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The Convention on Biological Diversity

INTRODUCTION

According to the foreword in the 1993 IUCN Explanatory Guide to the Biodiversity Convention, the convention marks an historic commitment by states to conserve biological diversity and to ensure that biological resources are used sustainably, with benefits of such use shared equitably. While other conventions cover portions of biodiversity—by protecting biodiversity in wetlands or among species for example—the convention on biological diversity is the first all-encompassing international agreement to cover all genes, species and ecosystems.

BACKGROUND

In recent years, alarm about biodiversity destruction led to formulating the convention on biological diversity, which reflects the many policy and scientific recommendations for biodiversity protection made over the years by experts and institutions such as UNEP, FAO and IUCN-The World Conservation Union. These groups, along with NGOs worldwide, have been instrumental in raising public and governmental awareness about the urgent need to curb the destruction of biological diversity.

A first step towards a convention was the convening of a series of biodiversity expert group meetings by UNEP Governing Council decisions 14/26 and 15/34 of 1987. The Ad Hoc Working Group of Experts on Biological Diversity began meeting in November 1988, when it concluded that existing conventions were inadequate to protect biodiversity against growing threats: the World Heritage Convention covered limited sites; CITES covered threats to endangered species only; Ramsar covered a specific ecosystem, wetlands. But none met the global need to conserve biodiversity worldwide. The ad hoc working group then prepared a number of studies on specific aspects of biodiversity protection and investigated whether an umbrella convention was a good idea.

By the summer of 1990, the working group had reached consensus: a new global treaty on biodiversity conservation

was urgently needed in the form of a framework treaty, building upon existing conventions. Sufficient progress had by then been made for UNEP to set up an additional Sub-Working Group on Biotechnology to prepare terms of reference on such issues as biotechnology transfer, conservation of wild and domesticated species, access to genetic resources and technology, financial support, and safety of release or experimentation on genetically modified organisms.

The same year, UNEP's Governing Council created an Ad Hoc Group of Legal and Technical Experts to prepare a new and global international legal instrument to protect biological diversity, paying particular attention to the need to share costs and benefits between developed and developing countries, and to how to support innovation by local people.

In 1991, formal negotiations began under the Intergovernmental Negotiating Committee (INC) for a Convention on Biological Diversity. The negotiations were chaired by Vicente Sánchez, Chile's ambassador to Kenya.

Biological diversity—or biodiversity—is the term given to the variety of life on Earth and the natural patterns it forms. Its meaning can be best understood by considering it in two stages: first, all species of life—animals, plants, micro-organisms, and so on—and the genes that each individual contains; second, the critical interrelationships or “ecosystems” which those species form.

Nobody knows just how many different species of plants and animals there are in the world. Estimates range widely between 10 million and 50 million. So far, scientists have only named and classified around 1.5 million separate life forms.

Growing populations, pollution, overuse of natural resources—like fish and timber, the conversion of wild habitats into farmland and the increased mechanization of farming, expanding cities, and industrial areas—are working to drive many plant and animal species to the brink of extinction.

The first session of the INC was also known as the third session of the Ad Hoc Working Group of Legal and Technical Experts. It considered the first draft of the convention prepared by the UNEP secretariat and a small group of experts. In total, five INC sessions were held. So difficult were negotiations on certain issues giving rise to North/South disputes that the convention was not adopted until 22 May 1992 in Nairobi (Kenya), just days before the opening of United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro. The convention was finally opened for signature at the Earth Summit on 5 June 1992. After some hesitation, Japan and the European Community signed the convention, but the United States would wait a year and experience a change of government before doing the same.

The convention would take 18 months to enter into force, and a key question was what would happen during this interim period. Given the extreme urgency of immediate biodiversity protection, Resolution 2 of the Nairobi Final Act adopted at the last INC session in Nairobi and UNEP Governing Council's resolution 17/30 called for action, inviting UNEP to convene an Intergovernmental Committee on the Convention on Biodiversity (ICCBD) to prepare the first Conference of the Parties (COP), and calling for scientists to advise the ICCBD.

POST INCD ACTIVITIES

In November 1992, UNEP's Executive Director appointed four expert panels to prepare advice on specific issues for the first ICCBD, scheduled for October 1993 in Geneva (Switzerland). Panel 1 developed a methodology for setting priorities for action and proposed an agenda for technical and scientific research. Panel 2 identified the socioeconomic forces that cause biodiversity loss and recommended steps to address these issues. Panel 3 advocated access to information and capacity building as key conditions to the convention's implementation, while making recommendations on funding. Panel 4 left it to the COP to take a political decision regarding a biotechnology protocol. The four reports were presented to the first ICCBD.

A number of parallel meetings also took place during the process leading up to the first ICCBD. On 24-28 May 1993, an Expert Conference on Biodiversity gathered scientists and policy makers to discuss ecosystem functions of biodiversity, loss and conservation of biodiversity, sociocultural and economic aspects of biodiversity, its conservation and use. The conference, hosted by Norway and UNEP and held in Trondheim (Norway), was seen as a crucial point in the transition from scientific knowledge to political action in providing input to UNEP's preparatory work for the ICCBD meeting.

Another meeting which provided key input into the ICCBD process was the Global Diversity Forum organized at IUCN-The World Conservation Union in Gland (Switzerland) from 7-9 October 1993 by UNEP, the African Centre for Technology Studies, the IUCN and the World Resources Institute. Forum participants—farmers, scientists, activists, representatives of business, industry, government and indigenous leaders—examined in a neutral setting key issues facing the biodiversity convention, such as intellectual

property rights, biosafety, and the incorporation of biodiversity into public policy and law. They emphasized the importance of participation and information in implementing of the convention and called for a diversity of mechanisms to finance the convention's implementation, stimulation of NGO/government alliances, and reform of national institutions where needed.

These and other interim activities were all part of the formal and informal ICCBD process, which itself was designed to pave the way for the COP. According to the convention, the COP would have to take place no later than one year after the convention's entry into force, which became formal on 29 December 1993, 90 days after deposit of the instrument of ratification by the 30th state, Mongolia. The COP was scheduled for the end of 1994 in the Bahamas.

THE ICCBD PROCESS

The first session of the ICCBD was held from 1-15 October 1993 in Geneva (Switzerland). In addition to procedural matters, issues identified by governments as priorities for discussion included:

- 1) conservation and sustainable use, including a wide range of activities; principles of eligibility for financial assistance; priority of activities for funding; incremental costs; and an Interim Scientific and Technical Advisory Committee (ISTAC) as recommended by Panel 1;
- 2) financial resources, including the characteristics of the institution operating the convention's financial mechanism, and the process to select an interim structure;
- 3) technology transfer, fair and equitable sharing of benefits, a technology clearinghouse, and biosafety.

The ICCBD set up two working groups. Working Group I was responsible for conservation and sustainable use, scientific and technical work between sessions, and biosafety. It made several recommendations to the COP, which were designed to promote national and regional biodiversity strategies; access to information and publications; participation of local communities, women and youth; an integrated implementation of all conservation conventions; capacity building; and the setting of priorities based on specific determined factors. Working Group I also discussed the Interim Scientific and Technical Advisory Committee (ISTAC) which had been called for by governments in the Nairobi Final Act (Resolution 2) and article 25 of the convention, to work in the intersessional period. UNEP's Executive Director was invited to convene a scientific meeting in Mexico in June 1994, before the next ICCBD.

Working Group II dealt with the financial mechanisms, the rules of procedure of the COP, full incremental costs, technical cooperation and capacity building. The first item provoked much North/South controversy. Despite developing countries' skepticism, industrialized countries succeeded in confirming the Global Environment Facility (GEF) as the convention's interim financial mechanism, until the first COP, as long as it was properly restructured.

Reporting channels and communications would be established between the GEF and the COP and certain

functioning principles were set, especially that of cost effectiveness. Until the first COP, all developing country signatories to the convention would be eligible for funding through the GEF; thereafter, funding would only be available to countries having ratified the convention, with special conditions for least developed countries and small island developing states. No consensus could be reached on a resolution on the interim financial mechanism and the rest of the agenda was relegated to the following ICCBD. Until then, the interim secretariat would gather data on clearinghouse mechanisms, on models for technology transfer, and develop guidelines for national legislation on regulating access to genetic resources.

As requested by the first ICCBD, the Open-Ended Intergovernmental Meeting of Scientific Experts on Biological Diversity was convened in Mexico City from 11-15 April 1994 to review scientific and technical issues facing the COP. These included identifying scientific programmes and international cooperation related to the conservation and sustainable use of biological diversity; organizing the preparation of an agenda for scientific and technological research; identifying innovative state-of-the-art technologies; and ways of promoting development and transferring such technologies.

The second meeting of the ICCBD was held from 20 June-1 July 1994 at UNEP headquarters in Nairobi. It decided that the first COP would take place from 28 November-9 December 1994 in Nassau (Bahamas). The committee also heard statements from international NGOs, such as WWF—World Wide Fund for Nature and from regional development banks.

The plenary considered the rules of procedure for the COP and worked on a statement to the UN Commission on Sustainable Development (CSD), which will address the issue of biological diversity in 1995; it also worked on a draft agenda for the first COP with a focus on organizational and financial matters.

Working Group I dealt with the selection and makeup of the permanent secretariat as called for by article 24 of the convention, and addressed the establishment of the clearinghouse mechanism for technical and scientific cooperation called for in article 18. But a number of core issues could not be resolved, including the role and nature of the clearinghouse, the range of subject areas to be covered, its link with the Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA), and its funding. The working group devoted much time to a protocol on biosafety. While the need for ensuring biosafety internationally was widely recognized, most OECD countries favoured technical guidelines on biosafety and emphasized the need to develop further scientific knowledge. Many developing countries and NGOs, on the other hand, supported the need to have a legally-binding instrument on biosafety. The working group's final report set in motion a process for developing technical guidelines without specifying what kind of working group should be recommended to the COP to draft a protocol.

Working Group II split into two smaller open-ended contact groups which reported to the main working group. It adopted two draft documents on financial rules for the

implementation of the convention, to be submitted to the COP, as well as a document recommending the setting up of a trust fund to administer the convention. The questions of whether contributions to the fund should be voluntary and of the scale of assessments could not be settled. A draft text on the budget and financial rules governing the funding of the secretariat was produced for circulation among parties before the COP. No agreement could be reached on the policies, strategies and eligibility criteria regarding access to and use of financial resources and no recommendations were tabled. These questions were left for the COP.

As for the institutional structure operating the financial mechanism under the convention, parties were strongly divided along North/South lines. Developed countries insisted that the GEF should become the convention's permanent financial mechanism while developing countries rejected the GEF unless it was restructured.

The main accomplishments of the second ICCBD concerned the prioritization of issues, rules of procedures and making the SBSTTA operational. The most important unresolved questions concerned the financial mechanism and the biosafety protocol. At the closing session, it was felt that the two ICCBD meetings had, overall, satisfactorily fulfilled their preparatory mission for the first COP.

THE FIRST CONFERENCE OF THE PARTIES

The COP

The first meeting of representatives of states having ratified the convention took place as scheduled in the Bahamas. This was considered by many as the key event in the field of biodiversity since the convention was opened for signature at UNCED in 1992. According to UNEP's Executive Director Elizabeth Dowdeswell, the two-week session was characterized by an "uncommon spirit of cooperation, persistence and dedication" to advancing the cause of the biodiversity convention for present and future generations.

More than 700 participants from 133 states and a similar number of NGOs attended the COP. Discussions centered on how best to implement the treaty's provisions on the conservation of biological diversity, its sustainable use, and the equitable sharing of the benefits arising from the use of genetic resources.

Among its chief accomplishments, the conference chose UNEP—which provided interim secretariat services—as the convention's permanent secretariat. The question of the secretariat's host country, however, will be decided at the next COP on 1-17 November 1995 in Indonesia.

A contact group set up by the conference chairman recommended that the restructured GEF should continue as the interim financial mechanism to assist developing countries implement the convention until the next COP, which will again consider the issue.

The conference also adopted a three-year medium-term work programme, with several administrative and financial issues to be considered yearly. Issues to be discussed at the

1995 conference include biodiversity components under particular threat, marine biodiversity, access to genetic resources, technology transfer, the need for and modalities of a protocol for safe handling and transfer of modified living organisms, financial mechanism, and the FAO Global System for Plant Genetic Resources for Food and Agriculture.

The conference also called for a study on a clearinghouse mechanism for technical and scientific cooperation, and adopted the budget for the secretariat and the financial rules governing the Trust Fund for the convention. It also adopted a statement to the CSD pledging to work closely with other biodiversity bodies and conventions.

Finally, the conference endorsed the Executive Director's proposal designating 29 December—the day the convention entered into force—as the international day for biological diversity.

NGO Reactions

While NGOs felt the COP was what one group called a "commendable show of pragmatic politics," the COP was

seen as having made a number of relatively easy decisions, leaving the more difficult ones for later conferences to sort out. On the other hand, NGOs were frustrated at their lack of input into the COP, since most decisions were taken in government contact groups with NGO participation kept to a minimum.

There was also frustration at the absence of discussion of forests, although the high profile given to marine biodiversity was welcomed. Some NGOs also felt conservation was too low on the priority list, while there was much discussion on money and access to genetic resources.

On the question of rules of procedure, NGOs felt that agreement to adopt them without rule 40 (1)—on whether decisions should be by consensus or by two-thirds majority—diluted the COP's power by making consensus the rule. Some also questioned the interim decision to locate the convention's secretariat in Geneva, in the absence of discussion over other acceptable alternatives; a decision on the secretariat's permanent location is expected at COP II. NGOs were also concerned that the budget of US\$4.8 million for 1995 and its provisional rise to US\$5.4 million for 1996 was insufficient for the secretariat to carry out the enormous workload contained in the work plan agreed by the COP.

As has been the case in the past, NGOs criticized the renewed choice of the GEF as the convention's interim funding mechanism, agreeing with the principle that GEF funds will not be enough to meet developing country needs in implementing the convention. As a result, they urged that additional funds be sought from the private and community sectors to supplement GEF funds, and that governments be encouraged to increase their aid spending to the 0.7% of GNP target that was reconfirmed at UNCED.

The weekend prior to the COP, a Global Biodiversity Forum was organized by IUCN, WRI and the Bahamas National Trust, with about 150 participants—NGOs, governments, academia, indigenous people, industry and other groups. The forum focused on approaches to determining priorities and on marine biodiversity.

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THE CONVENTION'S OBJECTIVES AND KEY PRINCIPLES

The convention is a framework treaty, which means that specific issues can be addressed through the negotiation of protocols and other legal instruments. It sets no targets in terms of figures or deadlines and its provisions are mostly expressed in overall goals and policies. Specifics are to be added by the COPs through subsequent annexes and protocols.

The biodiversity convention contains 42 articles and two annexes. It has three key objectives: to ensure the conservation of biological diversity (articles 6-9,11-14), its sustainable use (articles 6, 10-13), and the fair and equitable sharing of the benefits and knowledge arising out of the use of genetic resources (articles 15-19).

The convention aims to fulfill these objectives through a number of proposals: appropriate access to genetic

resources (article 15), appropriate transfer of relevant technologies (articles 16 and 19) and appropriate funding (articles 20 and 21).

Most biodiversity is located in areas under national sovereignty, in other words, within a country's borders. As a result, biodiversity itself cannot be considered the common heritage of mankind, unlike outer space and celestial bodies (Moon treaty) or the deep seabed (UNCLOS III).

The convention declares biodiversity conservation the "common concern" of humankind, implying the recognition of a common responsibility. The preamble and articles 6, 8 and 10 express the same idea by affirming the states' responsibilities for conserving and using biodiversity in a sustainable manner and imposing far-reaching obligations on these. The convention clearly presents a balance between sovereign rights on the one hand, and duties and responsibilities on the other hand.

The convention has been signed by 167 states and the European Community. To date, it has been ratified by 112 countries.

OBLIGATIONS AND COMMITMENTS

Conservation and Sustainable Use

Under the convention, parties must develop national strategies for conservation and sustainable use of biological resources and integrate them in national decision making. A comprehensive agenda for in situ conservation calls for measures ranging from the establishment of a system of protected areas to the rehabilitation of degraded ecosystems and the protection of natural habitats. Supplementary ex situ conservation measures are also to be implemented under the convention. Parties undertake to manage biological resources for conservation and to encourage the development of methods for their sustainable use.

Also in the field of conservation and sustainable use of biodiversity, particular mention is made of indigenous and local people and their knowledge. The convention encourages equitable sharing of the benefits derived from use of resources. Measures for research and training, public education and awareness shall be the object of national programmes and international cooperation, taking into account the special needs of developing countries in the case of research and training. Both constitute unqualified obligations. Moreover, techniques such as environmental impact assessments and planning of emergency measures are required.

The use of conservation and sustainable use as separate expressions, instead of using the sole word conservation, reveals the particular importance developing countries attach to the use of their biological resources and to their sovereign rights over them.

Not only is sustainable use of living resources and ecosystems recognized as a prerequisite for biodiversity conservation, it is also acknowledged that certain components of biodiversity deserve special attention and

OFFICIAL DOCUMENTATION

FAO Commission on Plant Genetic Resources, Towards an International Code of Conduct for Plant Biotechnology As it Affects the Conservation and Utilization of Plant Genetic Resources, CPGR/93/9, 1993.

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United Nations Environment Programme, Report of Panel I: Priorities for Action for Conservation and Sustainable Use of Biological Diversity and Agenda for Scientific and Technological Research, Experts Panels Established to Follow-up on the Convention on Biological Diversity, UNEP/Bio.Div./ Panels/Inf.1, 28 April 1993.

United Nations Environment Programme, Report of Panel II: Evaluation of Potential Economic Implications of Conservation of Biological Diversity and Its Sustainable Use and Evaluation of Biological and Genetic Resources, UNEP/Bio.Div./ Panels/Inf.2, 28 April 1993.

United Nations Environment Programme, Report of Panel IV: Consideration of 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 Effects on the Conservation and Sustainable Use of Biological Diversity, UNEP/Bio, Div./Panel/Inf.4.

Highlights of the results of the preparatory panels to the first ICCBD are available under document UNEP/CBD/IC/1/4.

Report of the first session of the ICCBD: *UNEP/CBD/IC/2/2.*

Information paper prepared by the interim secretariat of the biodiversity convention mandated by the COP for the 1995 session of the UN Commission on Sustainable Development: UNEP/CSD/IC/2/Inf.5.

Report of the Mexico City meeting of the Subsidiary Body on Scientific and Technical Advice: *UNEP/CBD/IC/2/11.*

Final report of Working Group I, second ICCBD: *UNEP/CBD/IC/2/L.3.*

Final Report of Working Group II, second ICCBD: *UNEP/CBD/IC/2/L.4.*

Report of the work of the Plenary, second ICCBD: *UNEP/CBD/IC/2/L.1/Add.1-Add.6.*

treatment. As a result, the overall goal of conservation of biodiversity is to be achieved by the establishment of separate provisions on its different elements (ecosystems, species and genes, in situ conservation, ex situ conservation and sustainable use of components of biological diversity) and on individual biological resources that are the source of biodiversity. Through its attention to the components of biodiversity, the convention addresses the cause rather than the symptoms of the loss of biodiversity, while becoming a major instrument in the wider framework of sustainable development. This comprehensive approach beyond biodiversity makes the convention important to all states, not only those particularly rich in biodiversity.

Access and Transfer

Access to genetic resources, to biotechnology and to the benefits arising from their use is considered of primary importance to the convention. Its inclusion was due to developing countries' insistence on including access to genetic resources, biotechnology transfer or sharing of benefits derived from their use in the negotiations of the convention. It illustrates the convention's holistic approach towards the issue of biodiversity protection.

Reversing the previous free-access trend embodied in the FAO Undertaking on Plant Genetic Resources of 1983, article 15 of the convention recognizes that the authority to legislate on access to genetic resources rests with national governments. This is because genetic resources are natural resources and, as such, are subject to national sovereignty and control.

Progress in biotechnology over the past decade has increased the value of genetic resources far beyond the scope of new plant varieties. This has made the access issue more sensitive, especially as industrialized countries undertook to protect the resulting innovations through intellectual property rights and increased patenting of living material.

The Group of 77 (G77) developing countries, believes that the value of the raw materials manipulated, which developing countries own, should be recognized. Given the emphasis on national action in the convention, article 19 on the handling of biotechnology and the distribution of its benefits requires that access to results and benefits be given on a bilateral level, so that those parties providing the genetic material obtain a fair and equitable share of the benefits whenever and wherever they are realized. Each case is to be decided individually through bargaining. Parties may, however, face considerable difficulties in implementing these provisions since they give no guidelines as to the problematic concrete question of the identification of the material from which benefits derive.

The delicate compromise on the issue of the transfer of technology contained in article 16 reflects the importance developed countries place on intellectual property rights. Still, this creates a basic obligation for parties to try to provide or facilitate access to and transfer of technology, including biotechnology, through legislative, administrative and policy measures. A general limitation to the provisions on technology transfer and on access to benefits arising from biotechnology comes from the definition of genetic resources which excludes from the treaty resources placed in gene banks and other ex situ facilities before the entry into force of the convention.

These provisions are supplemented by unqualified obligations for parties in order to facilitate the exchange of information and to promote technical and scientific cooperation, including for the development of indigenous and traditional technologies, with special attention being given to the strengthening of national human and institutional capabilities.

FUNDING

The need for a flow of funding from rich countries to poorer countries has been accepted from the outset of the process leading to the convention. What has been less clear is how this was to be done.

The decision was finally made to set up a fund fed by developed countries' contributions to provide funds to developing countries. According to article 20 on financial resources, these funds are in addition to official development assistance (ODA), and are designed to enable developing countries to meet the agreed full incremental costs they will face in order to meet their obligations under the convention.

Agreement on what exactly these costs are is to be made bilaterally through negotiations between each developing country party and the institution created to operate the financial mechanism. Poorer countries want the full incremental costs arising from the convention to be covered by the transfer of funds from rich countries. At the same time the convention endorses the refusal of rich countries to accept open-ended, automatic financial commitments. Thus, it only covers "agreed" incremental costs. External negotiations will certainly enable parties to add clarity to what they consider as "incremental cost," since no definition is provided in the convention of this rather vague term.

The COP will periodically determine the amount of financial resources needed. Contributions will take into account the need for predictability, as opposed to erratic flows of money hampering consistency of action, adequacy, as opposed to scarcity, and timely flows of funds in order to meet the convention's obligations.

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