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INTERGOVERNMENTAL COMMITTEE ON THE  
CONVENTION ON BIOLOGICAL DIVERSITY  
Second session  
Agenda item 5

OTHER MATTERS

Exchange of letters between the Permanent Representative  
of Spain to the United Nations Office at Geneva, and  
the Executive Secretary of the Interim Secretariat  
of the Convention on Biological Diversity

Note by the Interim Secretariat

The Interim Secretariat has the honour to circulate herewith as a document of the second session of the Intergovernmental Committee on the Convention on Biological Diversity a letter dated 13 June 1994 from the Permanent Representative of Spain to the United Nations Office at Geneva addressed to the Executive Secretary of the Interim Secretariat of the Convention on Biological Diversity (see annex I hereto), together with the reply from the Executive Secretary dated 14 June 1994 (annex II). In response to the request made by the Permanent Representative of Spain in his above-mentioned letter, the Agreement between the Government of Switzerland and the United Nations Environment Programme concerning the Interim Secretariat of the Convention on Biological Diversity is also being circulated herewith, as annex III. In addition, a letter dated 1 July 1994 from the Executive Director of the United Nations Environment Programme addressed to the Permanent Representative of Spain to the United Nations Office at Geneva is attached hereto, in the original language, as annex IV.

Annex I

LETTER DATED 13 JUNE 1994 FROM THE PERMANENT REPRESENTATIVE OF SPAIN  
ADDRESSED TO THE EXECUTIVE SECRETARY OF THE INTERIM SECRETARIAT  
OF THE CONVENTION ON BIOLOGICAL DIVERSITY

I am writing to you as the person responsible for carrying out the preparatory process for the entry into force of the Convention for the Protection of Biological Diversity.

To this end I wish to repeat to you formally our concern, expressed orally a number of times, as to the financing of this preparatory process, and, specifically, the allocation to this end of funds which could be used for other purposes - above all, to facilitate access to the process of less developed countries. Unfortunately, we have not received a satisfactory reply to these repeated consultations.

As you well know, the key issue in these consultations is that we feel the agreement entered in to between UNEP and the Swiss Government for the establishment of the Interim Secretariat, regardless of the circumstances under which it was established, entails the commitment by the authorities of the country hosting this Interim Secretariat to bear the costs of the preparatory process until the Conference of the Parties, including the costs of international meetings which may be convened in the interval.

Since the interpretation which the Contracting Parties and the Interim Secretariat are giving to this commitment does not seem to correspond to this idea, as the representative of a Country Party to the Convention I am requesting you - I repeat, as the person ultimately responsible for carrying out the preparatory process - to have a formal consultation with the Legal Department of the United Nations in New York on the scope and responsibilities of each of the parties to the above-mentioned convention, particularly with respect to the financing of major meetings needed to perform successfully the tasks entrusted to the Interim Secretariat.

I shall thank you, Madam Executive Secretary, for taking all steps so that the reply to this consultation be made before the forthcoming meeting of the Intergovernmental Committee scheduled for this June in Nairobi.

Should it not be possible to obtain this reply from the Legal Department in New York for that time, I urge you to take the appropriate steps for the text of this letter as well as the text of the agreement between UNEP and the Swiss Government in December 1992 be circulated in Nairobi to all delegations as official documents at the beginning of the meeting.

(signed) FERNANDO M. VALENZUELA  
Ambassador  
Permanent Representative

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Annex II

LETTER DATED 14 JUNE 1994 FROM THE EXECUTIVE SECRETARY OF THE INTERIM SECRETARIAT ADDRESSED TO THE PERMANENT REPRESENTATIVE OF SPAIN TO THE UNITED NATIONS OFFICE AT GENEVA

I am writing to acknowledge receipt of your letter of 13 June 1994 regarding the funding of the preparatory process for the Convention on Biological Diversity, and specifically for the convening of major meetings and the participation of least developed countries in those meetings.

As you point out in your letter, the matter has been raised with me by the Plenipotentiary Minister of your Mission, Mr. Jose Luis Los Arcos Galbete. On such occasions I have responded to him that the agreement in question is one between the United Nations Environment Programme and the Government of Switzerland, and that therefore, in my judgement, any recourse to a third party for legal interpretation of that Agreement is to be made by either party to the Agreement. I have further pointed out that, to date, I have had no indication from the Executive Director of UNEP that she has a difficulty in the interpretation of this Agreement, and that if she did, it would be appropriate for her to seek the legal interpretation of the UN Legal Counsel.

I have accordingly transmitted your letter of 13 June to the Executive Director for her consideration as to what action she considers appropriate. The Executive Director of UNEP has entered into this Agreement as part of the response to the request from governments to UNEP, in Resolution 2 of the Nairobi Final Act, to provide the secretariat to the Convention on an interim basis. The Executive Director of UNEP has also been requested by Resolution 17/30 of the Governing Council of UNEP to convene meetings of the Intergovernmental Committee to prepare for the first meeting of the Conference of the Parties.

I understand from your letter that your concern relates to the obligation of the Government of Switzerland, arising from this Agreement between the Government of Switzerland and UNEP, to fund major meetings held as part of the preparatory process for the First Meeting of the Conference of the Parties to the Convention, as well as to fund participation by least developed countries in those meetings.

Pending whatever action the Executive Director might wish to take arising from your letter, I should point out that the relevant clause in the Agreement states that "the Government of Switzerland will provide free of charge conference facilities for large meetings, including interpretation facilities. Such meetings, which are not expected to take place more than twice a year, will be held at the Geneva Conference Center or any other location in Geneva convenient to UNEP." This clause relates specifically to the obligation to provide facilities for conferences that are being held in Geneva. I assure you that for any meeting organized as part of the preparatory process and being held in Geneva, this undertaking by the Government of Switzerland will then be applied, as was done for the first session of the Intergovernmental Committee of the Convention.

With respect to the funding of participation by least developed countries to such meetings, there is no provision in the Agreement creating such an obligation on the part of the Government of Switzerland.

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You have also requested that if no advice is obtained from the UN Legal Counsel that the text of your letter of 13 June, as well as a copy of the Agreement between the Government of Switzerland and UNEP, be circulated as official documents for the Second Session of the Intergovernmental Committee for the Convention. It is my understanding that copies of the subject Agreement were previously circulated by UNEP to Governments. I shall await the response of the Executive Director about the need for advice from the UN Legal Counsel.

(Signed) Angela Cropper  
Executive Secretary

Annex IIIAGREEMENT BETWEEN THE GOVERNMENT OF SWITZERLAND AND THE UNITED NATIONS  
ENVIRONMENT PROGRAMME CONCERNING THE INTERIM SECRETARIAT OF THE  
CONVENTION ON BIOLOGICAL DIVERSITY

The Government of Switzerland and the United Nations Environment Programme have agreed as follows:

(a) The Government of Switzerland will provide accommodation for the Interim Secretariat until at least twelve months after the first meeting of the contracting parties.

(b) The full annual cost of the Interim Secretariat will be borne by the Government of Switzerland. These costs will include salaries and equipment (including the acquisition of furniture, telephones, telephone switch, facsimile machines, computers). UNEP will provide the Government of Switzerland with a budget for the Interim Secretariat and with a statement of expenditures on an annual basis.

(c) Office accommodation as well as necessary conference rooms will be made available rent free in building "C" of the Geneva Executive Centre on or about 1 June 1993. If four small conference rooms (20 to 40 people) are required, they will be provided.

The costs relating to the installation of the telephone switch uninterrupted power supply and the cabling of the offices for communication and computers will be borne by the Government of Switzerland to the extent that they are not already covered by the interim solution contained in the letters exchanged on the 14th, 17th and 22nd December 1992.

(d) During the period between its start of operations and its move into building "C" of the Geneva Executive Centre, the Interim Secretariat will be located in Champel, Avenue de Beau Séjour 24. UNEP will inform the Swiss authorities immediately about the requirements for office space at this address. It is understood that this requirement will in any case not be more than 14 offices. These offices will be equipped with facsimile machines, computer, telephones and telephone switch. Pending completion of the restructuring of the Geneva Executive Centre, i.e. for the period up to the beginning of June, 1993. The small meeting rooms referred to in paragraph (c) above will be provided elsewhere in Geneva.

(e) The Government of Switzerland will provide free of charge conference facilities for large meetings, including interpretation facilities. Such meetings, which are not expected to take place more than twice a year, will be held at the Geneva Conference Centre or any other location in Geneva convenient to UNEP.

(f) US Dollars 1 million per annum will be provided from the beginning of 1993 and paid into a special UNEP trust fund by the Swiss Government to finance activities of the Secretariat. It is understood that in 1993 part of this contribution will be used to finance the expenditures of holding meetings of the Intergovernmental Committee and the Conference of the Parties (servicing the meetings and financing the participation of developing country representatives). Any difference between the US Dollars 1 million and the cost of holding the panel meetings in 1993 and the total contribution in subsequent years will only be committed if spent by UNEP after consultation with the Swiss Government. A full accounting of all expenditures will be provided by UNEP on an annual basis. If additional funds are required, the Swiss Government will be willing to discuss with UNEP an increased level of annual contributions.

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(g) US Dollars 1,6 million will be paid into the special trust fund referred to in subparagraph (f) above to finance the holding of the planned meeting of the Intergovernmental Committee. This payment will be effected six months before the date of that meeting. If other Governments contribute towards the costs of that meeting, these contributions will be taken into account when UNEP provides a full post hoc accounting of the costs of the meeting. Any surplus will be reimbursed to the Swiss Government.

Nairobi, 22nd December 1992

THE PERMANENT REPRESENTATIVE  
OF SWITZERLAND TO UNEP

(Signature)

A. Kamer  
Ambassador

THE EXECUTIVE DIRECTOR OF UNEP

(Signature)

Dr. Mostafa K. Tolba

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