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Ad Hoc Working Group of Experts
on Biological Diversity

Second session
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REPORT OF THE AD HOC WORKING GROUP ON THE WORK OF ITS SECOND SESSION IN PREPARATION FOR A LEGAL INSTRUMENT ON BIOLOGICAL DIVERSITY OF THE PLANET

I. INTRODUCTION

1. The second session of the Ad Hoc Working Group of Experts on Biological Diversity was convened at the United Nations Office, Geneva, from 19-23 February 1990, pursuant to decision 15/34 of the Governing Council of UNEP to consider the technical content of a suitable new international legal instrument with particular emphasis on its socio-economic context and to advise on other measures that might be adopted for the conservation of the biological diversity of the planet.

II. ORGANIZATIONAL MATTERS

A. Opening of the meeting

2. The meeting was opened by Dr. M. K. Tolba, the Executive Director of UNEP. In his opening statement, he reiterated the need for a global effort in which developed and developing countries infuse a new spirit of co-operation into the North-South dialogue for the conservation of biological diversity as a fundamental element of environmentally sound and sustainable development. He outlined a number of outstanding basic issues that need priority attention during the meeting in order to develop precise recommendations on how to deal with them in the proposed new international legal instrument on biological diversity: (i) the nature of the international legal instrument; (ii) global conservation needs and costs; (iii) financing mechanisms; (iv) preferential treatment for those having jurisdiction and control over genetic resources with respect to gene banks containing them and to essential newly-developed varieties obtained through breeding them; and (v) international transfer of and favourable access to biotechnology that could be usefully applied or adapted to developing countries' needs. The Executive Director stressed that any new international agreement should not infringe upon the sovereignty of nation States over their natural resources. It must protect the interests of the States in which the resources are located and provide incentives for conservation of biological diversity without inhibiting growth or sustainable development.

B. Attendance

3. The meeting was attended by delegations (experts) from the following 41 countries: Australia, Austria, Brazil, Canada, Central African Republic, Chad, China, Comoros, Costa Rica, Denmark, Egypt, Finland, France, Germany (Federal Republic of), Greece, India, Indonesia, Japan, Jordan, Kenya, Malaysia, Malta, Mexico, Nepal, Netherlands, New Zealand, Nigeria, Norway, Peru, Sao Tome and Principe, Saudi Arabia, Spain, Sweden, Switzerland, Syrian Arab Republic, Thailand, Union of Soviet Socialist Republics, United Kingdom, United States of America, Venezuela and Zimbabwe.

4. Observers from the following United Nations bodies and specialized agencies were also present: Economic Commission for Europe (ECE), Food and Agriculture Organization (FAO), United Nations Educational, Scientific and Cultural Organization (UNESCO), World Health Organization (WHO), and the World Intellectual Property Organization (WIPO).

5. Six intergovernmental organizations were also represented: Council of Europe, South Pacific Regional Environment Programme (SPREP), International Union for the Protection of New Varieties of Plants (UPOV), Convention on Wetlands of International Importance Especially as Waterfowl Habitat (Ramsar), Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), and the Convention on the Conservation of Migratory Species of Wild Animals (CMS).

6. In addition, the following non-governmental organizations sent delegations: World Conservation Union (IUCN) and the International Board for Plant Genetic Resources (IBPGR). The full list of participants is attached as Annex II.

C. Adoption of the agenda and organization of work

7. The meeting adopted the following agenda:

1. Opening of the meeting
2. Adoption of the agenda and organization of work
3. Organizational matters: election of officers
4. Note by the Executive Director
5. Recommendations on the socio-economic elements to be included in the international legal instrument on the biological diversity of the planet
6. Other matters
7. Adoption of the report
8. Closure of the meeting

D. Election of officers

8. As the meeting is a continuation of the first session and was expected to deal with major policy issues, it was agreed to keep the previously elected officers with slight adjustments to include two other vice-chairmen from Latin America and the Caribbean and Eastern Europe.

9. The meeting elected the following officers for the session:
- | | |
|----------------|--|
| Chairman: | Mr. Veit Koester (Denmark) |
| Vice-chairmen: | Ms. Eleanor W. Savage (United States of America) |
| | Mr. Paul Chabeda (Kenya) |
| | Mr. Boris A. Yurtsev (USSR) |
| | Mr. Edgar Useche (Venezuela) |
| Rapporteur: | Ms. Setijati Sastrapradja (Indonesia) |

III. GENERAL DEBATE

10. The Ad Hoc Working Group of Experts on Biological Diversity, taking into account the issues raised in the opening statement of the Executive Director, the "Note by the Executive Director" (UNEP/Bio.Div.2/2) and the report on the work of its first session (UNEP/Bio.Div.1/3), held a general discussion on the subject. The need was emphasized in the debate for a new international legally-binding instrument on the conservation of biological diversity, to provide for concrete and action-oriented measures. Many delegations affirmed their desire to discuss the socio-economic aspects of the proposed instrument. Several delegations considered that the "Note by the Executive Director" covered most if not all of the socio-economic aspects. They expressed the view that the Executive Director's opening statement highlighted the main issues, covered most of the basic socio-economic issues raised in his Note and provided a good basis for discussion. It was agreed that the meeting should structure itself around the five basic issues identified by the Executive Director as priority issues. Observers from governmental and non-governmental organizations expressed the interest of their organizations in the issue and pledged their full and continuing support to the development of the proposed new international legal instrument. They indicated also that their organizations will make substantial contributions to the issue and will participate in technical and legal working group meetings.

11. In the general debate, the Working Group discussed the notion of "common heritage" with regard to biological diversity. Some delegations felt that the use of the expression "common heritage" implies legal implications. The Group agreed that whenever the concept of "common heritage" is used, it does not mean the establishment of collective international rights to resources within national jurisdictions nor does it infringe upon permanent sovereignty of States over natural resources.

12. A number of delegations pointed out that for developing countries their enormous external debt and ever-expanding population growth represent an abnormal burden when carrying out conservation activities. If they are to assume the responsibility implied in conservation of biological diversity, the debt problem should be examined and adequate additional financial resources should be provided. Several delegations emphasized the need for: (i) further rationalization and co-ordination of existing international legal instruments on biological diversity; (ii) equitable distribution of resources between developing and developed countries and sharing the global responsibility of conservation; (iii) establishing a relationship between conservation, utilization and property rights; (iv) building the new international legal instrument on

existing international legal instruments and measures, taking into consideration the efforts of other international and regional organizations within and outside the United Nations system; (v) raising public awareness by appropriate education programmes at all levels; (vi) measures to curb the contamination of the biosphere by pollutants; (vii) establishing inventories of flora and fauna at the national level; and (viii) development and implementation of action programmes, and other measures for conservation of biological diversity while preparing the global international legal instrument.

13. It was pointed out by the observer from the World Health Organization that, wherever appropriate, provisions would need to be made in the legal instrument to allow for the protection of human health to be given adequate attention when dealing with conservation issues.

IV. NATURE OF AN INTERNATIONAL LEGAL INSTRUMENT

14. In discussing the nature of the proposed international legal instrument, the Working Group considered the following three main elements, taking into account the draft articles prepared by IUCN for inclusion in the proposed international legal instrument and the FAO Undertaking on Plant Genetic Resources circulated as background documents: (i) the form of the international legal instrument and whether it should have legally-binding protocols under its umbrella; (ii) the scope of the international legal instrument and whether it should cover domesticated species; and, (iii) relationships between the proposed international legal instrument and existing international legal instruments on biological diversity. There was general agreement that: (i) absorbing the existing international legal instruments on conservation in the new international legal instrument is not possible; a new framework international legal instrument should have under its umbrella legally-binding protocols focussing on concrete issues and as far as possible these should be concluded and signed concurrently with the international legal instrument itself; (ii) the new framework international legal instrument should address the full range of biological diversity at the intra-species, inter-species and both terrestrial and aquatic ecosystems levels. Both in situ and ex situ conservation aspects should be included. Many delegations felt that it should also cover domesticated species and in this respect the FAO Undertaking on Plant Genetic Resources might be developed into a legally-binding protocol under the international legal instrument. A few countries felt, however, that inclusion of domesticated species in the international legal instrument might complicate its negotiation and delay its adoption; (iii) the new framework international legal instrument, through appropriate funding, administrative and other mechanisms, should build upon, co-ordinate and strengthen existing international legal instruments, agreements, mechanisms and action plans on biological diversity. It must cover the gaps in conservation conventions and avoid duplication and competition for the limited resources among the conventions. Co-ordination between the proposed international legal instruments on biological diversity and climate change is also needed; (iv) the new framework instrument should not explicitly exclude aspects already covered by existing conventions. Duplication should be avoided by providing, inter alia, a co-ordination

mechanism; (v) the ideas expressed on page 3 of the report of the Informal Meeting of Secretariats of International Conventions relating to biological diversity (14-15 December 1989), inter alia those concerning the role of the Secretariat of the international legal instrument as an information centre for the activities of other secretariats or acting as a central body for promoting co-operation among existing conventions, should be examined and possibly pursued; (vi) the principle of refraining from action that may be harmful to biological diversity in other States should be included; and, (vii) the obligation to prepare environmental impact assessments for projects having a potentially harmful effect on biological diversity was recommended by some delegations.

V. GLOBAL CONSERVATION NEEDS AND COSTS

15. The Working Group then turned to consideration of global conservation needs and costs and the Chairman opened the debate by outlining some points related to the issue. The Group agreed that the following areas represent basic conservation needs that would lead to measures of implementation and funding through adoption of the new international legal instrument: (i) surveys, inventories and identification of biological diversity-rich areas and areas under threat as well as of technologies and techniques related to the conservation and sustainable use of biological diversity; (ii) technical assistance for research, training, education, public awareness campaigns, surveys, inventories, etc.; (iii) management strategies and plans, particularly for biological diversity-rich areas, areas of high endemism, areas under threat, including recovery plans, co-ordination of various conservation activities and networking of protected areas and development of national conservation strategies; (iv) regular monitoring of the status of the world's biological diversity; (v) co-ordination of conservation management strategies and plans with sustainable development policies; (vi) priority conservation projects; (vii) needs of existing international legal instruments on biological diversity; and, (viii) transfer of technology. Some delegations felt that emphasis should be put on items (v) and (vi). A few pointed out that there might be a time constraint for detailed surveys and development of national inventories of flora and fauna and these must not delay implementation of other conservation needs. Several delegations emphasized the importance of and need for environmental impact assessments. One delegation emphasized the need for international support for the development of major biological collections, providing the core of knowledge on biodiversity.

16. In discussing global conservation costs, the Working Group considered the following two elements: (i) the true value of biological diversity, and (ii) likely costs of identified conservation needs. The Group was of the opinion that, although biological diversity is now viewed as a valuable economic natural resource, there are considerable difficulties in adequately assessing the total economic value of the benefits of its conservation. The Group also felt it was not in a position to make any meaningful costing of global conservation needs. This will have to be prepared by experts based on the needs identified by the meeting.

VI. FINANCING MECHANISMS

17. On financial matters, there was a consensus that those who enjoy most the economic benefits of biological diversity should contribute equitably to its conservation and sustainable management. A new partnership should be developed and in this context funding for developing countries should be characterized as co-operation among countries. There was also general agreement that an international legal instrument without firm commitments to funding to meet the conservation costs would be meaningless. Bearing in mind these basic principles, the Group considered the following elements in the course of their discussion: (i) the scope and need for financing; (ii) mobilization and fund-raising; (iii) fund management; and (iv) how effectively resources currently available for biological diversity conservation are used. The majority of the Group emphasized that there is a need for sufficient new and additional funds to achieve conservation of biological diversity and that, in a spirit of common responsibility, the costs of conservation should not fall disproportionately upon countries with significant biological diversity. Some delegations considered that preferential treatment should be given to developing countries, which had the greatest biological diversity.

18. The Group recognized that the funds are needed to cover: (i) secretariat administrative costs; (ii) global conservation needs; (iii) development and transfer of new technologies and techniques, including biotechnologies, to improve the utilization of biological resources on a sustainable basis and in accordance with national goals; (iv) national and international efforts to promote the concept of sustainability in the use of biological diversity, including its development through appropriate technologies; and (v) strengthening existing international legal instruments and activities on biological diversity when their basic objectives and/or activities are very similar or closely linked. The Group felt that resources for administrative purposes should be provided by the contracting parties. In addition, innovative mechanisms should be explored at both national and international levels for raising additional funds and/or redistributing existing funds to support conservation and management activities as identified by the Group under the issue of global conservation needs. Whatever the final financing arrangements, the Group, with a few exceptions, emphasized the need for a special fund management mechanism as part of the international legal instrument.

19. A few delegations felt, however, that there is a need: (i) to review existing financial mechanisms and to take into account the contribution made by existing aid programmes to conservation of biological diversity and possibly their reorientation; (ii) to undertake an authoritative study to determine real funding requirements, for example, by conducting case studies; and (iii) to consider the extent to which funding needs for conservation of biological diversity can be accommodated through reorientation of existing multilateral and bilateral aid arrangements.

20. Many delegations emphasized the need to ensure from the outset that funding mechanisms are appropriate by closely co-ordinating current efforts on global environmental problems, particularly the development of funding arrangements between the two future international legal instruments on biological diversity and climate change, as well as ongoing work in the context of the Montreal Protocol on protection of the ozone layer. This should include examination of existing multilateral mechanisms, such as FAO, World Bank, UNDP, IUCN, and the Consultative Group on Agricultural Research, as well as bilateral mechanisms. The said studies should also consider the role that might be played by new funding mechanisms.

21. Many delegations were of the opinion that environmental dimensions should be integrated in development programmes by conducting environmental impact assessments. Some pointed out that although conservation and sustainable use of biological diversity call for a global approach, existing conservation funds are contributed in a fragmented manner. Most of the delegations expressed preference for multilateral rather than bilateral arrangements. A number of delegations felt that the concept of sustainable use of biodiversity should not mean the imposition of conditionality on funding.

VII. ACCESS TO GENETIC RESOURCES AND TECHNOLOGY

22. The full potential of biological diversity can best be realized when genetic resources remain accessible to all users and if technology and information on their use is transferable to all. There was a consensus that: (i) accessibility, including access to knowledge and data, is an important element in conservation and sustainable development of biological diversity; (ii) free access does not mean free of charge and accessibility should be based on mutual agreement and full respect for the permanent sovereignty of States over their natural resources; (iii) accessibility to biological diversity, including new varieties, and to related technologies, including conservation technologies, are two sides of one and the same coin and must be an integral part of the planned legal instrument; (iv) those having jurisdiction and control over genetic resources should receive preferential treatment for access to their germplasm and varieties developed therefrom; (v) there is a need to examine questions of enforcement, ownership of biotechnology by private and public sectors and the relationship between the whole issue of intellectual property rights, access to genetic resources and access to biotechnology in a spirit of co-operation between gene-rich developing countries and technology-rich developed countries; (vi) there is a need to incorporate in the international legal instrument an innovative mechanism that facilitates access to resources and new technologies, including those in the private sector; and, (vii) the conclusion of agreements facilitating the acquisition and subsequent sustainable use of genetic resources and guaranteeing mutual benefits for those having jurisdiction and control over the resources as well as for the owners of the technology should be encouraged. Some delegations emphasized the importance of accessibility to biological diversity for harvesting and use in breeding, as well as to technologies involved in the development of germplasm and resulting varieties.

23. Several delegations emphasized that biotechnology has the potential to foster conservation of species by giving them an immediate value and if developing countries are given the capacity to develop and share the benefits of their biological diversity this will be a good incentive for natural resources conservation.

VIII. RELEASE OF GENETICALLY MODIFIED ORGANISMS AND ALIEN SPECIES INTO THE ENVIRONMENT

24. The Working Group agreed that an international legal instrument on the conservation of biological diversity should also contain provisions on the need for strict regulation on a national basis of intentional or accidental release into the environment of genetically engineered organisms and alien species, including the establishment of testing procedures. Some delegates stressed the importance of conducting environmental impact assessments before authorizing releases. Such assessments will quantify the risks and benefits of applying genetically engineered organisms for human uses.

IX. POLLUTION

25. With regard to the effect of pollution on biological diversity, the Working Group recognized that biological diversity is under threat from various kinds of pollutants. There was a consensus that a new legal instrument on the conservation of biological diversity should not attempt to resolve general problems connected with pollution, but should reflect some of the major principles and specifically address the most relevant pollution problems.

X. OTHER ISSUES

Studies to be made

26. Most delegations expressed the view that before any measure for a legal instrument on biodiversity conservation could be made studies on: (i) the cost of conserving biodiversity (see subparagraphs 18(ii) - (iv)); (ii) fund-raising mechanisms; and (iii) the relationship between intellectual property rights and access to genetic resources and biotechnology should be conducted as a means of responding to specific issues in the process of developing of the new legal instrument. The Group further considered: (i) who would conduct the studies? (ii) who would finance them? (iii) the time frame for completing the studies, and (iv) how they could be carried out. However, a few delegations considered that such studies should be executed in parallel with development of the new legal instrument and not hamper its development. Some delegations made firm commitments to provide funds while other delegations offered to give positive consideration to providing financial and in kind contributions towards the preparation of these studies, including the provision of relevant information and expertise, and to ensure the effective participation of developing countries in the technical and legal Working Group meetings. An offer was made to host the conference of plenipotentiaries in Australia, provided that it is not convened in the same venue as the 1992 Conference on Environment and Development. If that is the

case, an offer was made to host a working group of legal and technical experts or the final negotiating session in Australia. The Group, with a few exceptions, recommended the establishment of a Trust Fund under the auspices of UNEP for the purpose. The Deputy Assistant Executive Director, Office of the Environment Programme of UNEP, explained that financial resources for the purposes of Working Group meetings had already been received and utilized for these purposes without having resort to a trust fund. He expressed gratitude to those countries that had made such contributions.

Need for protocols

27. The Group felt that certain issues may need to be considered in separate legally-binding protocols and that as far as possible these should be concluded and signed concurrently with the framework legal instrument itself. Many delegations, however, felt that this is premature and that as much technical, financial and administrative content as possible with commitments for implementation should be included in the planned international legal instrument in order to make it more effective. One delegation indicated that six to seven protocols should be considered under the framework instrument to cover inter alia the following issues: surveys, monitoring assessments and research, sustainable development, protected areas, financial and technical assistance, technology development and transfer, including biotechnology and control, and environment impact assessment of release of genetically modified organisms.

1992 Conference on Environment and Development and the new international legal instrument

28. The Working Group stressed that the Preparatory Committee for the 1992 Conference on Environment and Development should be informed regarding the on-going discussions on a new international legal instrument for the protection of biological diversity. Several delegates felt that the new instrument should be ready as a major input to the 1992 Conference, while many delegations considered that at this stage it would be premature to fix any deadline since the complexity of the subject and the need for a solid instrument might require the negotiating process to go beyond 1992.

Additional conclusions

29. The informal drafting groups set up by the Working Group prepared a number of additional conclusions that were not discussed by the Working Group due to lack of time. These additional conclusions are attached as Annex I.

XI. ADOPTION OF THE REPORT AND CLOSURE OF THE MEETING

A. Adoption of the Report

30. The Working Group adopted its report at its last meeting held on 23 February 1990.

B. Closure of the meeting

31. The Chairman thanked participants for having worked so hard in a constructive manner and expressed gratitude to the Secretariat for its co-operation.

ANNEX I

Additional Conclusions

A. NATURE OF AN INTERNATIONAL LEGAL INSTRUMENT

Goal

Conservation of global biological diversity, which includes genetic diversity, species diversity and ecosystems diversity, within the broad socio-economic concept of sustainable development.

Scope

The legal instrument should incorporate a global approach. Appropriate legal principles should, where necessary, be developed to be applied according to status of areas (areas under national jurisdiction and control/areas outside national jurisdiction and control), different species (domesticated/wild species), etc.

The concept of "broad socio-economic context" should be elaborated. It should include an assessment of the benefits of sustainable use of biological diversity and of the equitable sharing of such benefits.

The concept of "common responsibility" for conservation and sustainable use of biodiversity should be developed to serve as an adequate definition for most areas, taking into account the need to keep the balance between different socio-economic interests.

B. GLOBAL CONSERVATION NEEDS AND COSTS

Conserving biological diversity in the context of sustainable development

There is a need for a new approach to the conservation of biological diversity, which must recognize the contribution of biological resources to the well-being of societies and their economies.

Policies must be introduced at national and international levels to ensure that sustainable rather than unsustainable use of biological resources is the rational economic choice.

There is a need for comprehensive assessments of the diverse uses of biological resources and measurement of their socio-economic benefits. This socio-economic information will provide decision-makers with vital criteria on which to base their decisions. It is also essential in developing specific instruments for the conservation of biological resources. These might include inter alia economic incentives and disincentives, market mechanisms, financial and technical co-operation, fund-raising mechanisms, integrated land use planning and management strategies, environmental impact assessments.

C. CONSERVATION MEASURES

Education

It is recognized that there is a need for socio-economic research on the benefits resulting from biological resources. This is vital in educating senior decision-makers on the importance of conservation and the benefits that are lost when biological resources are harmed. It is further acknowledged that there is a need to encourage the development of expertise in the field of socio-economic evaluation of biological resources.

The implementation of advanced technologies in conservation of biodiversity education alone may not be sufficient. Technical training in the use of all technologies will be critical. Provision must be made to encourage technical training as an integral part of technical co-operation efforts. This will ensure that technology is applied in an environmentally acceptable and efficient manner.

Finally, to achieve conservation goals, there must be recognition of the rights of indigenous peoples to benefit from their highly practical knowledge of local organisms and to incorporate their traditional uses of local ecosystems that often are consistent with conservation goals.

Research, training and technical co-operation

Effective action to conserve biodiversity must be based on adequate accurate information. The more broadly it is shared, the more likely agreements on problems and solutions. The current state of knowledge is woefully inadequate, but given the current rate of extinction, the next few years may offer the only opportunity to carry out the research and gather the information needed.

Although the critical need for further research and related scientific activities is recognized, action to conserve biodiversity cannot await the outcome of research. A well-designed programme must incorporate both research and preventive action.

Priorities must be established for scientific research, inventories and ecological monitoring. This must focus not only on species present, but also on their ecology and natural history. Special attention needs to be given to environments immediately threatened. This will also require the support of and require contributions from the fields of systematics, conservation biology, population biology, biogeography and ethnobiology.

The support of international biotic depositaries, central information, repositories such as the World Conservation Monitoring Centre, and the use of common or commensurable geographical referencing systems such as GEMS, must be encouraged. Likewise, the development of guidelines that assure involvement of local researchers, deposit of duplicate specimens in host countries, and sharing of credit must also be encouraged.

Specific Conservation Actions

The protection of biological diversity requires the development and implementation of a wide range of specifically-designed conservation actions. Specific actions might include the identification and establishment of representative systems of protected areas, management planning for such areas, the protection of endangered species and the maintenance of gene banks, zoos and botanical gardens. Those actions must be accompanied by the development and support of sustainable economic incentives and opportunities for countries and local communities, in particular, to conserve biological diversity.

Development and Transfer of Technology

Full consideration should be given to the development of innovative mechanisms for the transfer of technologies and techniques for the protection of biodiversity. These mechanisms must be additional and not infringe upon existing development and aid financial flows, including:

- development and transfer of technologies and techniques, as well as biotechnologies for the sustainable utilization of biological resources;
- development and transfer of technologies and techniques for monitoring data management, and traditional conservation activities.

D. ACCESS TO GENETIC RESOURCES AND TECHNOLOGY

There is incomplete knowledge of the impact which the extension of intellectual property rights to various kinds of products derived from plant and animal genetic material could have on the conservation and sustainable use of genetic resources.

The impacts may be pertinent both with regard to ensuring developing countries an equitable share of the economic benefits from the use of genes for commercial purposes and to the issue of (de facto) access to technology.

Current negotiations within the TRIPs group of negotiations in GATT might therefore have an impact on the negotiations leading to a new legal instrument on the conservation of biological diversity.

ANNEX II

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Convention on International
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