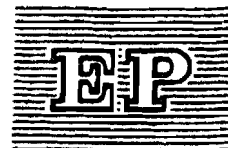




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Ad Hoc Working Group of Experts on Biological Diversity

Third session
Geneva, 9-13 July 1990

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

I. INTRODUCTION

1. The Governing Council of the United Nations Environment Programme (UNEP) in its decisions 14/26 and 15/34 formally recognized and re-emphasized the need for concerted international action to protect biological diversity on Earth by, inter alia, the implementation of existing legal instruments and agreements in a co-ordinated and effective way and the adoption of a further appropriate international legal instrument, possibly in the form of a framework convention.
2. The first session of the Ad Hoc Working Group of Experts on Biological Diversity, established pursuant to Governing Council decision 14/26, was held in Geneva from 16 to 18 November 1988 and the Executive Director reported the results to the Governing Council at its fifteenth session from 15 to 26 May 1989.
3. The second session of the Working Group was convened in Geneva from 19 to 23 February 1990 to advise further on the contents of a new international legal instrument, with particular emphasis on its socio-economic context. At that session, the Working Group made significant progress on a number of outstanding issues related to the preparation of a new legal instrument; the principal conclusions of the session are contained in document UNEP/Bio.Div.3/4. At that session, the Group recommended the preparation of a number of studies as a means of responding to specific issues in the process of developing the new instrument (see UNEP/Bio.Div.2/3, paragraphs 19 and 26). In accordance with these recommendations, the Secretariat commissioned several studies and briefing materials (see Annex II).

4. In addition to the studies mentioned above, and to assist in the preparation of more accurate estimates of the total costs of global biological diversity conservation needs, the Secretariat contacted nine developing and developed countries (Brazil, Federal Republic of Germany, Indonesia, Madagascar, Nepal, Peru, Poland, Uganda, Zaire) with regard to initiating country studies to determine the approximate conservation costs and conservation needs that have not been met. The information obtained will be available to subsequent meetings.

5. The Ecosystems Conservation Group (ECG) (the Food and Agriculture Organization of the United Nations, Unesco, International Union for the Conservation of Nature and Natural Resources, World Wide Fund for Nature and UNEP) has been active and very helpful in assisting the Executive Director. It considered the substance of UNEP Governing Council decisions at its fifteenth general meeting held in Gland on 13-14 September 1988 and reviewed the matter of draft elements for consideration in the new legal instrument on biological diversity at a special session in Rome from 23 to 25 April 1990.

6. The third session of the Ad Hoc Working Group of Experts on Biological Diversity was held in Geneva from 9 to 13 July 1990 to advise further, inter alia, on the contents of elements for a global framework legal instrument on biological diversity in accordance with decision 15/34 of UNEP's Governing Council.

II. ORGANIZATIONAL MATTERS

A. Opening of the session

7. The session was opened by Mr. R. Olemba, Deputy Assistant Executive Director, Office of the Environment Programme, on behalf of Dr. M.K. Tolba, Executive Director of UNEP. In an opening statement read by Mr. R. Olemba, the Executive Director welcomed delegates and informed the Working Group of the status of the studies prepared by the secretariat as requested by the Group last February. He stressed the need for gene-rich developing countries to work in tandem with technology-rich developed countries as the basis for a real "win-win" deal between North and South, based on mutual benefits from co-operation for the conservation and sustainable utilization of the planet's biological diversity. He outlined five main areas that needed to be reviewed during the meeting in order to establish their technical feasibility and to develop precise recommendations on how to deal with them in the proposed new international legal instrument: (i) conservation costs; (ii) financial modalities; (iii) technology transfer, and especially biotechnology transfer; (iv) draft elements for the proposed convention; and (v) the relationship between the proposed convention and existing global and regional conventions, agreements and action plans on biological diversity.

B. Attendance

8. The session was attended by delegations (technical and legal experts) from 78 countries: Algeria, Argentina, Australia, Austria, Bahamas, Benin, Bolivia, Brazil, Burkina Faso, Burundi, Canada, Chad, Chile, China, Colombia, Comoros, Congo, Cuba, Denmark, Dominican Republic, Ecuador, Egypt, Ethiopia, Finland, France, Gambia, Germany, Federal Republic of, Ghana, Greece, Guatemala, Guinea, Guyana, Haiti, India, Indonesia, Iraq, Japan, Jordan, Kenya, Lesotho, Malawi, Malaysia, Maldives, Malta, Mauritania, Mexico, Myanmar, Union of, Nepal, Netherlands, New Zealand, Nigeria, Norway, Pakistan,

Panama, Peru, Philippines, Republic of Korea, Sao Tome and Principe, Saudi Arabia, Senegal, Sierra Leone, Spain, Sri Lanka, Sweden, Switzerland, Syrian Arab Republic, Thailand, Togo, Trinidad and Tobago, Uganda, Union of Soviet Socialist Republics, United Kingdom, United States of America, Uruguay, Viet Nam, Venezuela, Zambia, Zimbabwe.

9. Observers from the following United Nations bodies and specialized agencies were also present: United Nations Environment Programme (UNEP), Convention on International Trade of Endangered Species of Wild Fauna and Flora (CITES), United Nations Development Programme (UNDP), United Nations Industrial Development Organization (UNIDO), United Nations Office for Ocean Affairs and the Law of the Sea (UN/OALOS), United Nations University (UNU), Food and Agriculture Organization of the United Nations (FAO), United Nations Educational Scientific and Cultural Organization (Unesco), World Health Organization (WHO), World Intellectual Property Organization (WIPO).

10. The following international organizations were also represented at the session: All Africa Conference of Churches, Convention on Wetlands of International Importance Especially as Waterfowl Habitat (RAMSAR), Council of Europe, Genetic Resources Action International Network (GRAIN), International Board for Plant Genetic Resources (IBPGR), International Tropical Timber Organization (ITTO), International Union for Conservation of Nature and Natural Resources (IUCN), International Union for the Protection of New Varieties of Plants (UPOV), South Pacific Regional Environment Programme (SPREP), World Resources Institute (WRI), World Wild Fund for Nature (WWF), Commonwealth Secretariat.

11. In addition, the following bodies participated: Centre for Integrated Development and CPL Scientific Ltd., Harvard Global Environment Program, United States Agency for International Development (USAID). The full list of participants is contained in document UNEP/Bio.Div.3/Inf.7.

C. Election of officers and adoption of the agenda

12. As the session is a continuation of the first and second sessions, it was agreed to keep the previously elected officers with a slight adjustment. The following officers were therefore elected for the session:

<u>Chairman:</u>	Mr. Veit Koester (Denmark)
<u>Vice-Chairmen:</u>	Ms. Eleanor W. Savage (United States)
	Mr. Paul Chabeda (Kenya)
	Mr. Yuri M. Shchadilov (USSR)
	Mr. José Luis Mendez Arocha (Venezuela)
	Ms. Setijati Sastrapradja (Indonesia)

13. The following agenda, contained in document UNEP/Bio.Div.3/1, was adopted by the Working Group:

1. Opening of the session.
2. Organizational matters:
 - (a) Election of officers;
 - (b) Adoption of the agenda;
 - (c) Organization of work.

3. Consideration of the "Note by the Executive Director":
 - (a) Cost of global biodiversity conservation needs;
 - (b) Current multilateral, bilateral and national financial support for biological diversity conservation;
 - (c) Global fund-raising and financing mechanisms for conservation of biological diversity;
 - (d) Relationship between intellectual property rights and access to genetic resources and biotechnology;
 - (e) Biotechnology: concepts and issues for consideration in the preparation of a framework legal instrument on biological diversity;
 - (f) Elements for possible inclusion in a global framework instrument on biological diversity;
 - (g) Relationship between the planned framework legal instrument and existing conventions, agreements and action plans on biological diversity.
4. Other matters.
5. Adoption of the report.
6. Closure of the session.

III. SUBSTANTIVE MATTERS

14. The Working Group, taking into account the Note by the Executive Director (UNEP/Bio.Div.3/2), the studies prepared for the session (Annex II), the statement of the Executive Director and the conclusions reached during its two previous sessions, conducted a full discussion of the following major issues.

A. Cost of global biodiversity conservation

15. The Chairman requested the consultant (Mr. J. Furtado, Centre for Integrated Development, United Kingdom) to present the results of his study on the total cost of priority global biodiversity conservation needs identified by the Working Group at its second session in February 1990. The consultant introduced his study (which is summarized in document UNEP/Bio.Div.3/3; the study itself is contained in document UNEP/Bio.Div.3/Inf.1) and, explaining that his findings were based on available information, pointed out the complexity of the issue and the difficulty of collecting complete and meaningful information on the likely total cost of meeting the global conservation needs of biological diversity identified by the Working Group at its second session. He stressed that the estimates presented in his report might be no more than an order of magnitude of the global conservation cost and that precise costing of certain conservation measures would never be possible. While there was considerable variation in the figures and uncertainty about their basis, the estimated additional cost for priority conservation needs of biological diversity, identified by the Working Group (see UNEP/Bio.Div.2/3 paragraph 15), over the next 10-20 years would range from hundreds of millions to units of billions of US dollars per year (approximately \$1 billion to \$10 billion per year).

16. The Working Group discussed and took note of the available estimates of the costs of biological diversity conservation. These estimates were accepted by the Group as a useful first approximation or indication of the order of magnitude of costs required for the conservation of biological diversity. There was general agreement that:

(a) The fact that there are uncertainties as to the total cost, that these estimates may not be more than an order of magnitude of the global conservation cost, and that precise costing of certain conservation elements might not be possible, should not delay or hamper the development of the new legal instrument;

(b) More accurate information at the country level is necessary to refine these estimates as much as possible. This should be done at the same time as other major issues are studied and considered, as well as during the negotiation process of the framework legal instrument. Accordingly, the country studies referred to in paragraph 4 of the present report should be completed as soon as possible;

(c) It is important to have a more accurate estimate of the magnitude of costs. This will be needed at a later stage when the political decision is being made about what amount would go into a funding system established by a framework legal instrument or protocol;

(d) In refining the cost, the full range of biological diversity and ecosystems and not only the diversity found in tropical ecosystems should be taken into consideration;

(e) Any consideration of costs must take into account the costs of finding alternatives to activities that threaten biological diversity and sustainable development as well as of facilitating the transfer of relevant technologies;

(f) The ECG would be a good forum for further examination of this issue. Several delegates mentioned that it would be beneficial to include the World Bank and other organizations in making further studies.

17. Some delegates recommended that the financial returns and benefits from the conservation of biological diversity and the notions of opportunity costs and investment be taken into consideration. There was no discussion on how they should be taken into account but it was agreed that the ECG should be asked to look into this matter.

B. Preliminary discussion of elements of a global framework legal instrument

18. A preliminary discussion was conducted by the Working Group on elements for possible inclusion in the global framework legal instrument on biological diversity as outlined in an annex to the Note by the Executive Director (document UNEP/Bio.Div.3/2). Many delegations said that they considered the elements a useful starting point for negotiations, incorporating most issues that should be addressed into a global framework legal instrument on biological diversity. Some delegates indicated that more account should be taken of sustainable development and, in particular, the issues of sustainable use, biotechnology and access to information. Several delegations stressed that sustainable development should be the basis for a possible legal

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instrument on conservation of biological diversity, including biodiversity within the domesticated sphere, and that was not fully reflected in the draft elements. Other delegations expressed concern about the use of terms or concepts such as "common heritage" and "indigenous people", and others recommended their deletion and the use of alternative expressions such as "common interest or concern" and "indigenous population". One delegation expressed concern about addressing the whole range of biotechnology issue in the convention and considered that the financial mechanisms might best be dealt with in a protocol. The Working Group agreed to consider the elements in more detail later in its session.

19. It was pointed out by the observer from FAO that FAO had prepared an outline for a draft international convention that had been amended in the light of discussion by the ECG in April, when the draft elements prepared by UNEP and the IUCN and FAO drafts were considered. The FAO and IUCN drafts were available as background documents for the meeting.

C. Funding mechanisms

20. On the subject of funding mechanisms, the Chairman introduced the consultant, Mr. Y. Ahmad, and requested him to present his analysis of possible financial mechanisms for the framework legal instrument on biological diversity, as outlined in document UNEP/Bio.Div.3/Inf.3 and summarized in document UNEP/Bio.Div.3/5, as well as his study on bilateral and multilateral funding mechanism initiatives currently under consideration in the field of biological diversity, as outlined in document UNEP/Bio.Div.3/10.

21. The consultant recommended that the papers should be examined together, and that document UNEP/Bio.Div.3/Inf.3 should not be regarded as the blueprint of a funding mechanism. He noted that there was a need to assess the financial needs of developing countries in three parts: first, the traditional needs for development co-operation or assistance, which must be seen against the background of the current reverse flow of resources due to the large debts of many developing countries; second, the need to cover the unmet conservation needs of developing countries, which had been estimated between \$20 billion and \$50 billion per annum for the next decade; and third, there were the financial requirements to cope with emerging global environmental problems. The consultant further stressed that funds must be additional, based on concessionality and that incremental costs must be funded by developed countries to cover the additional expenditures involved.

22. He then turned to the issue of ongoing initiatives under the World Bank in its proposed Global Environment Facility (GEF). The GEF, as proposed, is focused on four priority areas: depletion of the ozone layer; climate change and global warming; loss of biological diversity; and pollution of international waters. The GEF had been proposed as a pilot funding project to be set up over the next three years, and to be managed under a tripartite arrangement between UNEP, UNDP and the World Bank. The GEF, which could be implemented quickly if it were adopted, was intended to finance investment, technical assistance and institutional development. Approximately \$250 million could be expected for biodiversity needs in the next three years if the facility were to be adopted.

23. The Chairman then introduced the consultant of Metro Economica Ltd. (London), Mr. A. Markandya, and requested him to introduce his study on current multilateral, bilateral and national financial support for biological diversity conservation, summarized in document UNEP/Bio.Div.3/4 and presented in full in document UNEP/Bio.Div.3/Inf.2. The consultant based his presentation on the global priority conservation needs identified by the Ad Hoc Working Group at its second session (see UNEP/Bio.Div.2/3, paragraph 15). The amount of financial resources required to meet those needs was clearly beyond the level of existing multilateral and bilateral assistance provided to developing countries for the purpose of biological diversity conservation. The overall estimated annual flow of assistance to developing countries for conservation of biological diversity was roughly estimated at \$228 million, of which \$58 million was in multilateral aid and \$170 million in bilateral aid.

24. The consultant indicated that taxes on exploitation and use of resources could possibly contribute to financing surveys, inventories and identification of areas rich in biological diversity, development of technologies, management strategies and transfer of technology. Debt-for-nature swaps, which had proved successful in raising funds for conservation in some cases, were proposed as a possibility for the development of management strategies. The provision of resources from a central fund based on additionality was suggested as a means of financing the major part of areas identified by the Working Group as requiring further funding. It was proposed that this should be co-ordinated through the international agreement on biological diversity.

25. The consultant of the World Wide Fund for Nature (WWF), Mr. S.G. Lisansky, introduced a study analysing a wide range of options based mainly on small levies on selected consumption commodities for raising at least \$100 million per year as the minimum that could have an impact on the conservation of biological diversity after the convention comes into force. A commercial venture to develop and market new products derived from biological diversity was also proposed by the consultant.

26. After conducting a full discussion of the above studies and relevant sections of the Note by the Executive Director, the Working Group reaffirmed that an international legal instrument on biological diversity without firm commitments to funding including new and sufficient resources to meet conservation costs would be meaningless. The following points were frequently made:

(a) Governments are already investing considerable sums in national conservation activities and multilateral and bilateral donor agencies are also contributing to biological diversity conservation. However, these flows are inadequate for meeting the basic priority conservation needs identified by the Working Group in a timely and satisfactory manner;

(b) New and sufficient additional funds are required for developing countries to achieve conservation of biological diversity; these shall not be diverted from current urgent development programmes;

(c) Contributions to the funding mechanism might be provided by the Parties on an assessed basis; the scale of assessment could be related to a United Nations scale, industrial and commercial exploitation of or trade in genetic resources or on some other equitable basis. Other innovative fund generating mechanisms could be explored and applied at a later stage, as appropriate;

(d) It is rather early to specify the institutional framework of a funding mechanism, which could build on the experience gained in negotiating the establishment of a fund under the Montreal Protocol;

(e) The Global Environmental Facility, as proposed by the World Bank, UNDP and UNEP could be considered as an element of a funding mechanism, if adopted;

(f) Lack of an exact figure for the fund should not be seen as an obstacle to a decision on the development of a financial mechanism;

(g) There is a clear need for an experimental initial or pilot financial mechanism followed by an evaluation, while a better understanding of the costs and benefits of financial transfers is obtained;

(h) The functions to be performed by the funding mechanism should combine funding and clearing-house mechanisms including support to priority conservation needs identified by the Ad Hoc Working Group at its second session, and should be under the supervision of the contracting parties;

(i) Close co-ordination should be developed with existing appropriate funding institutions.

27. Several delegations underlined that other international organizations than those involved in the Global Environmental Facility should be associated with the implementation and management of a financial mechanism relating to biological diversity.

28. Some delegations expressed concern about the issues of compensation for conservation of habitats rich in biological diversity and debt-for-nature swaps as outline in the Note by the Executive Director. Other delegations expressed interest in these concepts as additional means of funding that should be analyzed further.

29. Two delegations said that funding measures should be considered in the broader context of economic and trade policies, and that appropriate trade measures would be important in assisting the financing of biodiversity conservation.

30. Many delegations stressed that countries are trying to make funds available at a national level, and that national approaches must be considered in financing.

D. Access to genetic resources and technology

31. As accessibility to biological diversity and accessibility to related technologies are interrelated and must be an integral part of the planned legal instrument on biological diversity (see UNEP Governing Council decision 15/34 and report UNEP/Bio.Div.2/3 paragraph 22 (iii)), the Group decided to discuss all pertinent issues together.

32. The Chair therefore invited the consultant of the Permanent Mission of Poland to United Nations agencies in Geneva, Mr. P. Freyberg, to introduce his study on ongoing discussions on intellectual property rights (IPRs) in the Uruguay round of GATT negotiations (document UNEP/Bio.Div.3/8). The consultant gave a brief background to the negotiations on intellectual property rights in that context and said that IPRs were at the core of every technology, including environmentally-related technologies. The consultant explained that in the Uruguay negotiations there was a clear conflict of interest between technology-rich and technology-poor countries. The former were interested in increased protection for IPRs, while the latter did not want this increased. As far as environmentally-related technologies were concerned it was the consultant's opinion that the likely outcome of the Uruguay round would be an increase in the cost to developing countries of access to and transfer of biotechnologies possessed by the developed countries. The less access they had to such technologies, the less able they would be to market and hence add commercial value to genetic resources under their jurisdiction. If that were the case, the eventual final outcome of the GATT negotiations might well decrease the developing countries' interest in the conservation of biological diversity. The consultant's main conclusion was that, in negotiating the rules and provisions for trade connected with environmental technologies, one could not forget special provisions which would ease access to environment-related technologies for the weaker partners in world trade. To do so would jeopardize efforts to conserve biological diversity.

33. The Chair then gave the floor to the consultant Ms. Marie-Angèle Hermitte who, in co-operation with Mr. Pierre Benoît Joly, had prepared a study on the relationship between intellectual property rights and access to genetic resources and biotechnology, as summarized in document UNEP/Bio.Div.3/6 and presented in full in document UNEP/Bio.Div.3/Inf.4. The consultant analysed the various forms of intellectual property and the way in which it could improve the interplay of market forces with a view to the long-term conservation of biological diversity. Plant varieties law and, in particular, the Convention establishing the Union for the Protection of New Varieties of Plants (UPOV), differ from patent law. In the former the invention is protected, but unlike patent law the plant resource is open to free access without payment. Currently there is pressure from industrialized countries for stronger protection for biotechnology inventions in the form of an extension of industrial patents to living organisms. UPOV has reacted by limiting access to varieties. The consultant found these developments disturbing because free access (which she stressed did not mean free of charge) had been one of the essential factors in advances in genetics. The consultant recommended that the UPOV Convention be drawn upon to harness IPRs to the task of ensuring the more efficient use of biological diversity. She advocated a system of "paid open access" and stressed such a system could be endangered by the extension of patent law.

34. Susan H. Bragdon, McNamara Fellow from the World Bank and Attorney/resource ecologist, presented her paper, as summarized in UNEP document Bio.Div.3/7 and found in full text in Bio.Div.3/Inf.5, on the concepts and issues related to biotechnology for consideration in the preparation of a framework legal instrument for the conservation of biological diversity. The consultant described the problems and raised the questions that must be addressed by those responsible for creating a new framework legal instrument. These included: (a) biotechnology research and development, in particular the effect of private sector involvement on the direction of

research, public accountability, intellectual secrecy and creativity, product displacement and orphan commodities; (b) biotechnology transfer, in particular how to increase developing countries' access to relevant biotechnology on equitable terms and facilitate mutually beneficial arrangements for the transfer of biotechnology from the private sector in industrialized countries to the private and public sectors in developing countries; (c) the potential of biotechnology for sustainable development efforts, in particular how contacts between bio-industry and organizations that promote sustainable development can be encouraged and how the conservation of genetic diversity can be made an objective of agricultural programmes; (d) the issue of the equitable administration and regulation of gene banks; and (e) the environmental impacts of new biotechnologies, in particular the desirability of a code of conduct, regulation of release and environmental impact assessment.

35. Taking into consideration the analyses provided by the consultants, relevant paragraphs of the Note by the Executive Director (paras. 21 to 25 and 36 to 39) and previous Working Group deliberations on these issues, a full discussion of the above-mentioned issues was conducted. There was general understanding that:

(a) Free access to biological diversity or biotechnology does not mean free of charge;

(b) Biotechnology transfer is a very important element of the planned legal instrument as it has potential to contribute to improved conservation and sustainable utilization of genetic diversity. However, because of the complexity of the issue, it was difficult for the Group to reach firm conclusions at the present session on how and to what extent the biotechnology issue should be addressed in the convention;

(c) The Working Group found it difficult to reach appropriate conclusions on intellectual property rights;

(d) With a view to advancing its work without being distracted by the complex issues of biotechnology, the issue should be referred to an open-ended Sub-working Group (SWG) of appropriately qualified persons which should make appropriate recommendations to the ad hoc Working Group (the terms of reference are contained in Annex III);

(e) The idea of establishing an information clearing-house for required biotechnologies as proposed in the Executive Director's statement should be re-examined at the next meeting of the ad hoc Working Group;

(f) The concerns of the ad hoc Working Group on the close relationship between access to genetic resources and biotechnology should be brought to appropriate fora (GATT, WIPO, etc.) to sensitize those groups to issues related to biological diversity. It is important that states bear in mind issues related to conservation and sustainable use of genetic resources when dealing with intellectual property rights-issues in fora where these are currently being dealt with;

(g) Similarly, there was merit in further consideration of many of the recommendations contained in paragraphs 36 to 39 of the Note by the Executive Director (UNEP/Bio.Div.3/2);

(h) The potential value of natural resources should be recognized and owners should receive appropriate payment;

(i) There was a need to strengthen national legal frameworks giving rights to resources and knowledge of how to use them;

(j) There was a need for a proper appraisal of technology items to be transferred under the convention and of the costs involved; the applicability of the approach followed in Montreal Protocol to biological diversity should be examined;

(k) A balance should be struck between the legitimate rights of germplasm owners and the technology owners. The interest of both need to be recognized.

36. The Working Group reaffirmed its position regarding the release of genetically-modified organisms and alien species into the environment and the effect of pollution on biological diversity, as contained in document UNEP/Bio.Div.2/3, paragraphs 24 and 25.

37. In view of the current state of reflection, some delegations expressed concern about the appropriateness of covering all aspects relevant to biotechnology included in the planned convention on biological diversity. They stressed that only technologies that would improve the conservation and sustainable development and utilization of biological diversity should be considered in negotiating the legal instrument.

38. The parties to the Amazon Co-operation Treaty represented at the meeting (Bolivia, Brazil, Colombia, Ecuador, Guyana, Peru and Venezuela) and Mexico and Uruguay stressed their common position that the exercise of negotiating a new international legal instrument on the protection of biodiversity would not be meaningful unless it took into due account the issues of (a) joint development of biotechnologies; (b) systematic access of developing countries to scientific and technological information; and (c) sustainable economic use of biodiversity. These issues, together with the establishment of efficient and equitable financing mechanisms to be administered by the parties must form an integral part of any new international legal instrument on the protection of biological diversity.

E. Draft elements for possible inclusion in a global legal framework convention on biological diversity

39. The Working Group then considered in greater detail the elements for possible inclusion in a global framework legal instrument on biological diversity, as outlined in the annex to the Note by the Executive Director, (document UNEP/Bio.Div.3/2). The Group felt that the elements outlined in the annex were useful and should be considered in the future proceedings of work towards a framework legal instrument on biological diversity. Additional elements/amendments suggested by the delegations are contained in Annex I.

IV. CONCLUSIONS

40. In addition to the Working Group conclusions reflected in paragraphs 16, 26, 35, 36 and 39:

(a) The Working Group acknowledged that it had made considerable progress on a number of substantive issues. It felt, however, that it had not been able to settle some issues sufficiently at its present session, in particular those related to biotechnology, access to biological diversity, and intellectual property rights;

(b) The Working Group also considered that the discussions on the draft elements (annex to UNEP/Bio.Div.3/2) had been extremely useful and would lay the groundwork for future deliberations;

(c) The working Group agreed that there should be another session of the present Ad Hoc Working Group (with technical and legal experts), preferably in November 1990 to examine detailed elements - to the extent possible - based upon the draft elements presented at this meeting, the deliberations and the conclusions of the previous sessions of the Working Group and the comments and suggestions made at this meeting. The Group requested the UNEP Secretariat to prepare and distribute such a document to Governments in due time;

(d) The Group emphasized that such a pre-drafting meeting would undoubtedly facilitate and accelerate the negotiation process;

(e) The actual negotiation process should start as soon as possible after the meeting of the Working Group in November, preferably in February 1991;

(f) The November meeting of the Working Group should also deal with the report of the Sub-Working Group (SWG) on biotechnology. The meeting of the SWG should take place immediately prior to the Working Group's November meeting. The Working Group decided that the Vice-Chairman, Mr. P. Chabeda, of the Bureau, who is in office until the next meeting, subject to any change, chair the SWG on biotechnology;

(g) The Working Group felt it was important to give both the Group and SWG on biotechnology sufficient time to deal with these issues. It was therefore suggested that a 2-3 day meeting was needed for the SWG on biotechnology, followed by a 6-day meeting of the Working Group;

(h) Some delegations made firm commitments to provide funds, while others said they would give positive consideration to providing financial and in-kind contributions to the preparation of country studies and to ensure the effective participation of developing countries in the Working Group and SWG on biotechnology. An offer was made by Spain to host the Working Group meeting in Spain and to cover incurred costs. Similarly, Saudia Arabia offered to host the meeting of the SWG on biotechnology;

(i) The Deputy Assistant Executive Director, Office of the Environment Programme of UNEP, expressed gratitude to those countries that had made financial contributions to the present session as well as to those that had offered to host forthcoming meetings of the Working Group.

V. ADOPTION OF THE REPORT AND CLOSURE OF THE SESSION

A. Adoption of the report

41. The Working Group adopted the report at its last meeting on 13 July 1990.

B. Closure of the session

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

ANNEX I

Additional elements/amendments/comments concerning a framework
legal instrument on biological diversity

1. In considering the preamble, as outlined in section I of the annex to the Note by the Executive Director (UNEP/Bio.Div.3/2), it was proposed that the following elements be included:

- Recognition that a régime governing biological diversity in areas beyond national jurisdiction should be developed;
- The aims of the convention should be the conservation of biological diversity, terrestrial as well as marine, for the benefit of present and future generations;
- Description of problems should include the problem of unprecedented population growth and loss of domesticated species;
- Recognition of the role of biological diversity for sustainable development;
- Recognition of the importance of ex situ conservation for the recovery and survival of endangered species;
- Duty of intergovernmental organizations to assist in promoting conservation and sustainable utilization of biological diversity on a global scale. Importance of encouraging non-governmental organizations to contribute to the same goals on a global, regional and national basis;
- Recognition of the importance of additional funding to make conservation of biological diversity as well as access to biotechnology possible for developing countries;
- Recognition that biotechnology could have a value for conservation of biological diversity and also pose a threat to existing species varieties;
- Importance of strengthening and activating existing legal instruments and programmes related to the conservation of biological diversity;
- Recognition of the threat that general environmental problems, such as climatic changes and ozone depletion, pose to biological diversity;
- Recognition of Principle 21 of the Stockholm Declaration, that States have a sovereign right to exploit natural resources under their jurisdiction, linked with an obligation to avoid causing damage to areas beyond their national jurisdiction;
- Recognition of the need to promote the development of national institutions to administer the conservation of biological diversity;

- Recognition that trade in endangered species is one reason for loss of species varieties;
- Recognition of importance of access to information on conservation of biological diversity;
- Recognition of the need to set aside natural habitats for conservation of biological diversity;
- Recognition of the need to compensate developing countries for foregoing commercial exploitation of areas in the interest of conserving biological diversity;
- Role of transnational companies in the exploitation of biological diversity should be offset by a mechanism for their contribution to conservation costs;
- Sustainable use of biological diversity should be an additional aim of the convention;
- Identification and recognition of other conventions and programmes relating to the conservation of biological diversity;
- Clearer definition of the goals of the convention.

2. The following deletions were also suggested:

- The term "indigenous populations" was generally more accepted than "indigenous peoples". Some delegates preferred that the term "indigenous" be replaced with "local".
- Many delegates requested that the term "common heritage" be avoided.
- Several delegates expressed a desire that the term "stewardship" be avoided. Other delegates indicated their desire that the concept, if not the term, should remain.

3. In considering Definitions and Interpretations, as outlined in section II of the annex, there was general agreement that the substance of a term's meaning should not be discussed at this stage. The following elements were proposed for inclusion:

- Wealth of biological diversity
- Biotechnology
- Pollution
- Habitat
- Protected zones/areas
- Ecosystems
- Biogeographic area
- Animal
- Plant
- Germplasm
- Microbe
- Intellectual property rights

- Domesticated species
 - Vulnerable species
 - Threatened species
 - Local species or varieties
 - Gene bank
 - Seed bank
 - Preservation
 - Defence
 - Rational use
 - Partnership
 - Biotype
- In addition, several delegations called for the deletion of "common heritage" and "free access", and for their replacement by other terms. One delegate asked that "territory" should be replaced by "zone under the jurisdiction of the State".

4. In considering Fundamental Principles, as outlined in section III of the annex, the following elements were proposed for inclusion:

- Biological diversity is a resource for both present and future generations, which should therefore be utilized wisely and in a sustainable way. Several delegates suggested that "rational" should be substituted for "sustainable" when discussing use of biological diversity;
- The benefits derived from utilization and the cost of conservation should be shared;
- Accessibility is to be based on mutual agreements;
- The principle relating to sovereignty of States over biological diversity should indicate that States should consider how migratory species, such as birds and fish, will be handled, as well as marine areas and other areas not under their jurisdiction. One delegate suggested that "sovereignty of States" should be changed to "sovereign rights of States over biodiversity in the zones under their jurisdiction";
- Conservation and socio-economic development must be mutually compatible;
- Poverty should be recognized as the main cause of loss of biological diversity;
- The necessity of safeguarding the basic functioning of ecosystems;
- Biological diversity is the common responsibility or common interest of humankind. Many delegates expressed a desire for the use of this language instead of common heritage. One participant pointed out that the countries of many of the delegates who would like this term removed had ratified the World Heritage Convention, which uses the same language;

- Several delegates expressed a desire that the idea that free access does not mean free of charge should be expressed in different terms or elaborated upon. Several delegates felt that the concept of free access must appear in some form in this section. One delegate requested that a distinction between scientific and educational resources as opposed to commercial exploitation should be made in relation to free access. The former should be free of charge and the latter the subject of commercial arrangements;
- Conservation and sustainable utilization of biological diversity are mutually dependant and must be integrated.

5. In considering General Obligations, as outlined in section IV of the annex, the following elements were proposed for inclusion:

- 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;
- States have a common obligation to co-operate on an international basis in maintaining and restoring biological diversity in areas beyond national jurisdiction;
- The obligation of both Governments and donor agencies to ensure that environmental impact assessments are undertaken in all planned development projects;
- The obligation to promote public awareness should include access to information. One delegate felt that it should be specified that public awareness should be promoted by the information media and others, as well as by community programmes;
- Sustainable development should be integrated into all sections of society;
- Measures to maintain and restore biological diversity should include measures to conserve it;
- Opportunity loss by setting aside areas to conserve biological diversity should be shared equitably;
- Countries should develop a code of conduct regulating the release of biotechnological products and generally modified organisms. Another delegate objected to such an inclusion;
- One delegate suggested that the duty to refrain from actions harmful to biological diversity should include a concept of threshold. Another delegate objected to such an inclusion;
- Several delegates suggested that the terms "duty", "obligation" and "responsibility" be dropped as they have an explicit legal meaning.

6. When considering Measures for Conservation and Sustainable Utilization of Biological Diversity, section V of the annex, the following suggestion was made:

- Reflection of the mutual interdependence of conservation and sustainable utilization of biological diversity, avoiding a division of elements relating to measures for conservation and sustainable utilization of biological diversity. The structure should reflect the hierarchy of importance of such elements, stressing sustainable use.

7. In considering Measures for In Situ Conservation of Biological Diversity (section V, subsection A of the annex) several delegates expressed a desire that measures taken for in situ and ex situ conservation should not be placed under separate headings. Other comments included:

- It should be clear that in situ conservation included the protection of species, and not just habitats and ecosystems;
- Regional and subregional co-operation plans should be called for;
- States should be required to notify other affected States if action they have taken has a potentially harmful effect on the biological diversity of other States;
- States should be required to report on procedure they have adopted to implement the provisions of the convention;
- The elaboration of any Global List should take into account other lists in existence and any network created should take into account existing networks. Several delegates requested a definition of what was meant by network in this context. One concern was overlapping or repeating work that has already been done by other organizations. Several delegates felt that this provision should be deleted;
- The regulation and control of the introduction of man-made and genetically modified organisms should include a comprehensive study on the effect of introduction of ecosystems.

8. The following elements and comments were proposed for inclusion:

- The recognition and strengthening of existing networks in addition to the obligation to create networks of protected areas in territories within national jurisdiction (national parks, seed banks, gene banks, etc.);
- The right of indigenous populations to participate in the use, management and conservation of natural resources pertaining to their lands should be taken into account;
- Inclusion of unique systems in Global List;
- Maintenance and use of local knowledge about biological diversity through necessary support and funding;
- The element of adopting national lists should be added to the element regarding a Global List. Criteria for the selection, establishment and management of national lists should be decided on by the States concerned. The word "specially protected" should be deleted;

- Elements regulating control and introduction of man-made, genetically modified and alien species should be merged;
- Obligation to maintain the biological diversity and ecological character of areas should be included in the Global List;
- Obligation to create networks of specially-protected areas, whether or not they are included in the Global List;
- Adoption of action plans to involve local populations systematically in helping to conserve biological diversity, which includes wild and domesticated species;
- Identification and inventorying of areas of particular importance for the conservation of biological diversity for the inclusion in a Global List need to be stressed and merged with the element regarding the obligation to carry out surveys and gather information;
- The creation of connecting zones between protected areas in densely populated countries, to prevent areas from becoming isolated and unsustainable;
- Obligation to provide financial and institutional assistance to existing programmes relating to the conservation of biological diversity;
- The wording "strict control" should be used instead of "regulation";
- Ex situ conservation should be considered separately/combined with in situ conservation;
- Support to ongoing, identified programmes relating to conservation of biological diversity should be stressed;
- Obligation of countries to publish lists of species of animals and plants to be protected;
- Maintenance and improvement of local knowledge about biological diversity;
- The obligation of States to include conservation and rational utilization in their policies;
- Obligation to restore and regenerate plans for animal species and their habitats;
- Support for international ecological experts and projects;
- Protection of species threatened with extinction at the world level through listing;
- Prevention, as well as reduction and control of pollution;
- Obligation to notify other States of activities which could cause imminent and urgent danger to biological areas beyond their national jurisdiction;

- Protection and preservation of rare and fragile ecosystems and the habitat of depleted, threatened and endangered marine species;
- One delegate suggested that the element regarding regulation of introduction of alien species be deleted. Other delegates supported retention of the element;

9. The delegates considered Measures for Ex Situ Conservation of Biological Diversity; Measures for Sustainable Utilization of Biological Diversity, Research and Training, Education and Public Awareness, and Environmental Impact Assessments, sections (V) - B. C., D., E and F of the annex, together. The following elements and comments were suggested for inclusion:

- The concept of financial remuneration and compensation should be reflected in all sub-sections related to measures for conservation;
- Reference should be made to the work of the Food and Agriculture Organization of the United Nations and the International Board for Plant Genetic Resources;
- Obligation to establish, at global, regional and national levels, centres for ex situ conservation, in particular for endangered species;
- Elements relating to adoption of plans and strategies for reintroduction of species and to recovery and rehabilitation of species should be combined;
- The term "exploitation" should be replaced with "rational exploitation";
- The relationship between conservation and socio-economic development should be stressed;
- Elements related to training of specialists involved in activities relating to conservation of biological diversity should be combined and not treated as separate categories;
- Research should also focus on other factors affecting the conservation of biological diversity, such as poverty, drought, fires, soil erosion and social and cultural factors;
- Research on and development of biological diversity and biotechnology;
- Development and production of public awareness material to help conserve biological diversity;
- Education of teachers, inclusion of education and public awareness in the curricula of schools and universities;
- Environmental impact assessments should be dealt with in connection with the separate conservation measures to which they apply. They should, inter alia, be carried out in relation to large industrial projects and when exploiting new areas or introducing new methods of use;

- Development of guidelines that set standards for environmental impact assessments should be introduced as an important part of national planning;
- An early warning system should be developed to enter into action when dangers are created by major environmental changes;
- The obligation of a country to conserve its biological diversity should not result in conditionalities by the international funding agencies for development loans.

10. It was proposed that the following elements be deleted.

- Elements related to ex situ conservation;
- Obligation to ensure that utilization of biological diversity does not have adverse impacts on the rest of the environment;
- The word "training" should be deleted and replaced by "education".

11. In considering availability, technology and access to biological diversity, and information thereon as outlined in section VI of the annex, the following comments were suggested for inclusion:

- The element on access to technology should cover all ranges of technology which relate to the conservation of biological diversity. Guidance on this issue could be obtained from the meeting in August 1990 of the Preparatory Committee for the United Nations Conference on Environment and Development;
- The issue of compensation should be included in the elements concerning availability and access;
- Availability and access should be permitted as long as viable populations are not thereby endangered;
- Preferential treatment needs further definition;
- The discussions on intellectual property rights at the present meeting need to be reflected in an element;
- Traditional knowledge and technologies need to be used for conservation of biological diversity. Ethnology can play an important role here;
- New technologies should be developed jointly, including on a South-South basis. The interdependence between cultural and technological knowledge should provide the basis for such development;
- The terminologies "gene-rich/poor" and "technology-rich/poor" countries should be avoided;
- Further emphasis should be put on scientific research and commercial access.

12. In considering transfer of technology for the conservation and utilization of biological diversity, as outlined in section VII of the annex, the following comments were suggested for inclusion:

- The issue of intellectual property rights should be addressed in this context, together with adequate financing mechanisms;
- Developing countries should be assisted in the development of their own technologies;
- The investments made when developing technologies that will be subject to transfer need to be taken into account;
- Transfer should be limited to those technologies that support biological diversity;
- A mechanism to ensure the transfer of technology should not only handle funds but also create facilities to ensure that ongoing efforts in the United Nations system be made widely available;
- The sub-working Group on Biotechnology could develop the issue of transfer of technology;
- Transfer on a preferential basis should be based on rapid transfer of the latest technology;
- All developing countries should receive technology, not only the poorer developing countries;
- Many delegates found the issue of technology transfer to be of great importance, and found that the issue needed further study and that no element should be deleted at this stage.

13. Some countries proposed that the following element be deleted:

- Establishment of a mechanism to ensure the acquisition of technology by providing funds to facilitate the necessary access to patents.

14. In considering technical assistance to developing countries, as outlined in section VIII of the annex, the following comments were proposed for inclusion:

- The obligations of developed countries in relation to provision of technical assistance should be stressed;
- The word "rational" should be used in connection with technical assistance;
- The wording "subject to mutual agreement" should be considered in relation to the commitment of developed States to provide technical assistance;
- A clearing-house mechanism, receiving instructions from a committee to regulate the work, could be part of a general technical mechanism to be established;

- The wording on elements related to technical assistance should be more flexible, since the issue has not been discussed at length by the session;
- The word "assistance" should be replaced by "co-operation" in technical and financial matters;
- Obligations relating to technology transfer will be limited by availability of finances;
- Developing countries should, within the framework of technical assistance, receive assistance in the development of national institutions.

15. In considering Financial Mechanisms (section IX of the annex) the following general remarks were made:

- The cost for global biological diversity surveys should be included as an additional element in a protocol;
- The World Bank should be actively involved with the financial aspects of a fund;
- It is too early to discuss funding mechanisms but:
 - (a) The multilateral fund established under the Montreal Protocol could be a useful model;
 - (b) Reference should be made to GEF by the World Bank;
 - (c) The "user's fees" concept is acceptable;
- Financial matters should be left for later to be dealt with by a special working group;
- The work from the World Bank and the presentation of the financial solution to the Montreal Protocol on the ozone layer should be taken into consideration;
- Developing countries should be especially mentioned as recipients of funds in financial mechanisms.

16. In considering the relationship between the planned legal instrument and existing instruments, agreements, programmes and action plans on biological diversity, the following comments were proposed for inclusion:

- Other legal instruments should not be subject to renegotiation as protocols to the planned legal instrument;
- The FAO undertaking on Plant Genetic Resources should be given special attention when suggesting elements relating to sustainable development;

- Secretariats should not be eligible to become parties to the planned legal instrument. This issue should be further discussed at the next session of the Working Group. The possibility of secretariats being involved and assuming commitments relating to the planned legal instrument needs to be further explored;
- The provision of financial assistance to existing secretariats needs to be further developed, possibly in the form of a protocol.

17. In considering Institutional Measures at National Level, section IX of the annex, the following comments were made:

- Instead of "establishment of national bodies", the provision should read "for the establishment or designation of existing national bodies";
- Several delegations felt the inclusion of a provision for national measures was not necessary, as 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;
- States may adopt measures to strengthen the provisions in the legal instrument;
- It is relevant to include in this section something on strengthening institutions;
- Provision should be made for an obligation to help developing countries to implement the legal instrument through national institutions and legislation.

18. In considering International Co-operation, section XII of the annex, the following comments were made:

- Several delegates felt the section should be deleted because it would be redundant and is better covered in other sections;
- There should be caution in the development of Global Lists, because such a list has the potential to undermine areas not on the list;
- The term "technical assistance" should be followed by "and co-operation";
- A paper should be commissioned on options for the establishment of priorities. Several delegates suggested the need for a mechanism to determine priority actions.

19. The Working Group determined that it was premature to consider the Institutional Arrangements for the Planned Legal Instrument (section XIII of the annex).

20. The chair next turned section XVII of the annex, entitled "annexes". The following comments were made:

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- The sections on definitions should be included in an annex. This allows for changes, additions and deletions as needed. It also allows for a comprehensive list;
- Note was made of the fact that the present list of protected areas has a huge volume;
- The machinery for arbitration procedure should not be in an annex.

21. The delegations made no comments on section XVIII of the annex, "Protocols".

ANNEX II

Ad Hoc Working Group of Experts on Biological Diversity
Third Session, Geneva, 9-13 July 1990

List of Documents

<u>Documents</u>	<u>Language</u>
UNEP/Bio.Div.3/1 Draft Provisional Agenda	A,C,E,F,R,S
UNEP/Bio.Div.3/2 Note by the Executive Director	A,C,E,F,R,S
UNEP/Bio.Div.3/3 Biodiversity Global Conservation Needs and Costs	A,C,E,F,R,S
UNEP/Bio.Div.3/4 Current Multilateral, Bilateral and National Financial Support for Biological Diversity Conservation	A,C,E,F,R,S
UNEP/Bio.Div.3/5 Framework Legal Instrument on Biological Diversity: An Analysis of Possible Financial Mechanisms	A,C,E,F,R,S
UNEP/Bio.Div.3/6 Relationship Between Intellectual Property Rights and Access to Genetic Resources and Biotechnology	A,C,E,F,R,S
UNEP/Bio.Div.3/7 Biotechnology: Concepts and Issues for Consideration in Preparation of a Framework Legal Instrument for the Conservation of Biological Diversity	A,C,E,F,R,S
UNEP/Bio.Div.3/8 Ongoing Discussions on Intellectual Property Rights in Uruguay Round of GATT Negotiations	A,C,E,F,R,S
UNEP/Bio.Div.3/9 Relationship Between Planned Framework Legal Instrument and Existing Conventions, Agreements, and Action Plans on Biological Diversity	A,C,E,F,R,S

UNEP/Bio.Div.3/10 Bilateral and Multilateral Funding Mechanism Initiatives Currently Under Consideration	A,C,E,F,R,S
UNEP/Bio.Div.3/11 Ongoing Discussions on Intellectual Property Rights in UPOV, WIPO and GATT as they Relate to Access to Genetic Resources	E
UNEP/Bio.Div.3/Inf.1 Biodiversity Global Conservation Needs and Costs	E
UNEP/Bio.Div.3/Inf.2 Current Multilateral, Bilateral and National Financial Support for Biological Diversity Conservation	E
UNEP/Bio.Div.3/Inf.3 Framework Legal Instrument on Biological Diversity: An Analysis of Possible Financial Mechanisms	E
UNEP/Bio.Div.3/Inf.4 Relationship Between Intellectual Property Rights and Access to Genetic Resources and Biotechnology	E
UNEP/Bio.Div.3/Inf.5 Biotechnology: Concepts and Issues for Consideration in Preparation of a Framework Legal Instrument for the Conservation of Biological Diversity	E
UNEP/Bio.Div.3/Inf.6 Relevant Existing Legal Instruments, Programmes and Action Plans on Biological Diversity	E

ANNEX III

Sub-working Group on Biotechnology

A. Terms of reference

1. To review all relevant documents available to the present session.
2. To examine the recommendations arising from the session.
3. To give a description of biotechnology applicable to the conservation of biodiversity.
4. To examine and advise on how biotechnology could be used to conserve biological diversity.
5. To look at the issue of biotechnology use for sustainable development in the socio-economic context.
6. To suggest ways and means of promoting joint/co-operative development of biotechnology and technology transfer among countries; and provide support for appropriate biotechnology development in developing countries.
7. To differentiate between or identify the types of biotechnologies relevant to conservation of biodiversity and give examples.
8. To examine the necessary interface with existing international institutions involved in biotechnology development, e.g. UNIDO.
9. To review work under way at the international level, e.g. WIPO, GATT, etc., with a view to recommending how relevant issues of biotechnology related to biodiversity can best be taken into account by these organizations.
10. To consider the risks associated with biotechnology with respect to conservation of biodiversity.
11. To advise on whether biotechnology issues should be reflected in the planned biological diversity convention, and how best this could be done.
12. To report to the next meeting of the Ad Hoc Working Group of Experts on Biological Diversity or whichever other working group follows this.

B. Size and composition of the Sub-working Group

It was agreed:

(a) That the SWG be open-ended but that effective adequate Regional representation be ensured;

(b) That delegates to the SWG should include experts on biotechnology;

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(c) That Kenya be interim chairman for the SWG to facilitate continuity and other work necessary between now and the first sitting of the SWG.

C. Dates for SWG Meeting

It was agreed that the SWG should meet immediately prior to the next session of the Ad Hoc Working Group of Experts on Biological Diversity or whichever other working group the Executive Director may subsequently convene.

ANNEX IV*

PRINCIPAL CONCLUSIONS OF THE AD HOC WORKING GROUP AT ITS SECOND
SESSION IN PREPARATION FOR A LEGAL INSTRUMENT ON
BIOLOGICAL DIVERSITY OF THE PLANET

Report by the Chairman

I. INTRODUCTION

1. The need was emphasized in the debate for a new international legally-binding framework instrument on the conservation of biological diversity. The following should be considered in the process of developing such an instrument.

II. NATURE OF AN INTERNATIONAL LEGAL INSTRUMENT

2. The aim of such a legal instrument should be to engage concrete and action-oriented measures for the conservation and sustainable utilization of biological diversity. There was a general agreement that:

(a) As much technical, financial and administrative content as possible with commitments for implementation should be included in the body of the framework instrument. It should have under its umbrella legally-binding protocols focusing on concrete issues and as far as possible these should be concluded and signed concurrently with the international legal instrument itself;

(b) 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;

(c) 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;

(d) 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;

* Previously issued as document UNEP/Bio.Div.2/4 of 9 May 1990

(e) 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;

(f) The principle of refraining from action that may be harmful to biological diversity in other States should be included; and the obligation to prepare environmental impact assessments for projects having a potentially harmful effect on biological diversity was also recommended.

III. GLOBAL CONSERVATION NEEDS AND COSTS

3. There was a general agreement 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:

(a) 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;

(b) Technical assistance for research, training, education, public awareness campaigns, surveys, inventories, etc.;

(c) 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;

(d) Regular monitoring of the status of the world's biological diversity;

(e) Co-ordination of conservation management strategies and plans with sustainable development policies;

(f) Priority conservation projects;

(g) Needs of existing international legal instruments on biological diversity;

(h) Transfer of technology.

4. 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.

IV. FINANCING MECHANISMS

5. There was a consensus that:

(a) Those who enjoy most the economic benefits of biological diversity should contribute equitably to its conservation and sustainable management;

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(b) A new partnership should be developed and in this context funding for developing countries should be characterized as co-operation among countries.

6. There was also general agreement that an international legal instrument without firm commitments to funding to meet the conservation costs would be meaningless.

7. 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.

8. 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.

9. Resource for the administration of the legal instrument 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.

10. Whatever the final financing arrangements, there is a need for a special fund management mechanism as part of the international legal instrument.

11. There is a need for close co-ordination of 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 on-going 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.

V. ACCESS TO GENETIC RESOURCES AND TECHNOLOGY

12. There was a consensus that:

(a) 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;

(b) Accessibility, including access to knowledge and data, is an important element in conservation and sustainable development of biological diversity;

(c) 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;

(d) 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;

(e) Those having jurisdiction and control over genetic resources should receive preferential treatment for access to their germplasm and varieties developed therefrom;

(f) 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;

(g) 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;

(h) 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.

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

13. An international legal instrument on the conservation of biological diversity should 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.

VII. POLLUTION

14. 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.

VIII. STUDIES TO BE DONE

15. Studies are needed on the following as a means of responding to specific issues in the process of developing the new legal instrument: (i) the cost of conserving biodiversity; (ii) fund-raising mechanisms; and (iii) the relationship between intellectual property rights and access to genetic resources and biotechnology.