

CONVENTION ON BIOLOGICAL DIVERSITY

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MESSAGE

FROM

**THE PRESIDENT OF THE UNITED STATES**

TRANSMITTING

THE CONVENTION ON BIOLOGICAL DIVERSITY, WITH ANNEXES,  
DONE AT RIO DE JANEIRO JUNE 5, 1992, AND SIGNED BY THE  
UNITED STATES IN NEW YORK ON JUNE 4, 1993



NOVEMBER 20, 1993.—Convention was read the first time and, together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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U.S. GOVERNMENT PRINTING OFFICE

## LETTER OF TRANSMITTAL

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THE WHITE HOUSE, November 19, 1993.

To the Senate of the United States:

I transmit herewith, for the advice and consent of the Senate to ratification, the Convention on Biological Diversity, with Annexes, done at Rio de Janeiro, June 5, 1992, and signed by the United States in New York on June 4, 1993. The report of the Department of State is also enclosed for the information of the State.

The final text of the Convention was adopted in Nairobi by the Intergovernmental Negotiating Committee for a Convention on Biological Diversity (INC) on May 22, 1992. The INC was preceded by three technical meetings of an Ad Hoc Working Group of Experts on Biological Diversity and two meetings of an Ad Hoc Working Group of Legal and Technical Experts. Five sessions of the INC were held, from June 1991 to May 1992. The Convention was opened for signature at the United Nations Conference on Environment and Development in Rio de Janeiro on June 5, 1992.

The Convention is a comprehensive agreement, addressing the many facets of biological diversity. It will play a major role in stemming the loss of the earth's species, their habitats, and ecosystems through the Convention's obligations to conserve biodiversity and sustainably use its components as well as its provisions that facilitate access to genetic resources and access to and transfer of technology so crucial to long-term sustainable development of the earth's biological resources. The Convention will also create a much needed forum for focusing international activities and setting global priorities on biological diversity.

The objectives of the Convention as set forth therein are the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of benefits arising out of the utilization of genetic resources. These objectives are implemented through specific provisions that address, *inter alia*, identification and monitoring, *in situ* and *ex situ* conservation, sustainable use, research and training, public education and awareness, impact assessment, access to genetic resources, access to and transfer of technology, technical and scientific cooperation, handling of biotechnology and distribution of its benefits, and financing.

Economic incentives will help all Parties achieve the environmental benefits of conservation and sustainable use of biological diversity. The Administration thus supports the concept that benefits stemming from the use of genetic resources should flow back to those nations that act to conserve biological diversity and provide access to their genetic resources. We will strive to realize this objective of the Convention. As recognized in the Convention, the adequate and effective protection of intellectual property rights is an

other important economic incentive that encourages the development of innovative technologies, improving all Parties' ability to conserve and sustainably use biological resources. The Administration will therefore strongly resist any actions taken by Parties to the Convention that lead to inadequate levels of protection of intellectual property rights, and will continue to pursue a vigorous policy with respect to the adequate and effective protection of intellectual property rights in negotiations on bilateral and multilateral trade agreements. In this regard, the report of the Department of State provides a detailed statement of the Administration's position on those provisions of the Convention that relate to intellectual property rights.

Biological diversity conservation in the United States is addressed through a tightly woven partnership of Federal, State, and private sector programs in management of our lands and waters and their resident and migratory species. There are hundreds of State and Federal laws and programs and an extensive system of Federal and State wildlife refuges, marine sanctuaries, wildlife management areas, recreation areas, parks, and forests. These existing programs and authorities are considered sufficient to enable any activities necessary to effectively implement our responsibilities under the Convention. The Administration does not intend to disrupt the existing balance of Federal and State authorities through this Convention. Indeed, the Administration is committed to expanding and strengthening these relationships. We look forward to continued cooperation in conserving biological diversity and in promoting the sustainable use of its components.

The Convention will enter into force on December 29, 1993. Prompt ratification will demonstrate the United States commitment to the conservation and sustainable use of biological diversity and will encourage other countries to do likewise. Furthermore, in light of the rapid entry into force of the Convention, early ratification will best allow the United States to fully represent its national interest at the first Conference of the Parties.

I recommend that the Senate give early and favorable consideration to this Convention and give its advice and consent to ratification, subject to the understandings described in the accompanying report of the Secretary of State.

WILLIAM J. CLINTON.

## LETTER OF SUBMITTAL

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DEPARTMENT OF STATE,  
Washington, November 16, 1993.

The PRESIDENT,  
The White House.

THE PRESIDENT: It is an honor to submit to you the Convention on Biological Diversity, with Annexes, done at Rio de Janeiro June 5, 1992, and signed by the United States in New York on June 4, 1993. It is my recommendation that the Convention be transmitted to the Senate for its advice and consent to ratification.

The Convention was opened for signature at the United Nations Conference on Environment and Development on June 5, 1992, at which time the United States declined to sign the Convention due to its concerns with particular provisions in the Convention. Since then, under the chairmanship of the Department of State, all relevant federal agencies conducted a comprehensive review of the Convention and the Department of State met with members of Congress, the private sector, and non-governmental environmental organizations with a view to determining how the United States' concerns could best be addressed. As a result of that view and consultative process, all agencies recommend that the United States ratify the Convention subject to several understandings described in more detail below.

The Convention is a comprehensive agreement, addressing the many facets of biological diversity. The objectives of the Convention as set forth therein are the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of benefits arising out of the utilization of genetic resources. These objectives are implemented through specific provisions that address, *inter alia*, identification and monitoring, *in situ* and *ex situ* conservation, sustainable use, research and training, public education and awareness, impact assessment, access to genetic resources, access to and transfer of technology, technical and scientific cooperation, handling of biotechnology and distribution of its benefits, and financing.

The Convention will play a major role in stemming the loss of the earth's species, their habitats, and ecosystems through direct obligations to conserve biological diversity and sustainably use its components as well as by facilitating access to genetic resources and access to and transfer of technology so crucial to long-term sustainable development of the earth's biological resources. The Convention will also create a much needed forum for focussing international activities and setting global priorities on biological diversity.

The conservation of biological diversity and the sustainable use of its components serve important environmental and economic goals. Conservation of biological diversity and the sustainable use of its components will provide numerous benefits, including new food sources, improved agricultural products and procedures, new tools for combating disease, and will help maintain the health of our ecological systems.

One way to support the conservation of biological diversity and sustainable use of its components is to create an economic incentive for countries to preserve the biological diversity within their borders. For this reason, the United States accepts the principle that benefits stemming from productive use of genetic resources should flow back to those nations that act to conserve biological diversity and provide access to their genetic resources. These benefits include not only forms of monetary compensation for use of genetic resources, but also opportunities for technology transfer through training, cooperative work programs, and improved access to information.

Voluntarily entered into contractual agreements on the use of genetic resources will provide the most effective vehicle for this flow of benefits. Indeed, the United States views such agreements as providing not only the means through which the many aspects of benefit sharing arrangements, including technology transfer, can be realized, but also as a means for protecting the various interests that arise in a cooperative venture based on access to or use of genetic resources. In particular, benefit sharing agreements will provide the means for protecting not only proprietary commercial data, but a wide variety of knowledge and technologies not subject to intellectual property protection (e.g., knowledge, traditions and customs of indigenous populations and local communities). Numerous such agreements involving diverse parties, including U.S. firms, foreign governments and indigenous people, are currently fostering technology cooperation.

The participation of the private sector greatly enhances the attainment of economic value from genetic resources. Providing effective incentives for the development of new technologies that make use of genetic resources is as critical as assuring the equitable sharing of the economic benefits that may arise from the use of genetic resources. However, absent an effective means to protect the significant investments necessary to develop new technology, the potential contribution of the private sector to the development of economically valuable products will not be realized.

For this reason, extension of adequate and effective intellectual property protection for the technology derived from the use of genetic resources is an essential prerequisite to the success of the Convention. The current system of U.S. laws provide an effective level of protection for intellectual property that is completely consistent with the goals of the technology transfer provisions of the Convention.

Furthermore, with respect to technology subject to patents and other intellectual property rights, the Convention requires all Parties to ensure that access to or transfer of technology is consistent with the adequate and effective protection of intellectual property

rights. The United States will strongly resist any actions taken by Parties to the Convention in derogation of this obligation.

The best means to foster the technology transfer envisioned by the Convention is for other Parties to provide an effective level of intellectual property protection. Such protection will provide the incentives necessary for the private sector to generate the technology using genetic resources in the first place. It will also provide the suitable climate necessary for cooperation between U.S. firms and those in other countries harboring genetic resources. This cooperation can yield tremendous benefits by fostering not only the voluntary and cooperative transfer of new technology to developing countries, but by encouraging the application of this technology to solve indigenous problems facing those countries. These private sector mechanisms will be complemented by public sector initiatives to support technology transfer in order to meet specific needs or objectives unmet by the private sector.

With respect to biosafety, the Convention requires Parties to establish or maintain means to regulate, manage, or control the risks associated with the use and release of living modified organisms, and to provide available information about the use and safety regulations required by that Party in handling such organisms. The Convention also requires that the Parties consider the need for and modalities of a possible protocol setting out appropriate procedures in the field of safe transfer, handling and use of any living modified organism resulting from biotechnology that may have adverse effect on the conservation of biological diversity and the sustainable use of its components. Given the recognized threats to biological diversity requiring priority attention, and the substantial amount of biosafety related activities taking place in other appropriate expert fora, the United States does not believe that a protocol on biosafety under this Convention is warranted. However, should discussions on this issue proceed, the United States, in close cooperation with the U.S. biotechnology industry, will work to ensure that any biosafety regime that might arise from the Convention is scientifically based and analytically sound.

The Convention establishes a Conference of the Parties ("COP") and a Subsidiary Body on Scientific, Technical and Technological Advice. The Subsidiary Body will provide, *inter alia*, scientific and technical assessments of the status of biological diversity and of the effects of types of measures taken in accordance with the Convention. It will identify technologies and know-how relating to conservation of biological diversity and the sustainable use of its components and provide advice on the ways and means of promoting development and/or transferring such technologies. The Subsidiary Body will advise on scientific programs and international cooperation in research and development. The subsidiary body should become the international focal point for international scientific and technical cooperation. In this capacity, it is well positioned to play an unprecedented role in advancing our understanding of biological diversity and ways in which the United States can work together with the international community to stem its loss most effectively.

The Convention identifies the Global Environment Facility ("GEF"), provided it has been fully restructured in accordance with the Convention, as the institutional structure to carry out the oper-

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ation of the financial mechanism on an interim basis, for the period between the entry into force of the Convention and the first meeting of the COP or until the COP designates a permanent institutional structure. The United States will provide leadership in the restructuring process of the GEF to sustain the confidence of developed and developing countries, with a view to its designation as the permanent institutional structure under the Convention.

Further analysis of the articles of the Convention, including the proposed understandings of the United States, are set forth below.

### ARTICLE 1 (OBJECTIVES)

Article 1 establishes the objectives of the Convention to be pursued in accordance with the specific provisions that follow. The objectives as stated therein are the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources. Fair and equitable sharing of benefits is to be accomplished, for example, by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding. As stated in the objectives and as confirmed in the subsequent and more specific provisions, appropriate transfer of technology must take into account all rights to that technology and may only proceed with the voluntary participation of the owner of the technology.

### ARTICLE 2 (DEFINITIONS)

“Biological Diversity”—the subject of the Convention—means “the variability among living organisms from all sources including, *inter alia*, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems.” The remaining definitions are self-explanatory.

### ARTICLE 3 (PRINCIPLE)

The Convention states verbatim Principle 21 of the Stockholm Declaration from the 1972 United Nations Conference on the Human Environment. This principle recognizes the sovereign right of States to exploit their own resources pursuant to their own environmental policies and the concomitant responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction. Although the article lacks language which places it in specific context within the Convention, the United States understands that it references a principle that the Parties will bear in mind in their actions under the Convention. The Department of State recommends that the following understanding be included in the United States instrument of ratification:

The Government of the United States of America understands that Article 3 references a principle to be taken into account in the implementation of the Convention.

## ARTICLE 4 (JURISDICTIONAL SCOPE)

Article 4 defines the jurisdictional reach of the Convention. With respect to components of biological diversity (e.g., species, ecosystems, genetic material), Article 4 generally restricts each Party's obligations to those components within the limits of its national jurisdiction in accordance with international law—its territory, exclusive economic zone, and, if applicable, its continental shelf. Thus, the Convention imposes no direct management obligations on a Party acting individually with respect to components of biological diversity in an area where another Party exercises jurisdiction or on the high seas. The Parties' obligations with respect to high seas resources and other matters of mutual interest are limited to "cooperation" (see Article 5, below).

Each Party is responsible for processes and activities under its jurisdiction or control that are carried out within the area of its national jurisdiction or beyond the limits of any State's jurisdiction.

## ARTICLE 5 (COOPERATION)

Article 5 provides that each Party shall, insofar as possible and appropriate, cooperate with respect to areas beyond any State's jurisdiction and on other matters of mutual interest for the conservation of biological diversity and the sustainable use of its components.

## ARTICLE 6 (GENERAL MEASURES FOR CONSERVATION AND SUSTAINABLE USE)

Article 6 provides that each Party shall, in accordance with its particular conditions and capabilities, develop new or adapt existing national strategies, plans or programs for the conservation and sustainable use of biological diversity and to integrate the conservation of biological diversity and the sustainable use of its components into relevant sectoral or cross-sectoral plans, programs and policies.

## ARTICLE 7 (IDENTIFICATION AND MONITORING)

Pursuant to Article 7, each Party shall, as far as possible and as appropriate, identify and monitor components of biological diversity important for its conservation and sustainable use, identify and monitor processes and categories of activities which have or are likely to have significant adverse impacts on the conservation of biological diversity and the sustainable use of its components, and maintain and organize the data collected.

ARTICLE 8 (*IN-SITU* CONSERVATION)

Pursuant to Article 8, the Parties shall, as far as possible and as appropriate, *inter alia*, take measures with respect to protected areas, biological resources (including threatened species), ecosystems and natural habitats, environmentally sound and sustainable development, living modified organisms resulting from biotechnology processes and activities determined to have a significant adverse effect on biological diversity, and alien species. In addition, each Party is required, subject to its national legislation, to take



measures relating to the knowledge, innovations, and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation of biological diversity and the sustainable use of its components, to promote their wider application, and to encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations, and practices.

#### ARTICLE 9 (EX-SITU CONSERVATION)

Pursuant to Article 9, the Parties shall, as far as possible and as appropriate, take certain *ex-situ* measures to complement those taken *in-situ*. These include, among other things, measures with respect to *ex-situ* conservation of and research on plants, animals, and microorganisms, recovery and rehabilitation of threatened species, and the collection of biological resources from natural habitats.

#### ARTICLE 10 (SUSTAINABLE USE OF COMPONENTS OF BIOLOGICAL DIVERSITY)

Article 10 requires each Party, as far as possible and as appropriate, to integrate consideration of such issues into national decision-making, adopt measures to avoid or minimize adverse impacts on biological diversity, protect and encourage customary use of biological resources in accordance with traditional cultural practices, support local populations to develop and implement remedial action, and encourage cooperation between its governmental authorities and its private sector. Other obligations with respect to sustainable use are incorporated directly into other articles of the Convention.

#### ARTICLE 11 (INCENTIVE MEASURES)

Article 11 requires each Party, as far as possible and as appropriate, to adopt economically and socially sound measures that act as incentives for the conservation of biological diversity and the sustainable use of its components.

#### ARTICLE 12 (RESEARCH AND TRAINING)

Article 12 requires the Parties to establish programs for scientific and technical education, to promote and encourage research, and to promote and cooperate in the use of scientific advances in biological diversity research.

#### ARTICLE 13 (PUBLIC EDUCATION AND AWARENESS)

Article 13 requires the Parties to promote public education and awareness relating to the conservation of biological diversity and the sustainable use of its components.

#### ARTICLE 14 (IMPACT ASSESSMENT AND MINIMIZING ADVERSE IMPACTS)

Paragraphs 1 (a) and (b) require each Party, as far as possible and as appropriate, to introduce procedures that require environmental impact assessment of its proposed projects that are likely to have significant adverse effects on biological diversity and to introduce appropriate arrangements to ensure that the effects on bio-

logical diversity are taken into account in its programs and policies.

Paragraph 1(c) requires each Party to promote, on the basis of reciprocity, notification, exchange of information, and consultation on activities under their jurisdiction or control which are likely to significantly affect adversely the biological diversity of other States or areas beyond the jurisdiction of any State by encouraging the conclusion of bilateral, regional or multilateral arrangements.

Paragraph 1(d) requires each Party to notify potentially affected States of cases of imminent or grave danger or damage to biological diversity under the jurisdiction of those States.

Paragraph 1(e) calls for national arrangements for emergency responses to activities which present a grave and imminent danger to biological diversity and encourages international cooperation in this regard.

The Convention does not create a liability regime for damage to biological diversity. Instead, Paragraph 2 provides that the COP shall examine the issue of liability and redress for damage to biological diversity, except where such liability is a purely internal matter.

#### ARTICLE 15 (ACCESS TO GENETIC RESOURCES)

Article 15 recognizes a balance of interests and obligations relating to access to genetic resources under the jurisdiction of each Party. Paragraph 1, recognizing the sovereign rights of States over their natural resources, provides that authority to determine access to genetic resources rests with the national governments and is subject to national legislation. Paragraph 2 calls upon each Party to endeavor to create conditions and facilitate access to genetic resources by other Parties and not to impose restrictions that run counter to the objectives of the Convention. Paragraphs 4 and 5 specify that access, where granted, shall be on mutually agreed terms and subject to prior informed consent of the Party providing such resources.

Paragraph 6 provides that each Party shall endeavor to develop and carry out its scientific research based on genetic resources by other Parties with the full participation of, and where possible in the territory of, such Parties. The subject matter of this paragraph is virtually identical to the subject matter of Article 19(1) and is therefore the subject of an understanding set forth under the discussion of Article 19.

Paragraph 7 requires each Party to take measures with the aim of sharing in a fair and equitable way the results of research and development and the benefits arising from the commercial and other utilization of genetic resources with the Party providing such resources. The Convention specifies that such sharing shall be on mutually agreed terms. The United States interprets this to mean that such sharing must take fully into account exclusive rights to technology that a party may possess, and that transfers of proprietary technology will occur only at the discretion of, and with the voluntary consent of, the owner of the technology.

Paragraph 3 clarifies that the genetic resources being provided under Articles 15, 16, and 19 are those that are provided by Parties that are countries of origin of such resources or by Parties that

have acquired the genetic resource in accordance with this Convention. Resources obtained by public or private entities before the Convention enters into force or obtained outside the scope of the Convention are not governed by the Convention.

#### ARTICLE 16 (ACCESS TO AND TRANSFER OF TECHNOLOGY)

Paragraph 1 creates a general obligation with respect to access to and transfer of technology. It generally obligates each Party to undertake, subject to the provisions of the article, to provide and/or facilitate access for and transfer to other Parties of technologies that are relevant to the conservation of biological diversity and the sustainable use of its components or make use of genetic resources and do not cause significant damage to the environment.

Paragraph 2 specifies the terms of such access and transfer. It states that access to and transfer of technology shall be provided and/or facilitated under "fair and most favorable terms," including on concessional and preferential terms where mutually agreed, and where necessary, in accordance with the financial mechanism. The United States interprets "fair and most favourable terms" to mean terms that are voluntarily agreed to by all parties to the transaction. Paragraph 2 further provides that in the case of technology subject to patents and other intellectual property rights, such access and transfer shall be provided on terms which recognize and are consistent with the adequate and effective protection of intellectual property rights. Finally, it provides that application of this paragraph shall be consistent with Paragraphs 3, 4, and 5.

Paragraph 3 requires each Party to take measures with the aim that Parties which provide genetic resources are provided access to and transfer of technology which makes use of those resources on mutually agreed terms, in accordance with international law, and consistent with Article 16, Paragraphs 4 and 5.

Paragraph 4 sets forth the Parties' obligations with respect to private sector technology. It requires each Party to take measures with the aim that the private sector facilitates access to, joint development, and transfer of technology referred to in Paragraph 1 for the benefit of both governmental institutions and the private sector of developing countries. Thus, the Convention does not direct the private sector to take such measures directly.

Paragraph 5 provides that the Parties, recognizing that patents and other property right may have an influence on the implementation of this Convention, shall cooperate in this regard subject to national legislation and international law in order to ensure that such rights are supportive of and do not run counter to its objectives. Apart from this obligation to cooperate, however, the United States understands that nothing in Article 16(5) otherwise alters the obligations of the Parties with respect to access to and transfer of technology, including the obligation of each Party, with respect to technology subject to patents and other intellectual property rights, to ensure that any access to or transfer of technology that occurs under the Agreement recognizes and is consistent with the adequate and effective protection of intellectual property rights.

Technology transfer by the U.S. private sector to other countries, including developing countries, requires an economic infrastructure in the recipient country that encourages the voluntary transfer of

technology and provides sufficient safeguards for investment. An essential component of this infrastructure is a legal regime that provides adequate and effective levels of intellectual property protection. To be considered adequate and effective, a country's intellectual property system must make protection available for all fields of technology and provide effective procedures for enforcing rights. When a recipient country has an inhospitable climate for investment, it becomes less likely that the U.S. private sector will enter that country's market. The absence of such protection has the effect of blocking access to new products based on foreign-originated proprietary technology and inhibiting joint development activities and application of proprietary technology to address indigenous problems or needs of the recipient country.

The Convention is consistent with these fundamental tenets. The United States understands that with respect to technology subject to patents and other intellectual property rights, Parties must ensure that access to and transfer of technology recognize and are consistent with adequate and effective protection of intellectual property rights. In particular, the Convention does not provide a basis for the use of compulsory licensing laws to compel private companies to transfer technology.

The Department of State therefore recommends that the following understanding be included in the United States instrument of ratification:

It is the understanding of the Government of the United States of America with respect to provisions addressing access to and transfer of technology that:

a. "fair and most favorable terms" in Article 16(2) means terms that are voluntarily agreed to by all parties to the transaction;

b. with respect to technology subject to patents and other intellectual property rights, Parties must ensure that any access to or transfer of technology that occurs recognizes and is consistent with the adequate and effective protection of intellectual property rights, and that Article 16(5) does not alter this obligation.

#### ARTICLE 17 (EXCHANGE OF INFORMATION)

Article 17 provides for the exchange of information from publicly available sources.

#### ARTICLE 18 (TECHNICAL AND SCIENTIFIC COOPERATION)

Article 18 requires the Parties to promote technical and scientific cooperation in the field of conservation of biological diversity and the sustainable use of its components.

#### ARTICLE 19 (HANDLING OF BIOTECHNOLOGY AND DISTRIBUTION OF ITS BENEFITS)

Paragraph 1 provides for the effective participation in biotechnology research activities by those Parties that provided the genetic resources for such research, where feasible in the territory of such Parties. The United States understands that with respect to research conducted by public or private entities in the United

States, the entity conducting the research shall determine the circumstances under which it is appropriate to provide for the participation of developing countries and whether it is feasible for such research to be performed in the territory of the developing country. The United States considers that in implementing Article 19(1) the Parties should take measures that promote the negotiation of agreements regarding research on genetic resources that are voluntarily accepted by both the provider of the genetic resource and the entity conducting the research activities.

The subject matter of Article 19(1) is virtually identical to the subject matter of Article 15(6). The United States understands Article 15(6) to apply only to scientific research conducted by a Party, while Article 19(1) addresses measures taken by Parties regarding scientific research conducted by either public or private entities. To confirm the United States' understanding of the relationship between Articles 15(6) and 19(1) and the scope of the obligations under Article 19(1), the Department of State recommends that the following understanding be included in the United States instrument of ratification:

It is the understanding of the Government of the United States of America with respect to provisions addressing the conduct and location of research based on genetic resources that:

- a. Article 15(6) applies only to scientific research conducted by a Party, while Article 19(1) addresses measures taken by Parties regarding scientific research conducted by either public or private entities.
- b. Article 19(1) cannot serve as a basis for any Party to unilaterally change the terms of existing agreements involving public or private U.S. entities.

Paragraph 2 requires each Party to take practicable measures to promote and advance access on a fair and equitable basis by Parties to the results and benefits arising from biotechnologies based upon genetic resources provided by those Parties. It specifies that such access shall be on mutually agreed terms.

The Convention does not contain provisions relating to the safe transfer, handling and use of living modified organisms resulting from biotechnology. Paragraph 3 calls upon the Parties to consider the need for and modalities of a possible protocol.

Paragraph 4 requires each Party to provide, directly or indirectly, available information about the use and safety regulations required by that Party in handling living modified organisms, as well as any available information on the potential adverse impact of the specific organisms concerned to the Party into which those organisms are to be introduced.

#### ARTICLE 20 (FINANCIAL RESOURCES)

Pursuant to this article the Parties undertake to provide financial resources in support of the Convention. Pursuant to Paragraph 1, each Party (including both developing and developed countries) undertakes, in accordance with its capabilities, to provide financial support and incentives in respect of those national activities which are intended to achieve the objectives of the Convention.

Paragraph 2 obligates the developed country Parties to provide new and additional financial resources to enable developing country Parties to meet the agreed full incremental costs to them of implementing measures which fulfill the obligations of this Convention and to benefit from its provisions and which costs are agreed between a developing country Party and the institutional structure established pursuant to Article 21 of the Convention. Assuming the Global Environment Facility ("GEF") is selected as the permanent institutional structure, the United States will implement this obligation through its periodic contributions to the GEF (for which a statutory appropriation will be necessary).

Agreement on the costs of implementing measures cannot be evaluated except in the context of agreement on a particular measure. Thus, the United States understands that to qualify for funding pursuant to this paragraph, both the costs *and* the measures must be agreed between a developing country Party and the institutional structure. The Department of State therefore recommends that the following understanding be included in the United States instrument of ratification:

It is the understanding of the Government of the United States of America that, with respect to Article 20(2), the financial resources provided by developed country Parties are to enable developing country Parties to meet the agreed full incremental costs to them of implementing measures that fulfill the obligations of the Convention and to benefit from its provisions and that are agreed between a developing country Party and the institutional structure referred to in Article 21.

Paragraph 3 states that developed country Parties may also provide financial resources through bilateral, regional and other multi-lateral channels.

Paragraph 4 notes, as a factual matter, that the extent to which developing country Parties will effectively implement their commitments under the Convention will depend on the effective implementation by developed country Parties of their commitments under the Convention related to financial resources and technology.

Paragraphs 5, 6, and 7 note the specific needs of least developed countries, small island states, and developing countries, including those that are most environmentally vulnerable, such as those with arid, and semi-arid zones, coastal and mountainous areas.

#### ARTICLE 21 (FINANCIAL MECHANISM)

This article establishes a mechanism for the provision of financial resources to assist developing countries in implementing the Convention. It sets forth the relationship between the COP and the institutional structure to which the operation of the mechanism is to be entrusted. Article 39 designates the Global Environment Facility of the World Bank, United Nations Environment Program, and the United Nations Development Program, provided it has been fully restructured in accordance with the provisions of this article, to be the international structure responsible for the operation of the financial mechanism. Although the article does not expressly designate the GEF as the permanent institutional structure, the article is drafted so as to enable the GEF to perform this function.

Paragraph 1 provides that the mechanism shall function under the authority and guidance of, and be accountable to, the COP and that the operation of the mechanism shall be carried out by such institutional structure as may be decided upon by the COP at its first meeting. In addition, it states that the COP shall determine the policy, strategy, program priorities and eligibility criteria relating to the access to and utilization of the financial resources. In this context, the United States understands that the "authority" of the COP relates to determining policy, strategy, program priorities, and eligibility criteria and not that the COP will have absolute control over the institutional structure. The Department of State therefore recommends that the following understanding be included in the United States instrument of ratification:

It is the understanding of the Government of the United States of America that, with respect to Article 21(1), the "authority" of the Conference of the Parties with respect to the financial mechanism relates to determining, for the purposes of the Convention, the policy, strategy, program priorities and eligibility criteria relating to the access to and utilization of such resources.

Paragraph 1 further provides that the contributions shall be such as to take into account the need for predictability, adequacy and timely flow of funds referred to in Article 20 in accordance with the amount of resources needed to be decided periodically by the COP. At the time of the adoption of the agreed text of the Convention, nineteen countries (including the United States) declared their understanding that the decision to be taken by the COP under Paragraph 1 refers to the "amount of resources needed" by the financial mechanism, not to the extent or nature and form of the contributions of the Parties. The Department of State therefore recommends that the following understanding be included in the United States instrument of ratification:

The Government of the United States of America understands that the decision to be taken by the Conference of the Parties under Article 21, Paragraph 1, concerns "the amount of resources needed" by the financial mechanism, and that nothing in Article 20 or 21 authorizes the Conference of the Parties to take decisions concerning the amount, nature, frequency or size of the contributions of the Parties to the institutional structure.

Paragraph 2 provides that the COP at its first meeting will determine the policy, strategy and program priorities, as well as detailed criteria and guidelines for eligibility for access to and utilization of the financial resources. In addition, the COP will decide on the arrangements to give effect to Paragraph 1 after consultation with the institutional structure.

Paragraph 3 provides that the COP will review the effectiveness of the mechanism established under this article. Paragraph 4 provides that the Parties shall consider strengthening existing financial institutions to provide financial resources for the conservation of biological diversity and the sustainable use of its components.

## ARTICLE 22 (RELATIONSHIP WITH OTHER INTERNATIONAL CONVENTIONS)

Paragraph 1 states that the provisions of the Convention shall not affect the rights and obligations of any Party deriving from any existing international agreement, except where the exercise of those rights and obligations would cause a serious damage or threat to biological diversity. This paragraph was intended to ensure that the Convention supplements, rather than supersedes, existing agreements (e.g., the Convention on International Trade in Endangered Species of Wild Fauna and Flora ["CITES"], the Convention on Wetlands of International Importance Especially as Waterfowl Habitat ["Ramsar"], the General Agreement on Tariffs and Trade ["GATT"]). The only exception would be where the exercise of rights and obligations pursuant to an existing agreement causes a serious damage or threat to biological diversity. The United States is aware of no agreement to which it is a Party, including those relating to the protection of intellectual property rights, the exercise of which would cause a serious damage or threat to biological diversity and would therefore be affected by this paragraph.

Paragraph 2 obligates the Parties to implement the Convention with respect to the marine environment consistently with the rights and obligations of States under the law of the sea. During the negotiations, the United States proposed, in addition to Article 22(2) the inclusion of a sovereign immunity clause, i.e., that the Convention does not apply to military vessels or aircraft, but that each Party has an obligation to ensure, by the adoption of appropriate measures not impairing operations or operational capabilities of such vessels or aircraft owned or operated by it, that such vessels or aircraft act in a manner consistent, so far as is reasonable and practicable, with the Convention.

In view of the reference in Paragraph 22(2) to the law of the sea and the recognition by many delegations during the negotiations that the United States proposal was a principle of customary international law and therefore superfluous, the United States withdrew its proposal. The Department of State therefore recommends that the following understanding be included in the United States instrument of ratification:

The Government of the United States of America understands that although the provisions of this Convention do not apply to any warship, naval auxiliary, or other vessels or aircraft owned or operated by a State and used, for the time being, only on government non-commercial service, each State shall ensure, by the adoption of appropriate measures not impairing operations or operational capabilities of such vessels or aircraft owned or operated by it, that such vessels or aircraft act in a manner consistent, so far as is reasonable and practicable, with this Convention.

## ARTICLE 23 (CONFERENCE OF THE PARTIES)

This article establishes a COP to meet not later than one year after the entry into force of the Convention and thereafter at regular intervals to be determined by the COP at its first meeting. This article further provides that the COP shall by consensus agree



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upon and adopt rules of procedure, as well as financial rules governing the funding of the Secretariat.

### ARTICLE 24 (SECRETARIAT)

This article provides for a secretariat to perform various administrative functions in the Convention. The interim secretariat, to function until after the first meeting of the COP, is to be provided by the Executive Director of the United Nations Environment Program (see Article 40).

### ARTICLE 25 (SUBSIDIARY BODY ON SCIENTIFIC, TECHNICAL AND TECHNOLOGICAL ADVICE)

This article establishes a body to provide the COP with timely advice relating to the implementation of the Convention. It shall be open to the participation by all Parties, shall be multidisciplinary, and shall comprise government representatives competent in the relevant field of expertise. Its specific functions are enumerated in the Convention.

### ARTICLE 26 (REPORTS)

This article obligates each Party to present to the COP reports on measures which it has taken for the implementation of the provisions of the Convention and their effectiveness in meeting the objectives of the Convention.

### ARTICLE 27 (SETTLEMENT OF DISPUTES)

This article provides for optional recourse to the International Court of Justice and/or arbitration, and mandatory recourse, at the request of one party to a dispute, to non-binding conciliation.

### ARTICLES 28-42 (FISCAL CLAUSES)

These are standard articles pertaining to such items as the adoption of additional protocols, amendment of the Convention, signature, ratification, and withdrawal procedures. Article 36 provides that the Convention will enter into force on the ninetieth day after the deposit of the thirtieth instrument of ratification, acceptance, approval or accession. Article 37 provides that no reservations may be made to the Convention.

No additional legislation is required to implement the Convention. The United States can implement the Convention through existing federal statutes. For example, the conservation of species is addressed by, *inter alia*, the Endangered Species Act, the Marine Mammal Protection Act, and the Magnuson Fishery Conservation and Management Act. The conservation of habitats is addressed by, *inter alia*, the Marine Protection, Research and Sanctuaries Act, the Coastal Zone Management Act, the National Forest Management Act of 1976, the Wilderness Act of 1964, and the Multiple-Use Sustained-Yield Act of 1960. Other laws require pollution controls, including *inter alia* the Clean Air Act, the Clean Water Act, the Rivers and Harbors Act, the Ocean Dumping Ban Act, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic

Substance Control Act (TSCA), and the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA).

Research activities are authorized by statutes including, *inter alia*, the 1946 Research and Marketing Act; the Act of August 4, 1965, as amended by the Food, Agriculture, Conservation, and Trade Act of 1990 (FACTA); the National Science Foundation Act of 1950, the Clean Water Act, the Endangered Species Act, and the Fish and Wildlife Act of 1956.

Education and public awareness is promoted by various statutes including, for example, the Fish and Wildlife Act of 1956, and the National Environmental Education Act (NEEA).

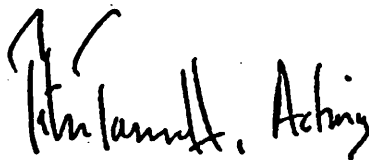
The United States cannot compel the transfer of technology held by private persons. With regard to technology controlled by the United States Government, the United States' authority to control the transfer of that technology is governed by specific statutory authorities, including, for example, FACTA; the Federal Technology Transfer Act of 1986; and the National Competitiveness Technology Transfer Act of 1989. Other statutes relevant to the transfer of technology include the Clean Air Act; the Federal Food, Drug, and Cosmetic Act (FFDCA), the Public Health Service Act. Trade secrets and confidential business information are protected under a variety of statutes, including the Trade Secrets Act, the Freedom of Information Act, FIFRA, and TSCA.

FACTA also requires that biomaterials assembled by the National Genetic Resources Program be made available upon request, without charge and without regard to the country from which the request originates.

Prompt ratification by the United States will demonstrate to the rest of the world the U.S. commitment to the conservation of the earth's species, their habitats, and ecosystems and to the sustainable use of the components of biological diversity. Ratification of the Convention is consistent with U.S. foreign policy and economic and environmental interests.

It is my recommendation that the Convention be transmitted to the Senate as soon as possible for its advice and consent to ratification.

Respectfully submitted.

Peter Landt, Acting

**CONVENTION  
ON BIOLOGICAL DIVERSITY**



**UNITED NATIONS**

**1992**

(i)

## CONVENTION ON BIOLOGICAL DIVERSITY

*Preamble**The Contracting Parties.*

*Conscious* of the intrinsic value of biological diversity and of the ecological, genetic, social, economic, scientific, educational, cultural, recreational and aesthetic values of biological diversity and its components.

*Conscious also* of the importance of biological diversity for evolution and for maintaining life sustaining systems of the biosphere.

*Affirming* that the conservation of biological diversity is a common concern of humankind.

*Reaffirming* that States have sovereign rights over their own biological resources.

*Reaffirming also* that States are responsible for conserving their biological diversity and for using their biological resources in a sustainable manner.

*Concerned* that biological diversity is being significantly reduced by certain human activities.

*Aware* of the general lack of information and knowledge regarding biological diversity and of the urgent need to develop scientific, technical and institutional capacities to provide the basic understanding upon which to plan and implement appropriate measures.

*Noting* that it is vital to anticipate, prevent and attack the causes of significant reduction or loss of biological diversity at source.

*Noting also* that where there is a threat of significant reduction or loss of biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat.

*Noting further* that the fundamental requirement for the conservation of biological diversity is the *in-situ* conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings.

*Noting further* that *ex-situ* measures, preferably in the country of origin, also have an important role to play.

*Recognizing* the close and traditional dependence of many indigenous and local communities embodying traditional lifestyles on biological resources, and the desirability of sharing equitably benefits arising

from the use of traditional knowledge, innovations and practices relevant to the conservation of biological diversity and the sustainable use of its components.

*Recognizing also* the vital role that women play in the conservation and sustainable use of biological diversity and affirming the need for the full participation of women at all levels of policy-making and implementation for biological diversity conservation,

*Stressing* the importance of, and the need to promote, international, regional and global cooperation among States and intergovernmental organizations and the non-governmental sector for the conservation of biological diversity and the sustainable use of its components,

*Acknowledging* that the provision of new and additional financial resources and appropriate access to relevant technologies can be expected to make a substantial difference in the world's ability to address the loss of biological diversity,

*Acknowledging further* that special provision is required to meet the needs of developing countries, including the provision of new and additional financial resources and appropriate access to relevant technologies.

*Noting* in this regard the special conditions of the least developed countries and small island States.

*Acknowledging* that substantial investments are required to conserve biological diversity and that there is the expectation of a broad range of environmental, economic and social benefits from those investments,

*Recognizing* that economic and social development and poverty eradication are the first and overriding priorities of developing countries,

*Aware* that conservation and sustainable use of biological diversity is of critical importance for meeting the food, health and other needs of the growing world population, for which purpose access to and sharing of both genetic resources and technologies are essential.

*Noting* that, ultimately, the conservation and sustainable use of biological diversity will strengthen friendly relations among States and contribute to peace for humankind,

*Desiring* to enhance and complement existing international arrangements for the conservation of biological diversity and sustainable use of its components, and

*Determined* to conserve and sustainably use biological diversity for the benefit of present and future generations.

*Article 1. Objectives*

The objectives of this Convention, to be pursued in accordance with its relevant provisions, are the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding.

*Article 2. Use of Terms*

For the purposes of this Convention:

"*Biological diversity*" means the variability among living organisms from all sources including, *inter alia*, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part: this includes diversity within species, between species and of ecosystems.

"*Biological resources*" includes genetic resources, organisms or parts thereof, populations, or any other biotic component of ecosystems with actual or potential use or value for humanity.

"*Biotechnology*" means any technological application that uses biological systems, living organisms, or derivatives thereof, to make or modify products or processes for specific use.

"*Country of origin of genetic resources*" means the country which possesses those genetic resources in *in-situ* conditions.

"*Country providing genetic resources*" means the country supplying genetic resources collected from *in-situ* sources, including populations of both wild and domesticated species, or taken from *ex-situ* sources, which may or may not have originated in that country.

"*Domesticated or cultivated species*" means species in which the evolutionary process has been influenced by humans to meet their needs.

"*Ecosystem*" means a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit.

"*Ex-situ conservation*" means the conservation of components of biological diversity outside their natural habitats.

"*Genetic material*" means any material of plant, animal, microbial or other origin containing functional units of heredity.

"*Genetic resources*" means genetic material of actual or potential value.

"Habitat" means the place or type of site where an organism or population naturally occurs.

"In-situ conditions" means conditions where genetic resources exist within ecosystems and natural habitats, and, in the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties.

"In-situ conservation" means the conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings and, in the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties.

"Protected area" means a geographically defined area which is designated or regulated and managed to achieve specific conservation objectives.

"Regional economic integration organization" means an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by this Convention and which has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to it.

"Sustainable use" means the use of components of biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations.

"Technology" includes biotechnology.

#### *Article 3. Principle*

States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

#### *Article 4. Jurisdictional Scope*

Subject to the rights of other States, and except as otherwise expressly provided in this Convention, the provisions of this Convention apply, in relation to each Contracting Party:

(a) In the case of components of biological diversity, in areas within the limits of its national jurisdiction; and

(b) In the case of processes and activities, regardless of where their effects occur, carried out under its jurisdiction or control, within the area of its national jurisdiction or beyond the limits of national jurisdiction.

*Article 5. Cooperation*

Each Contracting Party shall, as far as possible and as appropriate, cooperate with other Contracting Parties, directly or, where appropriate, through competent international organizations, in respect of areas beyond national jurisdiction and on other matters of mutual interest, for the conservation and sustainable use of biological diversity.

*Article 6. General Measures for Conservation and Sustainable Use*

Each Contracting Party shall, in accordance with its particular conditions and capabilities:

(a) Develop national strategies, plans or programmes for the conservation and sustainable use of biological diversity or adapt for this purpose existing strategies, plans or programmes which shall reflect, *inter alia*, the measures set out in this Convention relevant to the Contracting Party concerned; and

(b) Integrate, as far as possible and as appropriate, the conservation and sustainable use of biological diversity into relevant sectoral or cross-sectoral plans, programmes and policies.

*Article 7. Identification and Monitoring*

Each Contracting Party shall, as far as possible and as appropriate, in particular for the purposes of Articles 8 to 10:

(a) Identify components of biological diversity important for its conservation and sustainable use having regard to the indicative list of categories set down in Annex I:

(b) Monitor, through sampling and other techniques, the components of biological diversity identified pursuant to subparagraph (a) above, paying particular attention to those requiring urgent conservation measures and those which offer the greatest potential for sustainable use;

(c) Identify processes and categories of activities which have or are likely to have significant adverse impacts on the conservation and sustainable use of biological diversity, and monitor their effects through sampling and other techniques; and

(d) Maintain and organize, by any mechanism data, derived from identification and monitoring activities pursuant to subparagraphs (a), (b) and (c) above.



*Article 8. In-situ Conservation*

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

- (a) Establish a system of protected areas or areas where special measures need to be taken to conserve biological diversity;
- (b) Develop, where necessary, guidelines for the selection, establishment and management of protected areas or areas where special measures need to be taken to conserve biological diversity;
- (c) Regulate or manage biological resources important for the conservation of biological diversity whether within or outside protected areas, with a view to ensuring their conservation and sustainable use;
- (d) Promote the protection of ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings;
- (e) Promote environmentally sound and sustainable development in areas adjacent to protected areas with a view to furthering protection of these areas;
- (f) Rehabilitate and restore degraded ecosystems and promote the recovery of threatened species, *inter alia*, through the development and implementation of plans or other management strategies;
- (g) Establish or maintain means to regulate, manage or control the risks associated with the use and release of living modified organisms resulting from biotechnology which are likely to have adverse environmental impacts that could affect the conservation and sustainable use of biological diversity, taking also into account the risks to human health;
- (h) Prevent the introduction of, control or eradicate those alien species which threaten ecosystems, habitats or species;
- (i) Endeavour to provide the conditions needed for compatibility between present uses and the conservation of biological diversity and the sustainable use of its components;
- (j) Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices;

(k) Develop or maintain necessary legislation and/or other regulatory provisions for the protection of threatened species and populations;

(l) Where a significant adverse effect on biological diversity has been determined pursuant to Article 7, regulate or manage the relevant processes and categories of activities; and

(m) Cooperate in providing financial and other support for *in-situ* conservation outlined in subparagraphs (a) to (l) above, particularly to developing countries.

#### Article 9. *Ex-situ Conservation*

Each Contracting Party shall, as far as possible and as appropriate, and predominantly for the purpose of complementing *in-situ* measures:

(a) Adopt measures for the *ex-situ* conservation of components of biological diversity, preferably in the country of origin of such components:

(b) Establish and maintain facilities for *ex-situ* conservation of and research on plants, animals and micro-organisms, preferably in the country of origin of genetic resources:

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

(d) Regulate and manage collection of biological resources from natural habitats for *ex-situ* conservation purposes so as not to threaten ecosystems and *in-situ* populations of species, except where special temporary *ex-situ* measures are required under subparagraph (c) above; and

(e) Cooperate in providing financial and other support for *ex-situ* conservation outlined in subparagraphs (a) to (d) above and in the establishment and maintenance of *ex-situ* conservation facilities in developing countries.

#### Article 10. *Sustainable Use of Components of Biological Diversity*

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

(a) Integrate consideration of the conservation and sustainable use of biological resources into national decision-making;

(b) Adopt measures relating to the use of biological resources to avoid or minimize adverse impacts on biological diversity;

(c) Protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements;

(d) Support local populations to develop and implement remedial action in degraded areas where biological diversity has been reduced; and

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

#### *Article 11. Incentive Measures*

Each Contracting Party shall, as far as possible and as appropriate, adopt economically and socially sound measures that act as incentives for the conservation and sustainable use of components of biological diversity.

#### *Article 12. Research and Training*

The Contracting Parties, taking into account the special needs of developing countries, shall:

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

(b) Promote and encourage research which contributes to the conservation and sustainable use of biological diversity, particularly in developing countries, *inter alia*, in accordance with decisions of the Conference of the Parties taken in consequence of recommendations of the Subsidiary Body on Scientific, Technical and Technological Advice; and

(c) In keeping with the provisions of Articles 16, 18 and 20, promote and cooperate in the use of scientific advances in biological diversity research in developing methods for conservation and sustainable use of biological resources.

#### *Article 13. Public Education and Awareness*

The Contracting Parties shall:

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

(b) Cooperate, as appropriate, with other States and international organizations in developing educational and public awareness programmes, with respect to conservation and sustainable use of biological diversity.

*Article 14. Impact Assessment and Minimizing Adverse Impacts*

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

(a) Introduce appropriate procedures requiring environmental impact assessment of its proposed projects that are likely to have significant adverse effects on biological diversity with a view to avoiding or minimizing such effects and, where appropriate, allow for public participation in such procedures;

(b) Introduce appropriate arrangements to ensure that the environmental consequences of its programmes and policies that are likely to have significant adverse impacts on biological diversity are duly taken into account;

(c) Promote, on the basis of reciprocity, notification, exchange of information and consultation on activities under their jurisdiction or control which are likely to significantly affect adversely the biological diversity of other States or areas beyond the limits of national jurisdiction, by encouraging the conclusion of bilateral, regional or multilateral arrangements, as appropriate;

(d) In the case of imminent or grave danger or damage, originating under its jurisdiction or control, to biological diversity within the area under jurisdiction of other States or in areas beyond the limits of national jurisdiction, notify immediately the potentially affected States of such danger or damage, as well as initiate action to prevent or minimize such danger or damage; and

(e) Promote national arrangements for emergency responses to activities or events, whether caused naturally or otherwise, which present a grave and imminent danger to biological diversity and encourage international cooperation to supplement such national efforts and, where appropriate and agreed by the States or regional economic integration organizations concerned, to establish joint contingency plans.

2. The Conference of the Parties shall examine, on the basis of studies to be carried out, the issue of liability and redress, including restoration and compensation, for damage to biological diversity, except where such liability is a purely internal matter.

*Article 15. Access to Genetic Resources*

1. Recognizing the sovereign rights of States over their natural resources, the authority to determine access to genetic resources rests with the national governments and is subject to national legislation.

2. Each Contracting Party shall endeavour to create conditions to facilitate access to genetic resources for environmentally sound uses by other Contracting Parties and not to impose restrictions that run counter to the objectives of this Convention.

3. For the purpose of this Convention, the genetic resources being provided by a Contracting Party, as referred to in this Article and Articles 18 and 19, are only those that are provided by Contracting Parties that are countries of origin of such resources or by the Parties that have acquired the genetic resources in accordance with this Convention.

4. Access, where granted, shall be on mutually agreed terms and subject to the provisions of this Article.

5. Access to genetic resources shall be subject to prior informed consent of the Contracting Party providing such resources, unless otherwise determined by that Party.

6. Each Contracting Party shall endeavour to develop and carry out scientific research based on genetic resources provided by other Contracting Parties with the full participation of, and where possible in, such Contracting Parties.

7. Each Contracting Party shall take legislative, administrative or policy measures, as appropriate, and in accordance with Articles 18 and 19 and, where necessary, through the financial mechanism established by Articles 20 and 21 with the aim of sharing in a fair and equitable way the results of research and development and the benefits arising from the commercial and other utilization of genetic resources with the Contracting Party providing such resources. Such sharing shall be upon mutually agreed terms.

#### *Article 16. Access to and Transfer of Technology*

1. Each Contracting Party, recognizing that technology includes biotechnology, and that both access to and transfer of technology among Contracting Parties are essential elements for the attainment of the objectives of this Convention, undertakes subject to the provisions of this Article to provide and/or facilitate access for and transfer to other Contracting Parties of technologies that are relevant to the conservation and sustainable use of biological diversity or make use of genetic resources and do not cause significant damage to the environment.

2. Access to and transfer of technology referred to in paragraph 1 above to developing countries shall be provided and/or facilitated under fair and most favourable terms, including on concessional and preferential terms where mutually agreed, and, where necessary, in accordance with the financial mechanism established by Articles 20 and 21. In the case of technology subject to patents and other intellectual property rights, such access and transfer shall be provided on terms

which recognize and are consistent with the adequate and effective protection of intellectual property rights. The application of this paragraph shall be consistent with paragraphs 3, 4 and 5 below.

3. Each Contracting Party shall take legislative, administrative or policy measures, as appropriate, with the aim that Contracting Parties, in particular those that are developing countries, which provide genetic resources are provided access to and transfer of technology which makes use of those resources, on mutually agreed terms, including technology protected by patents and other intellectual property rights, where necessary, through the provisions of Articles 20 and 21 and in accordance with international law and consistent with paragraphs 4 and 5 below.

4. Each Contracting Party shall take legislative, administrative or policy measures, as appropriate, with the aim that the private sector facilitates access to, joint development and transfer of technology referred to in paragraph 1 above for the benefit of both governmental institutions and the private sector of developing countries and in this regard shall abide by the obligations included in paragraphs 1, 2 and 3 above.

5. The Contracting Parties, recognizing that patents and other intellectual property rights may have an influence on the implementation of this Convention, shall cooperate in this regard subject to national legislation and international law in order to ensure that such rights are supportive of and do not run counter to its objectives.

#### *Article 17. Exchange of Information*

1. The Contracting Parties shall facilitate the exchange of information, from all publicly available sources, relevant to the conservation and sustainable use of biological diversity, taking into account the special needs of developing countries.

2. Such exchange of information shall include exchange of results of technical, scientific and socio-economic research, as well as information on training and surveying programmes, specialized knowledge, indigenous and traditional knowledge as such and in combination with the technologies referred to in Article 16, paragraph 1. It shall also, where feasible, include repatriation of information.

#### *Article 18. Technical and Scientific Cooperation*

1. The Contracting Parties shall promote international technical and scientific cooperation in the field of conservation and sustainable use of biological diversity, where necessary, through the appropriate international and national institutions.

2. Each Contracting Party shall promote technical and scientific cooperation with other Contracting Parties, in particular developing countries, in implementing this Convention, *inter alia*, through the development and implementation of national policies. In promoting such cooperation, special attention should be given to the development and strengthening of national capabilities, by means of human resources development and institution building.

3. The Conference of the Parties, at its first meeting, shall determine how to establish a clearing-house mechanism to promote and facilitate technical and scientific cooperation.

4. The Contracting Parties shall, in accordance with national legislation and policies, encourage and develop methods of cooperation for the development and use of technologies, including indigenous and traditional technologies, in pursuance of the objectives of this Convention. For this purpose, the Contracting Parties shall also promote cooperation in the training of personnel and exchange of experts.

5. The Contracting Parties shall, subject to mutual agreement, promote the establishment of joint research programmes and joint ventures for the development of technologies relevant to the objectives of this Convention.

*Article 19. Handling of Biotechnology and Distribution of its Benefits*

1. Each Contracting Party shall take legislative, administrative or policy measures, as appropriate, to provide for the effective participation in biotechnological research activities by those Contracting Parties, especially developing countries, which provide the genetic resources for such research, and where feasible in such Contracting Parties.

2. Each Contracting Party shall take all practicable measures to promote and advance priority access on a fair and equitable basis by Contracting Parties, especially developing countries, to the results and benefits arising from biotechnologies based upon genetic resources provided by those Contracting Parties. Such access shall be on mutually agreed terms.

3. The Parties shall consider the need for and modalities of a protocol setting out appropriate procedures, including, in particular, advance informed agreement, in the field of the safe transfer, handling and use of any living modified organism resulting from biotechnology that may have adverse effect on the conservation and sustainable use of biological diversity.

4. Each Contracting Party shall, directly or by requiring any natural or legal person under its jurisdiction providing the organisms referred to in paragraph 3 above, provide any available information about the use and safety regulations required by that Contracting Party in handling

such organisms, as well as any available information on the potential adverse impact of the specific organisms concerned to the Contracting Party into which those organisms are to be introduced.

*Article 20. Financial Resources*

1. Each Contracting Party undertakes to provide, in accordance with its capabilities, financial support and incentives in respect of those national activities which are intended to achieve the objectives of this Convention, in accordance with its national plans, priorities and programmes.
2. The developed country Parties shall provide new and additional financial resources to enable developing country Parties to meet the agreed full incremental costs to them of implementing measures which fulfil the obligations of this Convention and to benefit from its provisions and which costs are agreed between a developing country Party and the institutional structure referred to in Article 21, in accordance with policy, strategy, programme priorities and eligibility criteria and an indicative list of incremental costs established by the Conference of the Parties. Other Parties, including countries undergoing the process of transition to a market economy, may voluntarily assume the obligations of the developed country Parties. For the purpose of this Article, the Conference of the Parties, shall at its first meeting establish a list of developed country Parties and other Parties which voluntarily assume the obligations of the developed country Parties. The Conference of the Parties shall periodically review and if necessary amend the list. Contributions from other countries and sources on a voluntary basis would also be encouraged. The implementation of these commitments shall take into account the need for adequacy, predictability and timely flow of funds and the importance of burden-sharing among the contributing Parties included in the list.
3. The developed country Parties may also provide, and developing country Parties avail themselves of, financial resources related to the implementation of this Convention through bilateral, regional and other multilateral channels.
4. The extent to which developing country Parties will effectively implement their commitments under this Convention will depend on the effective implementation by developed country Parties of their commitments under this Convention related to financial resources and transfer of technology and will take fully into account the fact that economic and social development and eradication of poverty are the first and overriding priorities of the developing country Parties.
5. The Parties shall take full account of the specific needs and special situation of least developed countries in their actions with regard to funding and transfer of technology.



6. The Contracting Parties shall also take into consideration the special conditions resulting from the dependence on, distribution and location of biological diversity within developing country Parties, in particular small island States.

7. Consideration shall also be given to the special situation of developing countries, including those that are most environmentally vulnerable, such as those with arid and semi-arid zones, coastal and mountainous areas.

*Article 21. Financial Mechanism*

1. There shall be a mechanism for the provision of financial resources to developing country Parties for purposes of this Convention on a grant or concessional basis the essential elements of which are described in this Article. The mechanism shall function under the authority and guidance of, and be accountable to, the Conference of the Parties for purposes of this Convention. The operations of the mechanism shall be carried out by such institutional structure as may be decided upon by the Conference of the Parties at its first meeting. For purposes of this Convention, the Conference of the Parties shall determine the policy, strategy, programme priorities and eligibility criteria relating to the access to and utilization of such resources. The contributions shall be such as to take into account the need for predictability, adequacy and timely flow of funds referred to in Article 20 in accordance with the amount of resources needed to be decided periodically by the Conference of the Parties and the importance of burden-sharing among the contributing Parties included in the list referred to in Article 20, paragraph 2. Voluntary contributions may also be made by the developed country Parties and by other countries and sources. The mechanism shall operate within a democratic and transparent system of governance.

2. Pursuant to the objectives of this Convention, the Conference of the Parties shall at its first meeting determine the policy, strategy and programme priorities, as well as detailed criteria and guidelines for eligibility for access to and utilization of the financial resources including monitoring and evaluation on a regular basis of such utilization. The Conference of the Parties shall decide on the arrangements to give effect to paragraph 1 above after consultation with the institutional structure entrusted with the operation of the financial mechanism.

3. The Conference of the Parties shall review the effectiveness of the mechanism established under this Article, including the criteria and guidelines referred to in paragraph 2 above, not less than two years after the entry into force of this Convention and thereafter on a regular basis. Based on such review, it shall take appropriate action to improve the effectiveness of the mechanism if necessary.

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

*Article 22. Relationship with Other International Conventions*

1. The provisions of this Convention shall not affect the rights and obligations of any Contracting Party deriving from any existing international agreement, except where the exercise of those rights and obligations would cause a serious damage or threat to biological diversity.

2. Contracting Parties shall implement this Convention with respect to the marine environment consistently with the rights and obligations of States under the law of the sea.

*Article 23. Conference of the Parties*

1. A Conference of the Parties is hereby established. The first meeting of the Conference of the Parties shall be convened by the Executive Director of the United Nations Environment Programme not later than one year after the entry into force of this Convention. Thereafter, ordinary meetings of the Conference of the Parties shall be held at regular intervals to be determined by the Conference at its first meeting.

2. Extraordinary meetings of the Conference of the Parties shall be held at such other times as may be deemed necessary by the Conference, or at the written request of any Party, provided that, within six months of the request being communicated to them by the Secretariat, it is supported by at least one third of the Parties.

3. The Conference of the Parties shall by consensus agree upon and adopt rules of procedure for itself and for any subsidiary body it may establish, as well as financial rules governing the funding of the Secretariat. At each ordinary meeting, it shall adopt a budget for the financial period until the next ordinary meeting.

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

(a) Establish the form and the intervals for transmitting the information to be submitted in accordance with Article 28 and consider such information as well as reports submitted by any subsidiary body:

(b) Review scientific, technical and technological advice on biological diversity provided in accordance with Article 25;

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

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

(e) Consider amendments to any protocol, as well as to any annexes thereto, and, if so decided, recommend their adoption to the parties to the protocol concerned:

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

(g) Establish such subsidiary bodies, particularly to provide scientific and technical advice, as are deemed necessary for the implementation of this Convention:

(h) Contact, through the Secretariat, the executive bodies of conventions dealing with matters covered by this Convention with a view to establishing appropriate forms of cooperation with them; and

(i) Consider and undertake any additional action that may be required for the achievement of the purposes of this Convention in the light of experience gained in its operation.

5. The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State not Party to this Convention, may be represented as observers at meetings of the Conference of the Parties. Any other body or agency, whether governmental or non-governmental, qualified in fields relating to conservation and sustainable use of biological diversity, which has informed the Secretariat of its wish to be represented as an observer at a meeting of the Conference of the Parties, may be admitted unless at least one third of the Parties present object. The admission and participation of observers shall be subject to the rules of procedure adopted by the Conference of the Parties.

#### *Article 24. Secretariat*

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

(a) To arrange for and service meetings of the Conference of the Parties provided for in Article 23:

(b) To perform the functions assigned to it by any protocol:

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

(d) To coordinate with other relevant international bodies and, in particular to enter into such administrative and contractual arrangements as may be required for the effective discharge of its functions; and

(e) To perform such other functions as may be determined by the Conference of the Parties.

2. At its first ordinary meeting, the Conference of the Parties shall designate the secretariat from amongst those existing competent international organizations which have signified their willingness to carry out the secretariat functions under this Convention.

*Article 25. Subsidiary Body on Scientific, Technical and Technological Advice*

1. A subsidiary body for the provision of scientific, technical and technological advice is hereby established to provide the Conference of the Parties and, as appropriate, its other subsidiary bodies with timely advice relating to the implementation of this Convention. This body shall be open to participation by all Parties and shall be multidisciplinary. It shall comprise government representatives competent in the relevant field of expertise. It shall report regularly to the Conference of the Parties on all aspects of its work.

2. Under the authority of and in accordance with guidelines laid down by the Conference of the Parties, and upon its request, this body shall:

(a) Provide scientific and technical assessments of the status of biological diversity;

(b) Prepare scientific and technical assessments of the effects of types of measures taken in accordance with the provisions of this Convention;

(c) Identify innovative, efficient and state-of-the-art technologies and know-how relating to the conservation and sustainable use of biological diversity and advise on the ways and means of promoting development and/or transferring such technologies;

(d) Provide advice on scientific programmes and international cooperation in research and development related to conservation and sustainable use of biological diversity; and

(e) Respond to scientific, technical, technological and methodological questions that the Conference of the Parties and its subsidiary bodies may put to the body.

3. The functions, terms of reference, organization and operation of this body may be further elaborated by the Conference of the Parties.

*Article 26. Reports*

Each Contracting Party shall, at intervals to be determined by the Conference of the Parties, present to the Conference of the Parties, reports on measures which it has taken for the implementation of the provisions of this Convention and their effectiveness in meeting the objectives of this Convention.

*Article 27. Settlement of Disputes*

1. In the event of a dispute between Contracting Parties concerning the interpretation or application of this Convention, the parties concerned shall seek solution by negotiation.

2. If the parties concerned cannot reach agreement by negotiation, they may jointly seek the good offices of, or request mediation by, a third party.

3. When ratifying, accepting, approving or acceding to this Convention, or at any time thereafter, a State or regional economic integration organization may declare in writing to the Depository that for a dispute not resolved in accordance with paragraph 1 or paragraph 2 above, it accepts one or both of the following means of dispute settlement as compulsory:

(a) Arbitration in accordance with the procedure laid down in Part 1 of Annex II;

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

4. If the parties to the dispute have not, in accordance with paragraph 3 above, accepted the same or any procedure, the dispute shall be submitted to conciliation in accordance with Part 2 of Annex II unless the parties otherwise agree.

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

*Article 28. Adoption of Protocols*

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

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

3. The text of any proposed protocol shall be communicated to the Contracting Parties by the Secretariat at least six months before such a meeting.

*Article 29. Amendment of the Convention or Protocols*

1. Amendments to this Convention may be proposed by any Contracting Party. Amendments to any protocol may be proposed by any Party to that protocol.

2. Amendments to this Convention shall be adopted at a meeting of the Conference of the Parties. Amendments to any protocol shall be adopted at a meeting of the Parties to the Protocol in question. The text of any proposed amendment to this Convention or to any protocol, except as may otherwise be provided in such protocol, shall be communicated to the Parties to the instrument in question by the secretariat at least six months before the meeting at which it is proposed for adoption. The secretariat shall also communicate proposed amendments to the signatories to this Convention for information.

3. The Parties shall make every effort to reach agreement on any proposed amendment to this Convention or to any protocol by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a two-third majority vote of the Parties to the instrument in question present and voting at the meeting, and shall be submitted by the Depository to all Parties for ratification, acceptance or approval.

4. Ratification, acceptance or approval of amendments shall be notified to the Depository in writing. Amendments adopted in accordance with paragraph 3 above shall enter into force among Parties having accepted them on the ninetieth day after the deposit of instruments of ratification, acceptance or approval by at least two thirds of the Contracting Parties to this Convention or of the Parties to the protocol concerned, except as may otherwise be provided in such protocol. Thereafter the amendments shall enter into force for any other Party on the ninetieth day after that Party deposits its instrument of ratification, acceptance or approval of the amendments.

5. For the purposes of this Article, "Parties present and voting" means Parties present and casting an affirmative or negative vote.

*Article 30. Adoption and Amendment of Annexes*

1. The annexes to this Convention or to any protocol shall form an integral part of the Convention or of such protocol, as the case may be, and, unless expressly provided otherwise, a reference to this Convention or its protocols constitutes at the same time a reference to any annexes thereto. Such annexes shall be restricted to procedural, scientific, technical and administrative matters.

2. Except as may be otherwise provided in any protocol with respect to its annexes, the following procedure shall apply to the proposal, adoption and entry into force of additional annexes to this Convention or of annexes to any protocol:

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

(b) Any Party that is unable to approve an additional annex to this Convention or an annex to any protocol to which it is Party shall so notify the Depositary, in writing, within one year from the date of the communication of the adoption by the Depositary. The Depositary shall without delay notify all Parties of any such notification received. A Party may at any time withdraw a previous declaration of objection and the annexes shall thereupon enter into force for that Party subject to subparagraph (c) below:

(c) On the expiry of one year from the date of the communication of the adoption by the Depositary, the annex shall enter into force for all Parties to this Convention or to any protocol concerned which have not submitted a notification in accordance with the provisions of subparagraph (b) above.

3. The proposal, adoption and entry into force of amendments to annexes to this Convention or to any protocol shall be subject to the same procedure as for the proposal, adoption and entry into force of annexes to the Convention or annexes to any protocol.

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

*Article 31. Right to Vote*

1. Except as provided for in paragraph 2 below, each Contracting Party to this Convention or to any protocol shall have one vote.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote with a number of votes equal to the number of their member States which are Contracting Parties to this Convention or the relevant protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs, and vice versa.

*Article 32. Relationship between this Convention and Its Protocols*

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

2. Decisions under any protocol shall be taken only by the Parties to the protocol concerned. Any Contracting Party that has not ratified, accepted or approved a protocol may participate as an observer in any meeting of the parties to that protocol.

*Article 33. Signature*

This Convention shall be open for signature at Rio de Janeiro by all States and any regional economic integration organization from 5 June 1992 until 14 June 1992, and at the United Nations Headquarters in New York from 15 June 1992 to 4 June 1993.

*Article 34. Ratification, Acceptance or Approval*

1. This Convention and any protocol shall be subject to ratification, acceptance or approval by States and by regional economic integration organizations. Instruments of ratification, acceptance or approval shall be deposited with the Depository.

2. Any organization referred to in paragraph 1 above which becomes a Contracting Party to this Convention or any protocol without any of its member States being a Contracting Party shall be bound by all the obligations under the Convention or the protocol, as the case may be. In the case of such organizations, one or more of whose member States is a Contracting Party to this Convention or relevant protocol, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under the Convention or protocol, as the case may be. In such cases, the organization and the member States shall not be entitled to exercise rights under the Convention or relevant protocol concurrently.

3. In their instruments of ratification, acceptance or approval, the organizations referred to in paragraph 1 above shall declare the extent of their competence with respect to the matters governed by the Convention or the relevant protocol. These organizations shall also inform the Depository of any relevant modification in the extent of their competence.

*Article 35. Accession*

1. This Convention and any protocol shall be open for accession by States and by regional economic integration organizations from the date on which the Convention or the protocol concerned is closed for signature. The instruments of accession shall be deposited with the Depository.

2. In their instruments of accession, the organizations referred to in paragraph 1 above shall declare the extent of their competence with respect to the matters governed by the Convention or the relevant protocol. These organizations shall also inform the Depository of any relevant modification in the extent of their competence.



3. The provisions of Article 34, paragraph 2, shall apply to regional economic integration organizations which accede to this Convention or any protocol.

*Article 36. Entry Into Force*

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the thirtieth instrument of ratification, acceptance, approval or accession.

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

3. For each Contracting Party which ratifies, accepts or approves this Convention or accedes thereto after the deposit of the thirtieth instrument of ratification, acceptance, approval or accession, it shall enter into force on the ninetieth day after the date of deposit by such Contracting Party of its instrument of ratification, acceptance, approval or accession.

4. Any protocol, except as otherwise provided in such protocol, shall enter into force for a Contracting Party that ratifies, accepts or approves that protocol or accedes thereto after its entry into force pursuant to paragraph 2 above, on the ninetieth day after the date on which that Contracting Party deposits its instrument of ratification, acceptance, approval or accession, or on the date on which this Convention enters into force for that Contracting Party, whichever shall be the later.

5. For the purposes of paragraphs 1 and 2 above, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

*Article 37. Reservations*

No reservations may be made to this Convention.

*Article 38. Withdrawals*

1. At any time after two years from the date on which this Convention has entered into force for a Contracting Party, that Contracting Party may withdraw from the Convention by giving written notification to the Depositary.

2. Any such withdrawal shall take place upon expiry of one year after the date of its receipt by the Depositary, or on such later date as may be specified in the notification of the withdrawal.

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

*Article 39. Financial Interim Arrangements*

Provided that it has been fully restructured in accordance with the requirements of Article 21, the Global Environment Facility of the United Nations Development Programme, the United Nations Environment Programme and the International Bank for Reconstruction and Development shall be the institutional structure referred to in Article 21 on an interim basis, for the period between the entry into force of this Convention and the first meeting of the Conference of the Parties or until the Conference of the Parties decides which institutional structure will be designated in accordance with Article 21.

*Article 40. Secretariat Interim Arrangements*

The secretariat to be provided by the Executive Director of the United Nations Environment Programme shall be the secretariat referred to in Article 24, paragraph 2, on an interim basis for the period between the entry into force of this Convention and the first meeting of the Conference of the Parties.

*Article 41. Depositary*

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

*Article 42. Authentic Texts*

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, being duly authorized to that effect, have signed this Convention.

Done at Rio de Janeiro on this fifth day of June, one thousand nine hundred and ninety-two.

*Annex I*

## IDENTIFICATION AND MONITORING

1. Ecosystems and habitats: containing high diversity, large numbers of endemic or threatened species, or wilderness; required by migratory species; of social, economic, cultural or scientific importance; or, which are representative, unique or associated with key evolutionary or other biological processes;
2. Species and communities which are: threatened; wild relatives of domesticated or cultivated species; of medicinal, agricultural or other economic value; or social, scientific or cultural importance; or importance for research into the conservation and sustainable use of biological diversity, such as indicator species; and
3. Described genomes and genes of social, scientific or economic importance.

*Annex II*

## Part I

## ARBITRATION

*Article 1*

The claimant party shall notify the secretariat that the parties are referring a dispute to arbitration pursuant to Article 27. The notification shall state the subject-matter of arbitration and include, in particular, the articles of the Convention or the protocol, the interpretation or application of which are at issue. If the parties do not agree on the subject matter of the dispute before the President of the tribunal is designated, the arbitral tribunal shall determine the subject matter. The secretariat shall forward the information thus received to all Contracting Parties to this Convention or to the protocol concerned.

*Article 2*

1. In disputes between two parties, the arbitral tribunal shall consist of three members. Each of the parties to the dispute shall appoint an arbitrator and the two arbitrators so appointed shall designate by common agreement the third arbitrator who shall be the President of the tribunal. The latter shall not be a national of one of the parties to the dispute, nor have his or her usual place of residence in the territory of one of these parties, nor be employed by any of them, nor have dealt with the case in any other capacity.

2. In disputes between more than two parties, parties in the same interest shall appoint one arbitrator jointly by agreement.

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

*Article 3*

1. If the President of the arbitral tribunal has not been designated within two months of the appointment of the second arbitrator, the Secretary-General of the United Nations shall, at the request of a party, designate the President within a further two-month period.

2. If one of the parties to the dispute does not appoint an arbitrator within two months of receipt of the request, the other party may inform the Secretary-General who shall make the designation within a further two-month period.

*Article 4*

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

*Article 5*

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

*Article 6*

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

*Article 7*

The parties to the dispute shall facilitate the work of the arbitral tribunal and, in particular, using all means at their disposal, shall:

(a) Provide it with all relevant documents, information and facilities; and

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

*Article 8*

The parties and the arbitrators are under an obligation to protect the confidentiality of any information they receive in confidence during the proceedings of the arbitral tribunal.

*Article 9*

Unless the arbitral tribunal determines otherwise because of the particular circumstances of the case, the costs of the tribunal shall be borne by the parties to the dispute in equal shares. The tribunal shall keep a record of all its costs, and shall furnish a final statement thereof to the parties.

*Article 10*

Any Contracting Party that has an interest of a legal nature in the subject-matter of the dispute which may be affected by the decision in the case, may intervene in the proceedings with the consent of the tribunal.

*Article 11*

The tribunal may hear and determine counterclaims arising directly out of the subject-matter of the dispute.

*Article 12*

Decisions both on procedure and substance of the arbitral tribunal shall be taken by a majority vote of its members.

*Article 13*

If one of the parties to the dispute does not appear before the arbitral tribunal or fails to defend its case, the other party may request the tribunal to continue the proceedings and to make its award. Absence of a party or a failure of a party to defend its case shall not constitute a bar to the proceedings. Before rendering its final decision, the arbitral tribunal must satisfy itself that the claim is well founded in fact and law.

*Article 14*

The tribunal shall render its final decision within five months of the date on which it is fully constituted unless it finds it necessary to extend the time-limit for a period which should not exceed five more months.

*Article 15*

The final decision of the arbitral tribunal shall be confined to the subject-matter of the dispute and shall state the reasons on which it is based. It shall contain the names of the members who have participated and the date of the final decision. Any member of the tribunal may attach a separate or dissenting opinion to the final decision.

*Article 16*

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

*Article 17*

Any controversy which may arise between the parties to the dispute as regards the interpretation or manner of implementation of the final decision may be submitted by either party for decision to the arbitral tribunal which rendered it.

## Part 2

## CONCILIATION

*Article 1*

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

*Article 2*

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

*Article 3*

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

*Article 4*

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

*Article 5*

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

*Article 6*

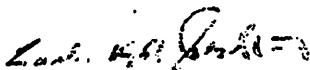
A disagreement as to whether the conciliation commission has competence shall be decided by the commission.

I hereby certify that the foregoing is a true copy of the Convention on Biological Diversity, opened for signature at Rio de Janeiro on 5 June 1992, the original of which is deposited with the Secretary-General of the United Nations.

Je certifie que le texte qui précède est une copie conforme de la Convention sur la diversité biologique, ouverte à la signature à Rio de Janeiro le 5 juin 1992, dont l'original se trouve déposé auprès du Secrétaire général de l'Organisation des Nations Unies.

For the Secretary-General,  
Under-Secretary-General  
The Legal Counsel

Pour le Secrétaire général,  
Secrétaire général adjoint  
Le Conseiller juridique



Carl-August Fleischhauer

United Nations, New York  
17 July 1992

Organisation des Nations Unies, New York  
Le 17 juillet 1992

