



United Nations
Environment
Programme



Distr.
GENERAL

UNEP/Bio.Div/WG.2/1/3
24 September 1990

ORIGINAL: ENGLISH

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

First session
Nairobi, 19-23 November 1990

ELEMENTS FOR POSSIBLE INCLUSION IN A GLOBAL
FRAMEWORK LEGAL INSTRUMENT ON
BIOLOGICAL DIVERSITY

Indications on how to read the text

The following text is based on the draft elements found in the Annex to the "Note by the Executive Director" (UNEP/Bio.Div.3/2) which served as a basis for discussion at the third session of the Working Group.

This Annex, hereinafter referred to as the original text, is presented in the amended form as requested at the third session of the Working Group (see UNEP/Bio.Div.3/12, para. 40 (c)) incorporating all proposals for substitutions or additions in square bracket form.

Parentheses inserted in the original text mean either that it was proposed that the original text be substituted or be deleted.

The elements in the text below have been annotated as follows:

Paragraphs marked with an asterisk ("*") followed by square brackets indicate a proposed additional new paragraph to the original text;

Square brackets followed by "a" indicate a proposed addition to the original text;

Parentheses followed by "d" indicate a proposal to delete the specified part of the original text;

Parentheses followed by square brackets with "s" propose that what is in the parentheses (indicating the original text) be substituted by what is in the square brackets (indicating the new text).

"S", "a" or "d" followed-by "ECG" indicates proposals made by the Ecosystem Conservation Group (ECG Group), at its meeting in Rome on 1 October 1990 where this document was reviewed.

I. PREAMBLE

(a) Description of the aims of the Convention - the duty of humankind to conserve biological diversity [terrestrial as well as marine]a [terrestrial as well as aquatic]s: ECG for the benefit of present and future generations;

(b) Recognition of mankind's co-existence on earth with a wide range of other living organisms, which exist independently from the benefits they may provide to humanity;

(b')* [Recognition of the need to set aside natural habitats for the conservation of biological diversity];

(c) Description of the problems - impoverishment of [global]d: ECG biological resources [at the global level]a: ECG, increasing rate of loss of biological diversity due to, among other things, [population growth]a, [demography]a, [advance of the agricultural frontier]a, [the commercial business with plants and species, poaching]a, [loss of wild as well as domesticated species]a, and degradation of habitats and pollution of the environment;

(c')* [Recognition of the threat to biological diversity of general environmental problems such as pollution entailing climatic changes and ozone depletion;]

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(c'')* [Recognition of the importance of strengthening and activating [existing]a: ECG legal instruments and programmes [and creating and implementing new instruments and programmes]a: ECG related to the conservation of biological diversity;]

(d) The deterioration of the quality of life on earth as a result of unsound management and use of natural resources;

(e) Recognition that the States, as the (stewards) [owners]s [and managers]s of biological diversity under their jurisdiction, over which they have sovereign rights, have a responsibility to conserve, develop and benefit from biological diversity, [in accordance with Principle 21 of the Stockholm declaration;]a

(e')* [States shall co-operate with each other in the conservation and management of biological diversity in territories beyond national jurisdiction;] [States should abstain from actions that could damage [areas] [biological resources]s: ECG outside their national jurisdiction;]

(f) (Conservation and sustainable use) [conservation, sustainable use and development]s of biological diversity as a common (responsibility) [concern]s [interest]s of (all)d mankind; [Sustainable development should be reached through the protection of habitats, but within the national framework of land use planning and species protection that safeguards biological diversity to the maximum extent practicable outside as well as within designated protected areas;]a

(g) (Obligation of states to share in any increased knowledge as well as other benefits of the potential of biological diversity;)d

(h) Close dependence of rural and (indigenous people) [indigenous populations]s [local communities]s on the potential of biological diversity, their profound knowledge of this biological diversity, and their vested interest in its sustainable use;

(h')* [States recognize, reward and sustain informal innovation by the local people and recognize that the protection of biological diversity by every state is a part of the socio-economic framework of that state;]

(i) In-situ conservation of biological diversity [seen as a priority way]a to secure intra-species genetic diversity, and the evolutionary potential of species and the interactions between species as a primary responsibility of the planned legal instrument; [Ex-situ conservation [of biological diversity]d: ECG is an additional tool to protect [biological diversity]a: ECG and a means to [keep and]a: ECG enhance knowledge on the economical and social potential of biodiversity;]a

(i')* [Acknowledging that special provisions are required to meet the needs of developing countries, including the provision of additional financial resources, which can be expected to make a substantial difference in the world's ability to address the conservation and sustainable use of biological diversity;]

(j) (Duty) [importance]s of ((intergovernmental and non-governmental)d organizations) [any body or agency, whether national or international, governmental or non-governmental]s to assist in promoting the conservation and sustainable utilization of biological diversity (on a global scale;) [on a global, national and regional basis;]s [taking into consideration the need to promote the development of national institutions;]a

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(k) Continuing (demonstration) [recognition]s: ECG of the cultural, ethical, scientific and economic value of biological diversity to mankind as an important incentive for its conservation;

(l) Contribution of the planned legal instrument on biological diversity conservation and sustainable utilization to the strengthening of (peace, security)d co-operation and friendly relations between states;

(m) Conservation of biological diversity has frequently provided the most benefits to countries which have the technical and economic capability to take advantage of it. (The cost of conservation without commensurate use could be a burden, especially for developing countries.)d [The exploitation of biological diversity should be offset by a mechanism involving transnational companies to contribute to conservation costs;]a [Also national economic incentive systems are considered important for the sustainable development of biological diversity;]a

(m')* [Recognizing the importance of access to information and biotechnology, [as well as the threat biotechnology could pose to existing species and varieties;] [and the need to compensate developing countries for forgoing commercial exploitation of areas in the interest of the conservation and sustainable use of biological diversity;]

General comments on Chapter I made at the meeting of the ECG-Group in Rome on 1 October 1990

(1) It was suggested that subsection (b')* be moved to Chapter V "Measures".

(2) The ECG Group proposed to place subsection (c")* under a new heading: (k*)..

II. DEFINITIONS AND INTERPRETATION

The following, as well as additional terms, will have to be defined to the extent that terms are used in the text of or annexes to the new legal instrument on biological diversity. The list of definitions is to be kept as brief as possible:

- Advisory committee
- Alien species
- [Animal]a
- [Areas beyond national jurisdiction]a
- [Biogeographic area]a
- Biological diversity
- Biomaterial
- [Biotechnology]a

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- [Biotype]a
- Conference
- Conservation
- [Defence]a
- [Domesticated species]a
- [Ecosystem]a
- [Endangered species]a
- Endemic species
- Ex-situ conservation
- [Free access]a
- Fund
- [Gene bank]a
- [Germplasm]a
- Global list
- [Habitat]a
- [Indigenous populations]a
- In-situ conservation
- [Intellectual property rights]a
- [Local species or varieties]a
- [Maintain]a
- [Microbe]a
- [National jurisdiction]a
- [Network]a
- [Partners]a
- [Partnership]a
- [Patent]a
- Party and State parties

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- [Plant]a
- [Pollution]a
- [Preferential treatment]a
- [Preservation]a
- [Protected zones/areas]a
- Protocol
- [Rational use]a
- [Restore]a
- Secretariat
- [Seed bank]a
- [Specially protected areas]a
- Species
- Species threatened with extinction at world level
- Specimen
- Sustainable development
- [Sustainable measures]a
- Sustainable use
- [Technology]a: [Those technologies which will support biological diversity and sustainable development;]a
- Territory: [Regions under the states national jurisdiction;]a
- [Threatened species]a
- [Transfer]a
- Viable population
- [Vulnerable species]a
- [Wealth of biological diversity]a
- Wild species

General comments on Chapter II

(1) One delegate suggested that all definitions and interpretations be put in an annex to allow for additions and changes.

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(2) It was suggested that to "maintain and restore" biological diversity should be interpreted as the rational and sustainable use of biological diversity.

(3) It was stated that, in the draft convention, the word "species" should always be followed by the words "and/or biotypes."

(4) "Gene-rich, technology-rich and poor countries," it was suggested, should be deleted, as well as "common heritage" and "free access," and other terms should be used to replace them.

III. FUNDAMENTAL PRINCIPLES

The following concepts should be considered for incorporation in the legal instrument:

- Biological diversity as a (heritage of mankind)d [common responsibility of humankind]s [common interest of humankind];]s
- (Sovereignty of states over [elements of]a: ECG biological diversity under their jurisdiction) [sovereign rights of states over [elements of]a: ECG biodiversity in regions under their jurisdiction]s (and the duty of stewardship, in time and space;)d
- *[All states have the duty to take, or to co-operate with other states in taking, such measures as are necessary to avoid all actions that could incur damage to biological diversity;] [This also applies for the conservation and sustainable development of biological diversity in territories beyond national jurisdiction;]
- Interrelation [and integration]a between conservation and sustainable use of biological diversity;
- (The need for conservation and sustainable utilization of biological diversity for the benefit of present and future generations;) [biological diversity is a resource for both present and future generations which should therefore be utilized wisely and in a sustainable way;]s [Conservation and socio-economic development must be mutually compatible and poverty [and mismanagement]a: ECG should be recognized as the main cause of loss of biological diversity;]a
- (Equitable sharing of benefits and conservation costs of biological diversity) [the benefits derived from utilization and the cost of conservation of biological diversity should be shared;]s [States benefiting most from biological diversity should carry the main responsibility for financial contributions;]a
- (Free access [to components of biological diversity and related technological]a: ECG does not [necessarily]a: ECG mean free of charge)d [accessibility to resources and biological diversity related technologies]s, [accessibility should be based on mutual agreements;]s [scientific and educational resources should be free of charge, and commercial exploitation should be subject to commercial arrangements;]a

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General comments on Chapter III

One delegate suggested that there should be emphasis on the necessity of safeguarding the basic functioning of ecosystems.

IV. GENERAL OBLIGATIONS

The following elements should be considered:

(a) Joint and individual obligation to take appropriate measures to (maintain and restore) [maintain, restore and conserve]s biological diversity at national and international levels, including the duty to co-operate with other States;

(b) Co-operation in the formulation and adoption of agreed measures, procedures and standards, and of protocols and annexes to facilitate the development and implementation of the legal instrument;

(c) Mutual assistance to achieve the goals of the legal instrument;

(d) Promotion of public awareness through (formal education and community awareness programmes) [formal education, community awareness programmes and the information media as well as access to information]s on the subject of the needs for and measures to conserve biological diversity at national and international levels by individual state action and/or by multilateral and bilateral co-operation;

(d')* [Obligation to report on implementation measures and to facilitate information exchange,] [as well as the obligation of [both] [all] [s]: ECG governments and donor agencies to ensure that environmental impact assessments are undertaken in all planned development projects;]

(e) Adoption and implementation of policies to maintain and use components of biological diversity for sustainable development; [The exploitation of biological diversity should be adjusted to the projects and priorities of each State;]a

(e')* [Duty of each State to establish a code of conduct regulating the release of [biotechnological products and]d: ECG genetically modified organisms;]

(e'')* [Obligation to provide financial and [institutional support] to the existing technical programmes co-ordinated within different regions related to in-situ and ex-situ conservation and use of biological diversity programmes;] [Opportunity loss, by setting aside areas to conserve biological diversity, should be shared equitably;]

(f) Duty to ensure conservation [and sustainable development]a of biological diversity within a State's territory; [including all sections of society,]a [and an obligation to develop national biological diversity conservation programmes in line with the convention;]a

(g) (Duty to refrain from actions harmful to biological diversity in territories of other States as well as in areas beyond the limits of national jurisdiction;) [States have a duty to ensure that activities within their national jurisdictions do not cause harm to other States or to areas beyond national jurisdiction;]s

/...

(g')* [States have a common obligation to co-operate on an international basis in maintaining and restoring biological diversity in areas beyond national jurisdiction;]

General comments on Chapter IV

(1) Several delegates suggested that the terms "duty", "obligation" and "responsibility" be avoided in this part of the proposed legal instrument.

(2) Two delegates suggested that the positions of subsections (a) and (f) be switched.

(3) One delegate opposed the suggested new subsection listed as (e').

(4) One delegate suggested that a concept of threshold should be developed in regard to the duty to refrain from actions harmful to biological diversity (subsection g); one delegate was opposed to this.

General comments made by the ECG Group on chapter IV

The Group suggested that subsection (d')* be split into two subsections (d')* and (d'')* which would read as follows:

(d')* [Obligation to report on implementation measures and to facilitate information exchange;]

(d'')* [Obligation of all Governments and donor agencies to ensure that environmental impact assessments are undertaken in all planned development projects;]

V. MEASURES FOR CONSERVATION AND SUSTAINABLE
UTILIZATION OF BIOLOGICAL DIVERSITY

A. Measures for in-situ conservation of biological diversity

Elements to be considered should include:

(a) (Obligation) [duty]s to carry out, [taking into consideration relevant priorities]a, initial and periodic surveys, gathering of information, drawing up of inventories and monitoring of biological diversity within national jurisdiction;

(a')* [General obligation to take all necessary measures to secure in-situ conservation of biological diversity;]

(b) (Identification of biogeographic areas of particular importance for conservation of biological diversity, to be included in a Global List)d [and in a Global List of species threatened with extinction at global level;]a

(b')* [Obligation to maintain the biological diversity and ecological balance in areas included in the Global List;]

/...

It was also suggested that, as an alternative, (a) and (b) be combined as follows: *[Identification of biogeographic areas of particular importance for conservation of biological diversity, to be included in a Global List; obligation to carry out initial and periodic surveys, gathering of information, drawing up of inventories and monitoring of biological diversity within jurisdiction;]

(c) Obligation to develop guidelines that establish criteria for the selection, establishment and management of [specially protected] [areas of importance for conservation of biological diversity]s: ECG [and unique]a areas to be included in the Global List [and in the Global List of species threatened with extinction at global level;]a

(c')* [Selection, establishment and management of [specially protected] areas under the Global List should not hamper implementation of other instruments regulating protection of areas of lesser regional and national importance, but should enhance and strengthen existing networks, institutions and programmes, such as the Man and Biosphere Programme on biological diversity, developed by the Commonwealth Science Council/IUCN/FAO and similar instruments;]

(d) Obligation to create [national lists and other]a networks of [specially protected]d areas [and also of national parks, seed banks and gene banks]a in territories within national jurisdiction [whether or not included in the Global List]a [according to nationally elaborated criteria for the selection, establishment and management;]a [also an obligation to create and maintain in densely populated areas wildlife corridors or zones between protected areas;]a

(e) Adoption, at national and international levels, of management strategies, plans, co-ordination schemes and networking [taking into consideration action plans already in use by FAO, UNEP, Unesco, IUCN and others]a for the in-situ conservation and sustainable use of biological diversity;

(e')* [Obligation to provide financial and institutional assistance to existing programmes, including international expertise and projects, related to conservation of biological diversity;]

(f) Adoption of [appropriate]a plans for the recovery and rehabilitation of species, habitats and ecosystems, [and of plans for restoration and regeneration of animal and vegetal species and for their habitat]a [including rare and fragile ecosystems as well as the habitat of depleted threatened or endangered species and other forms of [marine] [terrestrial and aquatic]s: ECG life]a [and bearing in mind existing conventions, action plans and programmes at national, regional and global levels;]a

(g) [Co-operation in]a [prevention,]a reduction and [strict]a control of pollution and other (forms of environmental degradation which could adversely affect biological diversity) [nuisances which entail the degradation of the environment and of the biological diversity;]a

(h) Use of wild resources on a sustainable basis;

/...

(i) Regulation and [strict]a control of the introduction of man-made and genetically modified organisms [and of alien species]a [on the basis of a thorough and comprehensive study of all possible effects on the ecosystem]a and [taking into account needs of utilization of exotic species for agricultural use;]a

(j) Regulation and introduction of alien species;

(k) In relation to biological diversity, adoption and implementation of [national]a policies promoting sustainable development;

(l) Support [and encouragement]a for land uses and activities compatible with the maintenance of biological diversity;

(m) Maintenance, [improvement]a [and wide use]a of local knowledge about biological diversity [in particular, through [relevant support and funding and]a action plans for systematic involvement of local population in conserving the biological diversity of wild and domestic species]a [keeping in mind that local knowledge in [ethnobotany] [about biological resources]s: ECG could prove to be invaluable with regard to protected areas;]a

(n')* [Obligation to notify the other States concerned in case of imminent danger or actual damage to biological diversity in the territory of a State or in areas within the jurisdiction of the latter State;] [Obligation of the State whose activities might cause a harmful effect on the biological diversity of other States to duly notify the States concerned;]

(o')* [Obligation to take all appropriate measures to ensure that the goals of maintaining biological diversity are duly included in the decision-making process for agricultural and related policies;]

(p')* [Obligation of States to report regularly on all actions and procedures adopted by them for implementing the current Convention;]

General comments on Chapter V (A)

(1) Some delegates stressed that a proper bias should be maintained on traditional activities for conservation.

(2) One delegate suggested elaboration of a protocol for conservation of endangered species and plants.

Comments made by the ECG Group on Chapter V (A)

(1) The Group pointed out that a global list of endangered species already exists under the CITES convention;

(2) It was suggested that subsection (o')* be moved to chapter IV "General Obligations".

B. Measures for ex-situ conservation of biological diversity

(a) Obligation to carry out initial and periodic surveys, inventories, gathering of information and monitoring, [as well as collection and maintenance of species and varieties threatened by erosion;]a

/...

(b) Adoption [where appropriate]a [and when necessary in co-operation with the International Board for Plant Genetic Resources and FAO,]a at national [regional]a and international levels, of management strategies, plans, co-ordination schemes and networking for the conservation of biological diversity ex-situ;

(c) Adoption of plans for the recovery and rehabilitation of species through ex-situ conservation when necessary;

(d) Obligation to establish, at national, [regional]a: ECG and international levels, centers for ex-situ conservation and in particular for species threatened with extinction;

(e) Adoption of plans and strategies for the re-introduction of species conserved ex-situ into their natural habitats [especially where practical constraints in providing ex-situ storage facilities exist;]a

It was suggested that (c) and (e) could be combined: *[Adoption of plans for the recovery and rehabilitation of species through ex-situ conservation and the re-introduction of species when necessary and applicable.]

C. Measures for sustainable utilization of [components of]a: ECG biological diversity

(a) The obligation to integrate conservation of biological diversity and its [sustainable]a: ECG utilization into national [socio-economic]a development plans and policies by means of national conservation strategies and other suitable instruments;

(b) The obligation to ensure that utilization of biological diversity does not have adverse impacts on [the rest of]d: ECG the environment can be met through the adoption of common standards by the Parties [that respect the [reasonable]a (exploitation) [utilization]s of certain resources, especially resources in the wild;]d: ECG

(c')* [Obligation to take into account and protect special interests of indigenous people and their right to participate in the sustainable utilization, management and conservation of natural resources pertaining to their native lands;]

(d')* [Obligation to contribute financially and in close co-operation with the local population to find solutions for rehabilitation in areas where the biological diversity has been destroyed;]

(e')* [The obligation assumed by a country to protect its biological diversity should not result in conditionalities by the international funding agencies for developmental loans.]

General comments on Chapter V (C)

One delegation suggested that the concept of demographic concentration should be included in Section C of the chapter.

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D. Research and training

- (a) Inventories and application of taxonomy;
- (b) Training of taxonomists, [ecologists]a technicians and experts for field identification;
- (c) Training of ethnobotanists and other specialists to contribute to the understanding of traditional knowledge in the field of biological diversity and natural resource management;
- (d) Research on and development of technologies, [both for conservation of biological diversity and for development of biotechnology]a [and for the proper functioning of the ecosystem and its population;]a
- (e) (Research on and training in the management of protected areas) [Research and training on conservation biology in the management of protected areas;]s [using existing guidelines and expert networks;]a
- (f) Research by and training of specialists in the use of biological diversity in sustainable agriculture [using existing guidelines and expert networks;]a
- (g) Improved understanding of the ecosystem function of biological diversity and its management requirements;
- (h')* [Research on the important factors affecting biological diversity such as: [poverty,] drought, fire, soil erosion, human factor, cultural and social factors.]

General comments on Chapter V (D)

One delegate suggested that subsections (b) and (c) be combined.

E. Education and public awareness

- (a) [Education of teachers and]a formal (training) [education,]s through schools, universities and other fora, [taking due account of the relevant educational programmes of Unesco;]a
- (b) Non-formal (training) [education]s including (training) [education]s for the general public and other groups [and also development and production of public awareness materials;]a
- (c) Education for local populations in areas of special interest for the conservation of biological diversity.

F. Environmental impact assessments

- (a) Obligation of States to assess the environmental impact of [large industrial]a projects and activities (which may adversely affect biological diversity,)d (in particular) [*inter alia*,]s [when exploiting new areas or introducing new methods of use of alien species, or]a those involving the introduction of alien species, genetically modified organisms and the re-introduction of species into their natural habitats;

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(b) Development of guidelines that set standards for making environmental impact assessments, [which are to be an important part of national planning;]a

(c')* [Elaboration of governmental procedures to be followed after environmental impact assessment has been done] [and of evaluation of the results of the environmental impact assessments according to the national legal regime of the relevant country;]

(d')* [Development of an early-warning system to enter into action when dangers are created by major environmental changes.]

General comments on the whole of Chapter V

(1) It was suggested that the concept of financial remuneration and compensation should be reflected in all subsections related to measures for conservation.

(2) One delegate suggested restructuring the whole of Chapter V, in particular, to include subsections A, B and F under the same headline: "Conservation and sustainable use of biological diversity," starting with section C (a) and (b), and then proceeding with A (e), (h), (k) and (l). It was stated that complementary measures regarding protected areas, currently under section A should be introduced as a final part of Chapter V. Environmental impact assessment measures should be placed under section A and subsections (i) and (j) of that section should be merged together. The measures on ex-situ conservation should become a new section F. It was further stated that article 8 of the FAO draft should be included in the elements on environmental impact assessments.

(3) Several delegates suggested that the measures for in-situ and ex-situ conservation should be combined under the same heading.

VI. AVAILABILITY OF AND ACCESS TO BIOLOGICAL DIVERSITY,
TECHNOLOGY AND INFORMATION THEREON

A. Availability of and access to biological diversity

(a) Availability of and access to genetic material conserved in-situ and ex-situ [at a recovery cost]a for purposes of scientific research, training, surveying, monitoring; [as long as viable populations are not thereby endangered;]a

(b) Availability of and access to genetic material for uses other than scientific research, training, surveying and monitoring; [as long as viable populations are not thereby endangered;]a

(c) Preferential treatment for countries of origin of germplasm with regard to access to genetic material and varieties derived therefrom.

General comments on Chapter VI (A)

It was suggested that additional emphasis be put on scientific research and commercial access.

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B. Availability of and access to relevant technology and information

- (a) Patents and property rights derived from genetic diversity under national jurisdiction and control;
- (b) Patents and property rights derived from genetic diversity beyond national jurisdiction and control;
- (c) Access to scientific research, training and surveying;
- (d) Access to know-how;
- (e) Access to information, (including traditional knowledge) [including a combination of traditional knowledge and technologies for the conservation of biological diversity;]s
- (e')* [Commercial access should be subject to commercial arrangements;]
- (f) Role of the public and private sectors;
- (g')* [Availability of additional financial resources to enable developing countries make the necessary investment in environmentally sound technology for the conservation and sustainable use of biological diversity.]

General comments on Chapter VI (B)

- (1) One delegate suggested that access to technology should cover all types of technology that relate to the conservation of biological diversity.
- (2) One delegate suggested that the outcome of the discussions on intellectual property rights from the Ad-Hoc Working Group of Experts on Biological Diversity should be reflected in the legal elements. Another delegate suggested that all references to patents should be referred to GATT and WIPO discussions.
- (3) One delegate suggested that new technologies should be developed jointly, including on a South-South basis.
- (4) It was suggested that details be included about the concept of biological diversity and about how to collect scientific material, how to distribute specimens and obtain information on taxonomy - although not in the legal framework. Information and instructions should be included about how national institutions should handle the information about the basic concepts of developing biotechnology.

VII. TRANSFER OF TECHNOLOGY FOR THE CONSERVATION AND UTILIZATION OF BIOLOGICAL DIVERSITY

- (a) Obligation for developed countries to transfer (technology) [those technologies that support biological diversity]s [open technology by co-operational research work based upon technical co-operation]s to the (gene-rich but technology-poor developing States)d [developing countries]s on a (non-commercial) [assistance in acquiring technology]s and preferential basis;

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(b) (Undertaking by the parties, through national policy and legislation, to ensure that private enterprises within their jurisdiction transfer technology to the poorer developing countries, while protecting the interest of the private sector. Parties to report on measures undertaken pursuant to this undertaking;)d

(b')* [The investments made by the private sector in developing technologies and their desire to receive equitable returns on their investments should be taken into account;]

(c) Improvement of access to know-how through exchange of information via the institutions established by the planned legal instrument, especially the secretariat;

(d) Mutual co-operation in training of experts in the field of both conservation and utilization of biological diversity;

(e) Joint ventures between the (technology-rich states and the gene-rich states)d in the field of biotechnology and conservation;

(f) Co-operation in relevant scientific research;

(g) (Establishment of a mechanism to ensure the acquisition of technology from the technology-rich states to the gene-rich developing countries by providing funds to facilitate the necessary access to patents.)d

General comments on Chapter VII

(1) An in-depth discussion as to the phrasing of subsection (g) was considered necessary.

(2) It was considered that transfer of technology aspects should be dealt with in the convention proper.

(3) One delegate considered that subsection (a) should be deleted.

(4) Access to genetic information on biotechnology, it was stated, should be an integral part of the convention on biodiversity.

(5) Access to biotechnology, one delegation considered, should be based upon requests from biologists.

(6) Biotechnology and transfer of technology, it was considered, were issues that should be dealt with by the 1992 UNCED conference and not included in the convention on biological diversity.

(7) Support was expressed for the Executive Director's idea that a clearing-house be set up for technology and biotechnology transfer.

(8) GATT, it was stated, should be kept informed about conservation issues in regard to property rights.

(9) It was stated that a strong secretariat was needed to run the transfer of technology. The secretariat should consist of e.g. representatives from UNIDO, FAO, UNCTAD and the United Nations Centre on Science and Technology for Developing Countries. The UNCED Preparatory Committee, it was stated, could provide a blueprint for transfer of technology.

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(10) It was considered that developing countries should be assisted in developing their own technologies.

(11) The investments made in developing technologies, it was stated, should be taken into account when discussing transfer of technology.

(12) It was proposed that a mechanism to ensure the transfer of technology should not only handle funds, but also create facilities to ensure that the results of the ongoing efforts in the United Nations system were made widely available.

(13) The rapid transfer of the latest technology, it was stated, should be on a preferential basis.

(14) Many delegates found the issue of technology transfer to be of great importance and considered that the issue needed further study and that no element should be deleted at the present stage.

VIII. TECHNICAL ASSISTANCE TO DEVELOPING COUNTRIES

(a) Obligation of the institutions set up under the planned legal instrument [and said institutions established to the extent that funds are available in the country]a to provide [rational]a (technical assistance) [technical co-operation]s [international co-operation]s [subject to mutual agreement]a to developing countries in the [quantitatively reasonable]a conservation and utilization of biological diversity;

(b) (Commitment) [obligation]s of the developed States to provide, outside their contributions to the institutions set up under the planned legal instrument, [required]a [rational]a technical (assistance) [co-operation]s to developing states on a multilateral and bilateral basis, subject to mutual agreement;

(c) Establishment of a "clearing-house" mechanism within the institutions set up by the planned legal instrument to facilitate the provision for [rational]a technical (assistance) [co-operation]s by the developed states to the developing states [subject to a mutual agreement]a.

General comments on Chapter VIII

(1) Institutions should help develop the ability to exploit biological diversity;

(2) An institution should be established solely to administer the funds for biological diversity;

(3) The establishment of a fund was suggested, analogous to the fund established by amendments to the Montreal Protocol on Substances that Deplete the Ozone Layer.

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IX. FINANCIAL MECHANISMS

A. Financial needs under the legal instrument

The overall level of financial resources requires:

- (a) Obligation of all countries, in particular the industrialized countries, to provide genuine additional resources to cover the financial needs to operate the legal instrument, and for the conservation and sustainable use of biological diversity at the national and international levels;
- (b) Obligation of industrialized countries to provide the necessary funding and other mechanisms for technology transfer;
- (c) Multilateral and bilateral assistance for the conservation of biological diversity and technology transfer, [taking into account the special needs of the developing countries.]a

General comments on section IX (A)

- (1) The financial mechanism should be added to the Convention as a protocol.
- (2) The financial aspects should be outlined in a much more detailed way, e.g. as a part of the legal instrument in the Convention, in an annex or in a protocol to the Convention.
- (3) It was suggested that financial matters be left to a special working group.
- (4) One delegate said that his country would provide support by participating in the financial part of the Convention.

B. Financial mechanisms for the legal instrument

Taking into account the totality of financial resources necessary, it would be worthwhile to examine the need for a fund or a funding mechanism that should be established to facilitate the financial transfer. This may well require:

- (i) Co-operative arrangements with existing multilateral and bilateral sources of funding; or
- (ii) The consideration of a special fund; or
- (iii) Both.

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General comments on Chapter IX (B)

- (1) The multilateral fund established under the Montreal Protocol on Substances that Deplete the Ozone Layer was considered a useful model.
- (2) Reference was made to Global Environment Facility, which is currently being negotiated between the World Bank, UNDP and UNEP, and to the concept of users's fees.
- (3) The World Bank, it was stated, should be involved with the financial aspects of a fund.
- (4) The financial aspect of initiating global biological surveys should be included as an additional element.

X. RELATIONSHIP BETWEEN THE PLANNED LEGAL INSTRUMENT AND EXISTING INSTRUMENTS, AGREEMENTS, PROGRAMMES AND ACTION PLANS ON BIOLOGICAL DIVERSITY

- (a) The legal instrument is not intended to replace existing instruments related to the conservation of biological diversity. (Such instruments may be re-negotiated as protocols to the planned legal instrument;)d
- (b) Co-ordination of programmes and plans under relevant legal instruments and exchange of information on activities;
- (c) (Options for secretariats which have an international character to become parties to the planned legal instrument;)d
- (d) Provision of financial assistance to existing secretariats and programmes [between developing countries;]a
- (e) (Eligibility of existing agreements, action plans, programmes to become protocols;)d
- (f) Efficient use of limited budgetary resources.

General comments on Chapter X

- (1) Concerning subsection (a), it was suggested that the current FAO undertaking on sustainable development for the protection of biological diversity of the planet might be translated into a protocol.
- (2) Concerning subsection (c), it was stated that the possibility for secretariats to be involved in and assume commitments relating to the planned legal instrument needed to be further explored.
- (3) With regard to subsection (d), it was stated that the provision of financial assistance to existing secretariats needed to be further developed, possibly in the form of a protocol.

XI. INSTITUTIONAL MEASURES AT NATIONAL LEVEL

- (a) (Establishment) [designation]s of national bodies [or designation of existing bodies]a, including advisory boards, to pursue the aims and goals of the legal instrument and to co-ordinate activities related to the conservation and sustainable use of biological diversity;

/...

(b) Obligation to take legislative action [in regard to the administrative and penalty system]a to ensure the conservation and sustainable use of biological diversity;

(b')* [Identification of financial institutions that might assist in the establishment of specialized bodies dealing with the conservation and sustainable use of biological diversity;]

(b'')*[States should co-operate to ensure the enhancement of the capability of developing countries to implement the legal instrument through national institutions and legislation;]

(c) (States may adopt stricter [and more complimentary]a measures than those contained in the legal instrument;) [States may adopt measures to strengthen the provisions contained in the legal instrument.]s

General comments on Chapter XI

(1) It was suggested that more durable solutions should be incorporated into subsections (a) and (b).

(2) Several delegations felt that the inclusion of a provision for national measure was not necessary, as the signatories to a convention are obliged to implement the convention through national measures. Several delegations disagreed, arguing that this provision should not be taken for granted and that it could also serve to encourage developing countries to have such specialized bodies.

XII. INTERNATIONAL CO-OPERATION

(a) Status of co-operation and co-ordination of international activities in conservation, evaluation, documentation, utilization and exchange of genetic material and information: [following the generally accepted policy of mutual benefit;]a

(b) Intensified activities and support for countries;

(c) Support for international [and national]a organizations active in the field of biological diversity;

(d) (Development of a Global List of areas for the conservation of biological diversity;)d

(e) Technical assistance [and co-operation;]a

(f) Development of a mechanism to determine priority actions under the legal instrument.

General comments on Chapter XII

(1) With regard to subsection (d), one delegate suggested the co-ordination of Chapters XII (d) and V (a) and (b), as they dealt with the same Global List. Another delegate suggested that subsection (d) should be moved to Chapter V, under "measures". It was also suggested that, in order to cover areas of concern for the conservation of biodiversity, the Global List should differ from the proposed list of protected areas.

/...

(2) Concerning subsection (f), one delegate suggested further in-depth discussions of this subsection at the next meeting, stressing that the issue here was covered in other Chapters. Another delegate suggested that a group commission a paper on options for establishment of priorities.

(3) Several delegates suggested the need for a mechanism to determine priority actions.

XIII. INSTITUTIONAL ARRANGEMENTS FOR THE PLANNED LEGAL INSTRUMENT

A series of different options, approaches and alternatives should be considered in dealing with the institutional arrangements. The following elements, together with additional elements, should be considered as appropriate:

- Conference of the Parties;
- Secretariat;
- Scientific advisory panel or committee;
- Reporting system;
- International funding mechanism to handle operational costs for the planned legal instrument, financial needs for conservation and sustainable use of biological diversity and financial resources for technology transfer;
- Mechanism to handle transfer of technology and technical assistance;
- A "clearing-house" mechanism.

General comments on Chapter XIII

(1) One delegate asked for a clarification of the role of the Scientific committee.

(2) The Working Group determined that it was still premature to consider institutional arrangements for the planned legal instrument.

XIV. SETTLEMENT OF DISPUTES

(a) A provision similar to that found under the Vienna Convention for the Protection of the Ozone Layer could be considered;

- (b) Mediation;
- (c) Good offices.

XV. OTHER PROVISIONS

- Procedure for adoption and amendment of annexes;
- Procedure for adoption, entry into force, and amendment of protocols;
/...

- Procedure for amendment of the legal instrument;
- Relationship between the legal instrument, its protocols and annexes.

XVI. FINAL CLAUSES

- Signature;
- Ratification, acceptance, approval;
- Accession;
- Entry into force;
- Reservations;
- Withdrawals;
- Depositary;
- Authentic texts.

XVII. ANNEXES

Annexes to the Convention are an integral part of the Convention. While some of the matters listed below may be provided for in the Convention, it may be necessary to make detailed and more elaborate provisions with respect to them in the annexes. The advantage is that the amendment procedure for the annexes could be simpler than for the Convention, hence they can be adapted to changed circumstances.

- Global list of protected areas [where preservation of biological communities is directly related to conservation of biological diversity;]a
- Guidelines for environmental impact assessment;
- (Machinery for arbitration procedure)d;
- Guidelines for introduction of genetically modified and alien species;
- Any element that the parties might consider need amendment, as scientific evidence or needs arise.

General comments on Chapter XVII

(1) Several delegates supported the idea that the sections on definitions should be included in an annex. This would allow for changes, additions and deletions as needed. It would also allow for a comprehensive list.

(2) It was noted that the present list of protected areas was a huge volume.

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XVIII. PROTOCOLS

Existing instruments, agreements, action plans and programmes might be re-negotiated as protocols, as the parties to these may decide.

Any area that the Parties may decide is appropriate for protocols may be developed simultaneously with the convention or at a later stage.

General comments on Chapters I - XVIII

(1) IUCN and FAO documents, it was stated, should be used as guidelines for the legal framework convention.

(2) Financial compensation and remuneration should be mentioned in all sections of the legal instrument.

(3) The term "sustainable development" should be used consistently overall in the text of the legal framework convention.

General comments on Chapters I-XVIII made by the Ecosystem Conservation Group at their meeting on 1 October 1990 where this document was reviewed:

(1) It was stressed that concepts like ownership and sovereignty can be applied only to the components of biological diversity;

(2) It was suggested that the objective of the convention be defined in a separate provision;

(3) It was pointed out that wherever utilization of biological diversity is mentioned it should be understood as sustainable utilization;

(4) It was stated that the term "Global list of areas" should refer to the areas of importance for conservation and evolution of biological diversity and the term "Global list of species" should be understood as the Global list of population of species threatened with significant loss of genetic diversity.
