include provisions according economic values to the functions which the biological resources of developing countries performed for the world community. Sustainable use of biological diversity was a valid part of development but, until countries depending on biological diversity for their economic well-being could see that their economic interests were served by the sustainable development of ecosystems, the accelerated loss of biological diversity would continue.

23. Mr. Strong stressed that the UNCED process and the negotiation of the Convention were complementary, not alternative. Whatever was decided with respect to the Convention, it was to be hoped that the Agenda 21 document - which would constitute a framework not mandatory instructions - would set out the programmatic actions for conserving biological diversity. The Convention would clearly be a powerful enabling mechanism for implementing the measures contained in Agenda 21.

24. The Chairman said that the Royal Swedish Academy of Sciences was working on a report highlighting the main elements of a scientific agenda and international research programme on biological diversity as a contribution to the discussions on the terms of reference for and organization of a scientific advisory committee. That report would be ready by February 1992. He invited the representative of the Academy to give INC an account of the current status of the report.

25. Professor Ramel, Chairman of the Environment Committee of the Royal Swedish Academy of Sciences, said that the Convention being prepared by INC would constitute a valuable political instrument for the preservation of threatened ecosystems and species. Its implementation would necessitate vital decisions concerning the priority to be accorded to the objects of preservation and to the relationship between the productive use and the preservation of resources. In that respect, scientists would have an essential contribution to make. The Royal Swedish Academy of Sciences had asked the experts engaged in research into biological diversity for their advice on the issues raised, in particular the economics of biological diversity and the concern about the maintenance of the sustainable use of that diversity. One difficulty besetting the entire subject was the great uncertainty of estimates of the number of existing species and of those threatened with extinction. He pointed out that, apart from its practical and economic value, biological diversity had immense scientific value for it was

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the foundation of the biological sciences and of an understanding of organic evolution, including the human biological heritage. Mr. Ramel stressed that the implementation of the Convention on Biological Diversity would require an organization that would promote cooperation both within and between nations. He considered that there was a need for the international scientific community to develop a dynamic programme of research into biological diversity in the context of the future Convention. To that end, it would be desirable to establish an international centre or scientific advisory committee which would stimulate such research, identify research projects, collect, exchange and disseminate relevant information, promote education in that field and perform other related functions.

26. The representative of UNESCO informed the Committee that, at its twenty-sixth session, the General Conference of UNESCO had expressed the hope that high priority would be given to UNESCO's activities in respect of biological diversity, in the context of the preparations for UNCED and of the negotiations for a Convention on Biological Diversity. She mentioned, in that regard, that a research and monitoring programme had been launched by UNESCO, in conjunction with IUBS and SCOPE, and gave a brief account of that programme, which was based, in part, on the International Biosphere Reserve Network. She also mentioned that the General Conference had decided to reinforce the Biosphere Reserve Network by, on the one hand, establishing an advisory committee and, on the other, initiating the process of preparing general recommendations on biosphere reserves.

27. The representative of FAO informed the Committee that the FAO Conference, currently meeting in Rome, had dealt with several topics connected with the Committee's work. The Conference had approved annex 3 to the International Undertaking on Plant Genetic Resources, which stated that nations had sovereign rights over their plant genetic resources; that breeders' lines and farmers' breeding material should be made available only at the discretion of those who had obtained them and that the Farmers' Rights should be implemented through an international fund for the support of plant genetic conservation and utilization programmes, particularly in the developing countries. The Conference had approved the contents of the draft International Code of Conduct for Plant Germplasm Collecting and Transfer. The Conference had asked FAO to initiate or continue negotiations with the Governments and institutions which had offered to contribute to the development of the international network by means of their base collections, *in situ* protected areas or space in their germplasm banks. It had also recognized the importance of cooperating with other organizations in the development of the Global System on Plant Genetic Resources. The Conference had recognized that the Commission on Plant Genetic Resources was the sole permanent intergovernmental organ in the United Nations system addressing a large portion of the world's biological diversity. It had asked the Director-General of FAO to bring that information to the attention of the Intergovernmental Negotiating Committee for a Convention on Biological Diversity and of the Preparatory Committee for UNCED. The Conference had decided that, after UNCED had been held, FAO should convene the Fourth International Technical Conference for the Conservation and Utilization of Plant Genetic Resources. As part of the process of preparing for that technical conference, the first report on the state of the world's PGR and the first Global Action Plan on PRG would be prepared.

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28. The INC discussed the final phases of preparation of the Biological Diversity Convention mainly the signature of the Final Act and Convention itself and requested the Secretariat to prepare an explanatory note explaining the procedure to be followed leading to the signature of the Convention at the time of the UNCED conference in Rio de Janeiro in June 1991.

29. Both Chairmen of the Working Groups, Mr. Muliro and Mr. Koester, reported to the Plenary on the progress of work within their respective groups. On the proposal of the Chairman of INC, Mr. V. Sanchez, the Plenary agreed that a small group under his chairmanship with the assistance of the Vice-Chairman of INC, Mr. Zavarzin, should continue to review the use of the terms in the Convention.

#### IV THIRD PLENARY MEETING

30. The third plenary meeting was held on 4 December 1991.

##### *A. Consideration of the Reports of Working Groups I and II*

31. The Chairman of Working Groups I and II introduced their reports. The Plenary took note of the reports and agreed to incorporate them into the body of the present report. The articles of the draft Convention, as revised by the Working Groups, are attached as Annex I to the report. Annex II shows the composition of the Sub-Working Groups established by Working Group II. The articles of the draft Convention revised by the Lawyers' Drafting Group are attached as Annex III to the report.

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##### *B. Report of Working Group I*

###### *I. Organizational matters*

###### *A. Opening of the session*

32. 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 25 November to 4 December 1991 and held 14 meetings.

33. The Working Group continued its activities under the chairmanship of Mr. J. Muliro (Kenya). It retained the Vice-Chairman, Mr. Pavel Suian (Romania), and Rapporteur, Mr. Nordahl Roaldsoy (Norway), it had elected at the fourth negotiating session/second session of INC (Nairobi, 23 September - 2 October 1991).

34. The Chairman opened the proceedings. Having recalled the articles that had been assigned to the Working Group for its consideration, he suggested that the members of all delegations who were lawyers should meet informally to examine Articles 20, 23 and 27 to 40 and report on them to the Working Group.

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## B. Attendance

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

36. The following United Nations bodies, specialized agencies and other international organizations were represented: Commission of the European Communities (CEC), Food and Agriculture Organization of the United Nations (FAO), International Board for Plant Genetic Resources (IBPGR), International Union for the Protection of New Varieties of Plants (UPOV), United Nations Conference on Environment and Development (UNCED), United Nations Educational, Scientific and Cultural Organization (UNESCO), World Intellectual Property Organization (WIPO), World Meteorological Organization (WMO) and World Health Organization (WHO).

37. The following non-governmental organizations were represented by observers: Women's Foundation for the Environment, World Conservation Monitoring Centre (WCMC), World Conservation Union (IUCN), Netherlands National Committee for IUCN (NNC/IUCN), World Federation of United Nations Associations (WFUNA), World Wide Fund for Nature (WWF) and World Wide Fund/Natura-Ecuador.

## II. Substantive matters

38. WG.I. started by considering subparagraph (b) of Article 7 (*Ex-situ* Conservation). After some discussion, the Chairman of WG.I convened an open-ended informal drafting group to prepare a concise text for the subparagraph, on the basis of the various proposals made.

39. The informal group drafted a text of subparagraph (b) that was accepted by WG.I.

40. The WG.I agreed to delete subparagraph (c) of Article 7, on the grounds that the provision it contained was covered elsewhere in the draft convention.

41. After some discussion, WG.I adopted subparagraph (d) of Article 7, in a more concise formulation submitted by an informal drafting group.

42. The Chairman of WG.I convened an open-ended informal drafting group to prepare a new text for subparagraph (e) of Article 7. The informal drafting group submitted a text with three phrases in square brackets. After some discussion, the first two phrases in square brackets were deleted. One delegation pointed out that, although it had accepted those deletions, the

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purposes of the provisions in question had been to make it clear that the duty to regulate the collection of biological resources referred to areas both inside and outside the national jurisdiction. WG.I then accepted the text, with one formulation in square brackets.

43. After some discussion, WG.I decided to place subparagraph (f) of Article 7 in square brackets and to insert a footnote similar to that used in the case of Article 6, paragraph (d).

44. Having decided to postpone consideration of Article 7 *bis*, WG.I then moved on to Article 8 (Sustainable Use of Components of Biological Diversity). The *chapeau* of Article 8 was approved, with an addition in square brackets.

45. After some discussion, paragraphs (a) and (b) of Article 8 were approved, as amended by WG.I.

46. After a general discussion of subparagraph (c) of Article 8, WG.I asked an informal drafting group to prepare a text, with due regard for the proposals that had been made. After some consideration, the informal drafting group came to the conclusion that, rather than redrafting the subparagraph, WG.I should refer the whole issue of "local and indigenous populations/peoples/communities" to the "friends of the Chairman" of INC, with a view to considering the issue. WG.I accepted the recommendation.

47. After considering subparagraph (d) of Article 8, WG.I decided to place it in square brackets, with a footnote similar to that used in the case of Article 6, subparagraph (d).

48. WG.I then began its consideration of Article 9 (Research and Training). After some discussion, during which a suggested addition to the *chapeau* was accepted but placed in square brackets, the Chairman convened an open-ended informal drafting group to examine the possibility of combining two or more of the subparagraphs of the article into an acceptable text.

49. The informal group drafted a text combining the first two subparagraphs into a single provision and containing a new version of the third subparagraph, with two alternative texts in square brackets for its latter part and a footnote. The first subparagraph was accepted by WG.I, which noted that the text might possibly be streamlined once the meaning of the word "conservation" had been fully defined. After some discussion, the second subparagraph was also accepted, with an amendment to one of the texts in square brackets.

50. WG.I then turned to Article 10 (Education and Public Awareness). The title of the Article was amended to "Public Education and Awareness". WG.I then approved a more concise version of subparagraph (a). After some discussion, subparagraph (b) was adopted, with some amendments and three optional adjectives or adjectival phrases, each in square brackets.

51. WG.I then took up consideration of Article 11 (Environmental Impact Assessment). Amendments to the title and *chapeau* were adopted and the Chairman then convened an open-ended informal drafting group to examine the possibility of combining the first two subparagraphs of the Article. The informal group produced a text that was accepted by WG.I.

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52. WG.I then proceeded with its consideration of the remainder of Article 11, namely, subparagraphs (c), (d) and (e). The contents of the subparagraphs were generally discussed. One delegation submitted the text of a proposed additional subparagraph (c) *bis*, which was placed in square brackets for consideration at a later stage.

53. A number of delegations pointed out that subparagraph (e) of Article 11 should be considered together with the provisions of Article 5 *bis*, since they partly overlapped. A number of other delegations were of the opinion that it was appropriate to consider subparagraph (e) *per se*.

54. WG.I next held a general discussion on Article 12 (Surveys and Inventories). Some proposals were made regarding the *chapeau* of Article 12 and subparagraphs (a) and (b).

55. The texts of the rest of Article 11 and of Article 12 were referred to an open-ended informal drafting group.

56. The informal group drafted texts for subparagraphs (c), (d) and (e) of Article 11 and proposed an amended title of the article. Subparagraph (c) included one text in square brackets. Subparagraph (d) was drafted with amendments and contained no square brackets. Subparagraph (e) was agreed as amended, but left in square brackets, to be reconsidered in the context of Article 5 *bis*.

57. The informal group also drafted a text of Article 12 with some amendments. The text was, however, placed in square brackets for further consideration in conjunction with Article 5 *bis*.

58. WG.I, after hearing the report of the informal drafting group, accepted the proposed texts of Article 11 and Article 12, with two footnotes to Article 11.

59. WG.I then proceeded to consider an additional subparagraph (e) to Article 8 (Sustainable Use of Components of Biological Diversity) proposed by one delegation at an earlier stage. After some discussion, several amendments were introduced into the text of the subparagraph, which then was placed in square brackets for further consideration at a later stage.

60. WG.I then moved on to consider new proposals for inclusion in the draft Convention, namely, Article 5 *bis*, subparagraphs (k) and (l) to Article 6, Article 7 *bis* and Article 8 *bis* and a new paragraph (e) under Article 9. It was decided to start by considering Article 8 *bis* (Incentive Measures).

61. One delegation introduced the proposed Article. While many delegations welcomed the idea contained in that Article, it was the general feeling that its contents should be considered at the next session of INC. The text of Article 8 *bis* was thus placed in square brackets for inclusion in the fourth revised draft Convention. WG.I did not take up the other new proposals.

62. Turning to Article 13 (Global Lists), WG.I held a lengthy discussion on the general question of including Global Lists in the Convention. Some delegations were opposed to such inclusion and others expressed reservations regarding the relevance of that Article, while a number of other delegations

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considered the Global Lists to be important. Some delegations were unconvinced that the preparation of Global Lists was the best way of using the limited financial and human resources available. The idea of preparing national lists was also introduced.

63. In view of the differences of opinion on the question of including Global Lists, the texts of the paragraphs other than paragraph 1 were not examined. One delegation did, however, propose an alternative text for paragraph 1. WG.I decided to put the entire text of the Article (and that of the related Article 22 *bis*) in square brackets, the two alternative texts for paragraph 1 also being bracketed, and to resume consideration of the matter at the next session of INC.

64. WG.I, having examined Article 21 (Institutional Measures on National Level), decided to place subparagraph 1(a) in square brackets and relocate it to Article 5 (Implementation Measures), to delete subparagraph 1(b), to place in square brackets and relocate subparagraph 1(c) to Article 4 (General Obligations) and to place in square brackets and relocate paragraph 2 also to Article 4. Article 21 was thus, in effect, deleted since no provisions remained therein.

65. Reverting to Article 9 (Research and Training), which had previously been extensively discussed, WG.I approved the addition thereto of a new subparagraph and a footnote.

66. Turning to Article 22 (Conference of the Parties), WG.I approved paragraph 1 as it stood, paragraph 2 with the addition of a further option concerning the time-limit, both options being placed in square brackets, and paragraph 3 as amended.

67. WG.I then transferred paragraphs 4, 5 and 6 of Article 22 to WG.II for its comments, in view of the fact that they concerned the issues of technical assistance/cooperation and transfer of technology. WG.I next approved paragraph 7, as amended, and paragraph 8 as it stood.

68. WG.I proceeded with consideration of Article 24 (Scientific Committee). The importance of a mechanism for providing scientific, technical and technological advice to the Conference of the Parties was generally recognized. A number of delegations expressed their wish to have provisions for such a mechanism in a separate article and thus to retain Article 24. Others proposed to expand the relevant provisions (paragraph 7 (h)) under Article 22 (Conference of the Parties), deleting Article 24 as a separate provision.

69. The matter was referred by the Chairman to an informal drafting group, which submitted a text in which the title was amended, as suggested in the footnote by the Lawyers' Meeting. Two options were given for the entire text of the Article, both in square brackets. The second option contained two alternative versions of paragraph 1. After some discussion, an alternative title was added, both titles being placed in square brackets, and an alternative word was added wherever a certain word appeared in the text. WG.I then approved the text, as amended.

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70. WG.I then moved to Article 25 (Reports). A general discussion was held and some proposals for reformulation of the paragraphs of Article 25 were made. An informal drafting group was established to summarize the proposals made and combine them into a single text. It submitted a text with two phrases in square brackets. One delegation having proposed an alternative verb, two alternatives in square brackets were included for the main verb of the sentence. The text was accepted with that amendment.

71. Turning to Article 26 (Operational Cost), WG.I decided not to discuss paragraph 1, since it related to the mandate of WG.II, and to delete paragraph 2, as its contents were covered by paragraph 3 of Article 22.

72. WG.I then began its consideration of Article 5 *bis* (Identification and Monitoring). Many representatives thought that, in view of the complexity of that Article and the consequential implications of its adoption for other Articles of the Convention, they were unable to consider it appropriately without further information. A number of them requested the proposers of that new Article to produce, before the forthcoming sixth negotiating session/fourth session of INC, an explanatory note on the possible consequential implications for other articles of the Convention if Article 5 *bis* was adopted. The proposers of the Article agreed to that request. WG.I then decided to leave Article 5 *bis* in square brackets, one delegation pointing out that the discussion of the Article did not constitute a first reading, and to include it as it stood in the fourth revised draft Convention.

73. The coordinator of the Lawyers' Drafting Group made an oral presentation of the work carried out by the Group. WG.I then discussed the way in which it should handle the results of the Group's work. A number of representatives were of the opinion that, in view of the limited time available to complete the Convention and the fact that the Lawyers' Drafting Group had been made up exclusively of members of the delegations comprising the Working Group, WG.I should consider the possibility of deciding forthwith that the Articles in question, as reviewed by the Lawyers' Drafting Group, should be included in the fourth revised draft Convention. Some representatives were prepared to adopt that exceptional procedure, provided that it was made clear that no precedent would be created thereby. Other representatives considered that the Articles in question should be examined by the entire Working Group (WG.I) and approved in the standard way.

74. Due to time constraints, WG.I did not consider the substance of the Articles revised by the Lawyers' Drafting Group, namely, Articles 20, 23 and 27 to 40. It decided to recommend that the texts of the Articles revised by the Lawyers' Drafting Group be annexed to the report of INC for consideration at the sixth negotiating session/fourth session of INC.

## II. Recommendations to the Plenary

75. WG.I recommended that the Plenary:

(1) Take note of its report and incorporate it into the body of the report of INC;

(2) Annex to the report of INC the articles prepared by WG.I, for subsequent inclusion in the fourth revised draft Convention; and

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(3) Annex to the report of INC the articles, as revised by the Lawyers' Drafting Group, so that they could be considered at the sixth negotiating session/fourth session of INC.

IV. *Adoption of the report*

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

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C. *Report of Working Group II*

I. *Organizational matters*

A. *Opening of the session*

77. The Chairman of Working Group II (WG II), Mr. Veit Koester (Denmark), opened the proceedings. The Vice-Chairman of the Bureau established by decision of the second session of the Ad Hoc Working Group of Legal and Technical Experts on Biological Diversity, Mr. A. Vaish (India), continued in office at the session. In the absence of Mr. S. Samba (Gambia), Mr. Pierre Mbouegnong (Cameroon) was nominated by the African Group to serve as rapporteur for Working Group II.

B. *Attendance*

78. The meetings were attended by representatives of the following countries: Argentina, Australia, Austria, Bahamas, Bangladesh, Barbados, Belgium, Brazil, Bulgaria, Burkina Faso, Cameroon, Canada, Central African Republic, Chile, China, Colombia, Congo, Costa Rica, Czechoslovakia, Denmark, Ecuador, Egypt, Finland, France, Germany, Ghana, Greece, Guyana, India, Indonesia, Italy, Japan, Kenya, Malawi, Malaysia, Mauritius, Mexico, Myanmar, Netherlands, Niger, Norway, Pakistan, Papua New Guinea, Peru, Philippines, Poland, Portugal, Republic of Korea, Romania, Senegal, Spain, Sweden, Switzerland, Thailand, Tunisia, Uganda, Union of Soviet Socialist Republics, United Kingdom, United Republic of Tanzania, United States of America, Uruguay, Venezuela, Zambia and Zimbabwe.

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

80. In addition, observers for IBPGR, IUCN and WWF attended the meetings.

C. *Organization of work*

81. The Chairman proposed that the Working Group should begin its work where it had left off at its previous session, namely, consideration of Article 17 *bis*, paragraph 2, and that it should use the same working procedure and discuss the text paragraph by paragraph. The Chairman suggested that, if it subsequently appeared that such a method did not prove to be effective, alternative approaches could then be considered.

82. The Chairman introduced the Third Revised Draft Convention on Biological Diversity (UNEP/Bio.Div/N5-INC.3/2) and the document prepared by the Secretariat on the Interpretation of the Words and Phrases "Fair and Favourable", "Fair and Most Favourable", "Equitable", "Preferential and Non-Commercial", "Preferential", "Non-Commercial" and "Concessional" (UNEP/Bio.Div/N5-INC.3/3).

II. *Substantive matters*

83. Working Group II had a general formal discussion of Article 14 and Article 14 *bis*. The latter article was introduced by the delegation of Canada.

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84. A second reading of paragraphs 2-5 of Article 17 *bis* was also completed. The Malaysian delegation proposed two new paragraphs which were discussed, amended and added as paragraphs 4 and 5 of Article 17 *bis*. One new paragraph was introduced as paragraph 6 of Article 17 *bis*, but not discussed. In addition, the Working Group examined the provisions which WGI considered were related to Article 17 *bis* and had therefore transmitted to WG II, namely, Article 3, paragraphs 8, 12, 15 (in part) and 18.

85. In order to facilitate discussion on Articles 18 and 19, H.E. Mr. J. Mateos (Mexico), Chairman of the Executive Committee of the Interim Multilateral Fund for the Implementation of the Montreal Protocol, made a brief statement explaining the mechanism and functioning of the Interim Multilateral Fund. The Executive Director of UNEP also made a brief statement explaining the mechanism and functioning of the Global Environment Facility. Both speakers subsequently responded to a number of questions by delegations.

86. In relation to Articles 18 and 19, the Chairman drew attention to the documents on the Interpretations of Phrases "Adequate, New and Additional", "New and Additional", and "Adequate and Additional" Financial Resources (UNEP/Bio.Div/INC.4/4 and Add.1).

87. In addition, the Chairman presented an informal paper on identifying the elements of financial resources that required agreement by delegations in order to establish a common text. He suggested that the Working Group hold informal consultations based on the paper before turning to the text of Articles 18 and 19.

88. The Group established a number of sub-working groups\* to deal with the following issues:

Sub-Working Group 1: issues related to Article 17 *bis*, including consideration of Article 3, paragraphs 8, 12, 15 (in part) and 18 transmitted by Working Group I;

Sub-Working Group 2: issues related to Article 17 *bis*, paragraph 3;

Sub-Working Group 3: item 1 of the Informal Paper by the Chairman on Financial Resources in relation to Articles 18 and 19;

Sub-Working Group 4: items 2 to 6: of the Informal Paper by the Chairman on Financial Resources in relation to Articles 18 and 19;

Combined Sub-Working Group: items 1 to 6 of the Informal Paper by the Chairman on Financial Resources in relation to Articles 18 and 19.

89. The Chairman of the Combined Sub-Working Group presented an oral report and submitted the Sub-Working Group's proposals on Articles 18 and 19. The report of the Sub-Working Group contained a recommendation to develop an indicative list of categories of agreed incremental costs as an appendix to the Convention. The Combined Sub-Working Group also recommended that the word "mandatory" in Article 19, paragraph 1, should be defined and that the linkage between Articles 18 and 19 should be clarified in future negotiations.

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\* The composition of the Sub-Working Groups is shown in Annex II.

90. Some questions were raised regarding the use of terms and, in accordance with the decision of the Plenary, they were referred to the Chairman of the INC.

### III. *Recommendations to the Plenary*

91. As a result of its deliberations on the articles mentioned in paragraphs 6 to 9 above, Working Group II recommended the general understanding of the draft articles contained in document UNEP/Bio.Div/N5-INC.3/WG.II/L.1/Add. 1 and 2.

### IV. *Adoption of the Report*

92. After considering the text paragraph by paragraph, Working Group II adopted its report, as amended.

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### D. *Other matters*

93. The Plenary agreed that the Sixth Negotiating Session/Fourth Session of the INC should be held in Nairobi from 6-15 February 1992 and that meetings would be held on the Saturdays, 8 February and 15 February. Several delegations expressed the wish to have all documents of the session in Nairobi in the official languages by the end of the meeting, namely, 15 February 1992. In response, the Executive Director stressed that he is not in a position to guarantee that all documentation in the United Nations' official languages would be ready for the last meeting on Saturday, 15 February if the Secretariat was not given one full working day to prepare the translations. If discussions ended at mid-day on Friday, 14 February, the UNEP Secretariat would nevertheless make every effort to provide delegations with documents in the official languages.

94. After discussion the Plenary agreed that the Seventh Negotiating Session/Fifth Session of the INC would be held in Nairobi from 11-15 May 1992 and would be followed by a Diplomatic Conference 18-20 May 1992 which is expected to finalize the text of the Convention, adopt Resolutions and receive Declarations, if any, and sign the Final Act. The Chairman drew the attention of the delegates to the fact that to sign the Final Act at the Diplomatic Conference the delegates must be accredited to the final phase of the negotiating process and authorized to sign the Final Act.

95. The Convention will be open for signature at the Conference of Plenipotentiaries to be convened in Rio de Janeiro during the United Nations Conference on Environment and Development in June 1992. It can be signed by Heads of State, Heads of Government or Ministers for Foreign Affairs, by virtue of their functions and without having to produce full powers (1969 Vienna Convention on Law of Treaties, Articles 7) or by other persons producing credentials emanating from the appropriate authority in their respective governments authorizing them with the power to sign the Convention.

96. The Plenary agreed to create at the next session in February a regionally balanced (up to 2 per region) Drafting Group of Lawyers which will also ensure representation of the six United Nations languages. The Drafting Group will review the text from the purely drafting/legal point of view without any substantive changes. It was decided that the Group would work in English.

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*E. Recommendations*

97. The Plenary adopted the recommendations made by Working Groups I and II to the Plenary contained in paragraphs 75 (WG.I) and 91 (WG.II).

*F. Adoption of the Report*

98. The Committee adopted its report.

*G. Closure of the Session*

99. Following the customary exchange of courtesies, the Chairman declared the Fifth Negotiating Session/Third Session of INC closed.

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Annex I

A. Articles prepared by Working Group I

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]:

(b) Establish facilities for *ex-situ* conservation and research of plants, animals and micro-organisms;

(c) Adopt measures for the recovery and rehabilitation of endangered species and for their reintroduction into their natural habitats under appropriate conditions;

(d) Regulate [and control] collection of biological resources from natural habitats for *ex-situ* conservation purposes so as not to threaten ecosystems and *in-situ* populations of species [ensuring that they are not exploited for commercial purposes];

[(e) Financial and other assistance to facilitate the establishment and maintenance of *ex-situ* conservation facilities in developing countries.]<sup>1</sup>

Article 8. *Sustainable Use of Components of Biological Diversity* \*

[The Contracting Parties] [Each Contracting Party] shall [as far as possible and as appropriate]:

(a) Integrate procedures for the conservation and sustainable use of biological resources into domestic decision making;

(b) Adopt measures relating to the use of biological resources [individually or jointly directly or through international organizations] to avoid or minimize adverse impacts on biological diversity;

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<sup>1</sup> A first reading of this subparagraph was postponed and was not undertaken by Working Group I during the fifth negotiating session/third 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 (e) do not imply any disagreement on the text, but only that Working Group I has agreed not to consider it at this time.

(c) Protect and encourage customary use by local [and indigenous] communities and indigenous [people] [populations] of areas and biological resources in accordance with traditional cultural practices that are recognized as compatible with sustainable use requirements;<sup>2</sup>

[(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>3</sup>

[(e) Encourage cooperation between [national] [governmental] authorities and private sector in developing methods for sustainable use of biological resources.]

[Article 8 bis. Incentive Measures<sup>4</sup>

1. Each Contracting Party shall, as far as possible and as appropriate, take effective economic and social measures to encourage the conservation and sustainable use of biological diversity.

2. In determining such measures, each Contracting Party shall take into account, *inter alia*:

(a) Economic and social policies which act as incentives to conserve biodiversity;

(b) The effect of:

(i) Institutional arrangements;

(ii) Systems of rights to use biological resources;

(iii) International trade species; and

(iv) Pricing policies

on the conservation and sustainable use of biological diversity.

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<sup>2</sup> Discussed during fifth negotiating session/third session of INC and put aside for consideration at a later stage of the issue of "local and indigenous populations/peoples/communities".

<sup>3</sup> A first reading of this subparagraph was postponed and was not undertaken by Working Group I during the fifth negotiating session/third 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.

<sup>4</sup> A first reading of new Article 8 bis was not undertaken by WG.I but postponed until the sixth negotiating session/third session of INC.

3. The Conference of the Parties shall establish at its first meeting a group of experts to develop guidelines for determining the value (ecological, economic, aesthetic and cultural) of biological diversity.]

*Article 9. Research and Training*

[The Contracting Parties] [Each Contracting Party] [taking into account the special needs of developing countries] shall:

(a) Establish and maintain programmes for scientific and technical education and training in measures for the identification, conservation and sustainable use of biological diversity and its components and provide support for such education and training for the specific needs of developing countries;<sup>5</sup>

(b) Promote and encourage research which contributes to the conservation and sustainable use of biological diversity, particularly in developing countries, [*inter alia*, in accordance with decisions of the Conference of the Parties taken in consequence of recommendations of the Scientific Committee] [*inter alia*:

- (i) Increased knowledge of the components of biological diversity and their role in the functioning of ecosystems;
- (ii) Increased knowledge of the impact of natural and human factors affecting the conservation of biological diversity, including social studies;
- (iii) Application of this knowledge for sustainable use of biological diversity;
- (iv) Development of technologies and other measures for the conservation and sustainable use of biological diversity [including of biotechnology in line with the objectives of this Convention]; and
- (v) Estimation of economic and social values of biological resources;<sup>6</sup>

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<sup>5</sup> The meaning of "conservation" requires clarification. Should it be defined to include, for example, identification and sustainable use, the text could be streamlined.

<sup>6</sup> Some delegations considered that, if there were to be a list, it should be located in an annex.

(c) [In keeping with the provisions of Articles 16 and 17,] promote and cooperate in the use of scientific advances in biological diversity research in developing methods for conservation and sustainable use of biological resources.<sup>7</sup>

*Article 10. Public Education and Awareness*

The Contracting Parties shall:

(a) Promote and encourage understanding of the importance of and the measures required for the conservation of biological diversity, as well as its propagation through media, and the inclusion of these topics in educational programmes;

(b) Cooperate, as appropriate, with other States and international organizations in developing educational and public awareness programmes, including with respect to conservation of biological diversity for [shared [transboundary] ecosystems [belonging to more than one State], [migratory species and areas beyond the limits of national jurisdiction.

*Article 11. Impact Assessment*

Each Contracting Party, as far as possible and as appropriate shall:

(a) Introduce appropriate procedures requiring assessment of the environmental effects of proposed policies, programmes or projects that are likely to have significant adverse effects on biological diversity [whether within or beyond the limits of national jurisdiction] with a view to avoiding or minimizing such effects;

(b) Develop guidelines for the application of procedures for assessment of adverse effects on biological diversity and integrate such procedures into national decision-making processes. [These guidelines should foresee, in accordance with the legislation of each State, appropriate participation procedures for the public concerned;

[(c bis) Cooperate upon request with other Contracting Parties and international organizations, as appropriate, for development of national procedures and guidelines for assessment of effects on biological diversity in developing countries.]<sup>8</sup>

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<sup>7</sup> The contexts of subparagraph (c) may be covered by one of the bracketed provisions of subparagraph (b).

<sup>8</sup> A proposal placed in square brackets for consideration at a later stage.

(d) Promote, on the basis of reciprocity, notification, exchange of information and consultation about the potential adverse effects on biological diversity of activities under their jurisdiction or control which are likely significantly to affect other States<sup>9</sup> or areas beyond the limits of national jurisdiction, by encouraging the conclusion of bilateral, regional or multilateral arrangements as appropriate [as well as for the establishment of contingency plans to address situations affecting biological diversity];<sup>10</sup>

[(e) Monitor and evaluate impacts on biological diversity as the projects, programmes or policies are implemented with a view to taking actions to safeguard its conservation.]

[Article 12. *Surveys and Inventories*

Each Contracting Party, as far as possible and as appropriate, shall:

(a) Survey, monitor and maintain inventories of biological diversity within its jurisdiction, with particular attention to ecosystems, habitats and species that are known to be threatened; and

(b) Establish and maintain a national data bank of inventories of biological diversity and, in cooperation with other Contracting Parties, [establish] a [suitable] network.]

[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 with Extinction on a Global Level shall be established pursuant to the procedures set down in Article 22 *bis*.] [A List of [Components of] Biological Diversity of [Outstanding Global Importance] shall be established, pursuant to the procedures set out in Article 22 *bis*.]

2. Inclusion of an area on the List of Biogeographic Areas of Particular Importance requires the consent of the State or States concerned.<sup>11</sup>

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<sup>9</sup> Upon the second reading all paragraphs using words "Contracting Parties" or "States" to be reconsidered to achieve consistency.

<sup>10</sup> During the fifth negotiating session/third session of INC, a proposal was made for the addition of this text at the end of paragraph (d) of Article 11. While the importance of the issue of "Contingency plans" was not contested, Working Group I decided that, at the second reading, consideration should be given as to the precise location of the additional text proposed. The text was placed in square brackets to.

<sup>11</sup> These paragraphs were not discussed in substance.

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>11</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.<sup>11</sup>

*Article 22. 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] [three] 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 governing the funding of the Secretariat. At each ordinary meeting, it shall adopt a budget for the financial period until the next ordinary meeting.<sup>12</sup>

7. The Conference of the Parties shall keep under review the implementation of the present Convention, and, for this purpose, shall:

(a) Establish the form and the intervals for transmitting the information to be submitted in accordance with Article 25 and consider such information as well as reports submitted by any subsidiary body;

[(b) Review [and approve] scientific [information] [technological advice] on biological diversity provided by the Scientific Committee in accordance with Article 24;]

(c) Consider and adopt, as required, in accordance with Articles 29 and 30, amendments to this Convention and its annexes;

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<sup>12</sup> WG.II decided to transfer paragraphs 4, 5 and 6 to WG.II for further consideration.

(d) 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;

(e) Consider and adopt, as required, in accordance with Article 30, additional annexes to this Convention;

(f) Consider and adopt, as required, protocols in accordance with Article 28;

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

(h) 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 the International Atomic Energy Agency, 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 22 bis. Procedures for Global Lists <sup>13</sup>

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 with extinction on a global level;

(b) Select, taking into account the recommendations of the Scientific Committee, from the inventories forwarded pursuant to subparagraph (a), areas and species to be included in the Global Lists;

(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 subparagraph (a);

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<sup>13</sup> The substance of Article 22 bis was not discussed by WG.I.



(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 subparagraph (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;

(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

(h) Ensure that arrangements 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. [Scientific] and [Technical] [Technological] [Committee]  
[Subsidiary Bodies for Scientific and Technological Cooperation]*

*Alternative 1*

[The Conference of the Parties shall at its first meeting establish such subsidiary bodies for providing scientific and [technical] [technological] advice as required for the implementation of the Convention.]

*Alternative 2*

[1. The Conference of the Parties shall at its first meeting establish a Scientific and [Technical] [Technological] Committee with a balanced regional representation.]

[1. A Scientific and [Technical] [Technological] Committee is hereby established. The Conference of the Parties shall, at its first meeting, appoint the members of the committee with a balanced regional representation.]

2. The Committee shall under the direction of the Conference of the Parties provide scientific and [technical] [technological] advice to assist the Conference of the Parties to promote the objectives of the Convention.]

*Article 25. Reports*

Each Contracting Party shall, at intervals to be determined by the Conference of the Parties, [submit] [present] to the Conference of the Parties, reports on:

The actions which it has taken for the implementation of this Convention [including, in particular, those pursuant to Articles 5 and 15-18 of this Convention] [and its view on the effectiveness of those actions and on the state of components of biological diversity within the limits of its national jurisdiction.]

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

*Article 3. Fundamental Principles*

[8. Countries providing genetic material located within their national jurisdiction shall share in benefits from the research and the development which make use of that genetic material.] <sup>14</sup>

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>15</sup>

[18. The maintenance of a wide genetic base is necessary for biotechnology to be able to contribute to conservation and sustainable use of biological diversity.] <sup>16</sup>

*Article 17 bis. Handling of Biotechnology and Distribution of Its Benefits*

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

3. The Contracting Parties shall [endeavour to] ensure that [developing] countries [of origin are] providing genetic material from [in-situ] [all] sources located within their national jurisdiction have priority access to the use of and other benefits from the products of biotechnology which make use of that genetic material. Such access shall be on mutually agreed terms.

4. Each Contracting Party introducing [genetically modified organisms] [living organisms resulting from biotechnology] [which may have an impact] [on the conservation and sustainable use of biological diversity] shall obtain the [prior informed consent] [advance agreement] of the country into which any of these are to be introduced. [Such an agreement shall be based on exchange of information stipulated in paragraph 5 of this Article].

5. Each Contracting Party shall ensure that information about the use and safety regulations required [for the conservation and sustainable use of biological diversity] in handling [genetically modified organisms] [living organisms resulting from biotechnology] in the providing country is made available to the receiving country before introduction of any of these organisms.

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<sup>14</sup> Provisional formulation to replace Article 3, paragraph 8 and 12.

<sup>15</sup> The Lawyers' Meeting recommended that the term "biological resources" be replaced by "genetic material". This would be consistent with Article 14.

<sup>16</sup> Provisional formulation to replace Article 3, paragraph 18.

[6. Each Contracting Party shall ensure that the private sector within its jurisdiction also undertakes the obligations contained in paragraphs 1-5 of this Article.]<sup>17</sup>

*Article 18. Financial Resources*<sup>18</sup>

1. Each Contracting Party undertakes to provide, in accordance with its capabilities, financial support and incentives in respect of those activities which are intended to [achieve the objectives of this convention] [contribute to the conservation and sustainable use of biological diversity] in accordance with its national plans, priorities and programmes.<sup>19</sup>

*Alternative 1 for paragraph 2 to replace alternative 2*

2. The Contracting Parties which are developed countries commit themselves to provide adequate new and additional financial resources to enable developing countries to achieve the objectives of this Convention.<sup>20</sup> [Developed countries referred to above do not include countries with economies in transition.]<sup>21</sup>

*Alternative 2 for paragraph 2 to replace alternative 1*

2. The Contracting Parties, and in particular developed countries, undertake to provide [new and additional] financial [and other] resources to meet the agreed incremental costs to developing countries of [achieving the objectives] [fulfilling the obligations under Articles ...] of this convention.<sup>22</sup>

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<sup>17</sup> This paragraph was introduced at the fifth negotiating session/third session of INC by China, India and Malaysia but discussion was postponed until after the further development of paragraphs 1-5 of this Article.

<sup>18</sup> Some delegations noted that the final outcome of this article would be closely related to the final text of Article 1 and Article 19.

<sup>19</sup> Basic text proposed by an informal Sub-Working Group.

<sup>20</sup> Basic text proposed by an informal Sub-Working Group.

<sup>21</sup> Bracketed text proposed by Bulgaria, Czechoslovakia, Poland, Romania and the USSR.

<sup>22</sup> Proposal by the United Kingdom with modifications by the United States.

3. The extent to which developing countries are able to [meet the objectives] [fulfil the obligations under Articles ...] of this Convention will be subject to the availability of [such] resources [to meet agreed incremental costs.]<sup>23</sup>

*Article 19. Financial Mechanisms*

*Alternative 1*<sup>24</sup>

[1. There is hereby established a fund, hereinafter called the Biological Diversity Fund, for the achievement of the objectives of the Convention by developing countries. Contributions to the fund shall be mandatory for Contracting Parties which are developed countries according to the formula in Annex ... to this Convention. Voluntary contributions may also be made by the developed countries and by other countries and sources.]

[2. The Fund shall be administered [through an agency to be decided by the Conference of the Parties] [in the following manner].]

[3. Pursuant to the objectives of this Convention, the Conference of the Parties at its first meeting shall establish detailed criteria and guidelines for access to and utilization of the Fund, including monitoring and evaluation of such utilization.]

4. The Conference of the Parties shall review the effectiveness of the funding mechanism established under this Article, including the criteria and guidelines referred to in paragraph 3, not less than two years after the entry into force of this Convention and thereafter on a regular basis.

[5. The Contracting Parties shall consider strengthening existing financial institutions to provide financial resources for the conservation and sustainable use of biological diversity.]

*Alternative 2*<sup>25</sup>

[1. The Contracting Parties, pursuant to the objectives of this Convention and taking into consideration the special needs of developing countries, shall establish a [fund] [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

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<sup>23</sup> Basic text by an informal Sub-Working Group with modifications by the United Kingdom and the United States.

<sup>24</sup> Text by an informal Sub-Working Group.

<sup>25</sup> Proposal by the United Kingdom with modification by Mexico.

benefits of the provisions of paragraph 6 of Article 14. Contributions shall be assessed according to the formula in Annex ... to this Convention. Additional contributions may also be made by developed countries and by other countries and sources.]

[2. The [fund] [financial mechanism] shall be administered [through the evolving Global Environment Facility] [through a Multilateral Fund for Biological Diversity] [through an agency to be decided by the Conference of the Parties] [in the following manner ...].]

[3. Pursuant to the objectives of this Convention, the Conference of the Parties at its first meeting shall [confirm] [establish] criteria and guidelines [set out in Annex ... to this Convention] for access to and utilization of the [fund] [financial mechanism], including monitoring and evaluation of such utilization.]

[5. The Contracting Parties shall consider strengthening existing financial institutions to support the [fund] [financial mechanism] established under this Convention.]

Annex II

*Composition of the Sub-Working Group  
established by Working Group II*

*Sub-Working Group 1:* dealt with other issues related to Article 17 *bis*, including consideration of Article 3, paragraphs 8, 12, 15 (in part) and 18 transmitted by Working Group I

Egypt - Chairman  
Bahamas  
Denmark  
India  
Malaysia  
Switzerland  
United Kingdom  
United States of America

*Sub-Working Group 2:* dealt with issues related to Article 17 *bis*, paragraph 3

Bahamas - Chairman  
Colombia  
France  
Mexico  
United Republic of Tanzania

*Sub-Working Group 3:* dealt with item 1 of the Informal Paper by the Chairman on Financial Resources in relation to Articles 18 and 19

Canada - Chairman  
China  
Colombia  
Germany  
Indonesia  
Norway  
United Republic of Tanzania

*Sub-Working Group 4:* dealt with items 2 to 6 of the Informal Paper by the Chairman on Financial Resources in relation to Articles 18 and 19

Guyana - Chairman  
Australia  
Bahamas  
India  
Malaysia  
Mauritius  
Mexico  
Netherlands  
Sweden  
Uganda

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*Combined Sub-Working Group:* dealt with items 1 to 6 of the Informal Paper by the Chairman on Financial Resources in relation to Articles 18 and 19

Canada - Chairman  
Australia  
Bahamas  
China  
Colombia  
Germany  
Guyana  
India  
Indonesia  
Malaysia  
Mauritius  
Mexico  
Netherlands  
Norway  
Sweden  
Uganda  
United Republic of Tanzania

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*Annex III*

*Articles revised by Lawyer's Drafting Group*

*Article 20. 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 compatible with the conservation and sustainable use of biological diversity.]

*Article 23. Secretariat*

1. A Secretariat is hereby established. Its functions shall be:

(a) To arrange for and service meetings of the Conference of the Parties provided for in Article 22;

[(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 List 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 to in Article 13 of the present Convention;]

(d) To perform the functions assigned to it by any protocol;

(e) To prepare reports on the execution of its functions under this Convention and present them to the Conference of the Parties;

(f) To coordinate 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;

(g) 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 the United Nations Environment Programme until the completion of the first ordinary meeting of the Conference of the Parties held pursuant to Article 22. 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.

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*Article 27. Settlement of Disputes*<sup>1</sup>

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 [Part 1 of] Annex I;

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

4. *Alternative 1.* 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 Annex I, part 2 unless the parties otherwise agree.

*Alternative 2.* If the parties to the dispute have not, in accordance with paragraph 3 above, accepted the same or any procedure, a party which has not made a declaration under paragraph 3 above shall be deemed to have accepted arbitration in accordance with the procedure laid down in [Part 1 of] Annex I. If the parties to a dispute have not accepted the same means of dispute settlement, the dispute shall be submitted to arbitration in accordance with the procedure laid down in [Part 1 of] Annex I.

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

*Article 28. Adoption of Protocols*

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

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

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<sup>1</sup> Although most environmental conventions provide a single system of dispute resolution for all articles (e.g. Vienna Convention for Protection of the Ozone Layer), some environmental conventions have limited the applicability of some dispute resolution mechanisms to specified articles (e.g. Protocol on Environmental Protection to the Antarctic Treaty, Articles 19 and 20; United Nations Convention on the Law of the Sea, Articles 286, 297-298.

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 29. Amendment of the Convention or Protocols*

1. Amendments to this Convention may be proposed by any Contracting Party. Amendments to any protocol may be proposed by any party to that 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 to the instrument in question 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 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 Parties to the instrument in question present and voting at the meeting, and shall be submitted by the Depositary to all 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 30. 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 procedural, 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 any protocol:

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(a) Annexes to this Convention or to any protocol shall be proposed and adopted according to the procedure laid down in Article 29;

(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 subject to paragraph (c) below;

(c) On the expiry of six months from the date of the circulation of the communication by the Depositary, the annex shall enter into force 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 any protocol.

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

#### *Article 31. 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, [and which are present when the vote is taken]. Such organizations shall not exercise their right to vote if their member States exercise theirs, and vice versa.

#### *Article 32. Relationship Between the Convention and Its Protocols*

1. A State or a regional economic integration organization may not become a Party to a protocol unless it is, or becomes at the same time, a Contracting Party to the Convention.

2. Decisions under any protocol shall be taken only by the Parties to the protocol concerned.

#### *Article 33. Signature*

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

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*Article 34. 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 35. 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 34, paragraph 2, shall apply to regional economic integration organizations which accede to this Convention or any protocol.

*Article 36. Entry Into Force*

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the [twentieth] instrument of ratification, acceptance, approval or accession.
2. Any protocol shall enter into force on the ninetieth day after the date of deposit of the number of instruments of ratification, acceptance, approval or accession, specified in that protocol, has been deposited.

3. For each Contracting Party which ratifies, accepts or approves this Convention or accedes thereto after the deposit of the [twentieth] 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 paragraphs 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 37. Reservations*<sup>2</sup>

No reservations may be made to this Convention.

*Article 38. Withdrawals*

1. At any time after [two] [three] [four] 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.

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<sup>2</sup> Some environmental conventions contain a clause prohibiting reservations (e.g. Vienna Convention for Protection of the Ozone Layer; Protocol on Environmental Protection to the Antarctic Treaty). Some do not (e.g. London Dumping Convention; Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region). Some permit only specified reservations, an approach provided for in the Vienna Convention on the Law of Treaties and customary international law (e.g. Convention on the Conservation of Migratory Species of Wild Animals).

In accordance with the Vienna Convention on Treaties and customary international law, when a multilateral convention does not address the topic of reservations, the usual presumption is that States may formulate reservations that are not incompatible with the object and purpose of the Convention.

The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal presents another approach. It prohibits reservations but allows "declarations or statements ... with a view, *inter alia*, to the harmonization of its laws and regulations with "the Convention, provided that any such declaration or statement is not tantamount to a reservation.

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2. 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.

3. Any Contracting Party which withdraws from this Convention shall be considered as also having withdrawn from any protocol to which it is party.

*Article 39. Depositary*

The Secretary-General of the United Nations shall assume the functions of Depositary of this Convention and any protocols.

*Article 40. 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

Part 1

ARBITRATION

*Article 1*

The claimant party shall notify the Secretariat that the parties are referring a dispute to arbitration pursuant to Article 27 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. [If the parties do not agree on the subject-matter of the dispute before the President of the tribunal is designated the arbitral tribunal shall determine the subject-matter]. The Secretariat shall forward the information thus received to all Contracting Parties to the Convention or to the Protocol concerned.

*Article 2*

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 President of the tribunal. The latter shall not be a national of one of the parties to the dispute, nor have his or her 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 arbitrator jointly by agreement.

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

*Article 3*

1. If the President 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 the President within a further two-month 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 who shall make the designation within a further two-month period.

*Article 4*

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

*Article 5*

Unless the parties to the dispute otherwise agree, the arbitral tribunal shall determine its own rules of procedure.

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*Article 6 bis*

[The arbitral tribunal may, at the request of one of the parties, recommend essential interim measures of protection].

*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, information and facilities; and

(b) Enable it, when necessary, to call witnesses or experts and receive their evidence.

*Article 7 bis*

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.

*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 a 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.

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*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*

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*

The award shall be binding on the parties to the dispute. It shall be without appeal unless the parties to the dispute have agreed in advance to an appellate procedure.

*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.

Part 2

CONCILIATION

*Article 1*

A conciliation commission shall be created upon the request of one of the parties to the dispute. The commission shall, unless the parties otherwise agree, be composed of five members, two appointed by each Party concerned and a President chosen jointly by those members.

*Article 2*

In disputes between more than two parties, parties in the same interest shall appoint their members of the commission jointly by agreement. Where two or more parties have separate interests or there is a disagreement as to whether they are of the same interest, they shall appoint their members separately.

*Article 3*

If any appointments by the parties are not made within two months of the date of the request to create a conciliation commission, the Secretary-General of the United Nations shall, if asked to do so by the party that made the request, make those appointments within a further two-month period.

*Article 4*

If a President of the conciliation commission has not been chosen within two months of the last of the members of the commission being appointed, the Secretary-General of the United Nations shall, if asked to do so by a party, designate a President within a further two-month period.

*Article 5*

The conciliation commission shall take its decisions by majority vote of its members. It shall, unless the parties to the dispute otherwise agree determine its own procedure. It shall render a proposal for resolution of the dispute, which the parties shall consider in good faith.

*Article 6*

A disagreement as to whether the conciliation commission has competence shall be decided by the commission.

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