

(viii) The COP will periodically review and evaluate the effectiveness of all modalities established in accordance with Article 11.3. Such evaluations will be taken into account by the COP in its decisions, pursuant to Article 11.4 on the arrangements for the financial mechanism.” (A/AC. 237/41, paragraph 86).

Substantive discussion on issues related to (c) and (d) were deferred for consideration at the ninth session. Consideration of the draft decision on financial mechanism submitted by the G-77 and China at the Seventh Session was also deferred to the ninth Session.

With regard to the sub-item entitled “provision to developing country parties of technical and financial support” the discussion was focussed on the UNEP and the INC joint pilot projects (known as CLIMEX) on an information exchange system for country activities. It was stressed that participation in this project should be voluntary in nature and not subject to any conditions. Further, it should not pre-empt and prejudice the decisions of the conference of the parties.

Apart from the above mentioned substantive issues, the INC during its eighth Session reviewed the activities of the interim Secretariat and other administrative and budgetary matters. At its 3rd Plenary meeting on 24th August, 1993, the Committee expressed satisfaction that the instruments of ratification, acceptance, approval or accession had been deposited by 31 States.¹ It took note of the information provided by the delegations of Botswana, Burkina Faso, Kiribati, Mauritania, and Uganda that their countries had completed ratification procedures at national level and soon they will be depositing their instruments of ratification.

The Committee decided to schedule its future session as follows:

Ninth Session—7 to 18 February 1994, Geneva

Tenth Session—22 to 31 August 1994, Geneva

Eleventh Session—6 to 17 February 1995, New York.

The Committee also considered the offer of the Governments of Germany to host the first session of the Conference of parties. It recommended to the General Assembly at its forty-eighth session to consider as a follow-up of UNCED giving approval to the invitation of Germany to hold the first session of the Conference of Parties from 28 March to 7 April 1995, in Berlin.

1. As of 24 August 1993, the Convention has been ratified by: Algeria, Antigua and Barbuda, Armenia, Australia, Canada, China, Crote Islands, Dominica, Ecuador, Fiji, Guinea, Iceland, Japan, Maldives, Marshall Islands, Mauritius, Mexico, Monaco, Norway, Papua New Guinea, Peru, San Kitts and Nevis, Saint Lucia, Seychelles, Sweden, Tunisia, U.S.A. Uzbekistan, V Zambia and Zimbabwe.

II. The Convention on Biological Diversity: A Note on Post Rio Summit Developments

The Convention on Biological Diversity was opened for signature at the Earth Summit held in Rio de Janeiro, Brazil, on 5 June 1992. As of 1 December 1993, 167 countries had signed the Convention and 37 nations had ratified it. Consequently, the Convention entered into force on 29 December 1993.*

At the last session of the Intergovernmental Negotiating Committee held in Nairobi which adopted the final text of the Convention on 22 May 1992, the negotiating Governments also adopted Resolution 2 on international cooperation for the conservation of biological diversity and the sustainable use of its components pending the entry into force of the Convention. This resolution invited the UNEP, at its Governing Council Session, to consider convening meetings of an Intergovernmental Committee on Biological Diversity to consider, *inter alia*:

- assistance to Governments in preparation of an agenda for scientific and technological research;
- the need and modalities for a protocol for the safe transfer, handling and use of modified organisms resulting from biotechnology;
- modalities for the transfer of technology;
- policy guidance for the institutional structure designated to undertake the operation of the financial mechanisms for the period until the entry into force of the Convention;
- and other preparations for the first Conference of the Parties which is to be convened by the Executive Director of the UNEP not later than one year after the entry into force of the Convention.

In November 1992, the Executive Director of the UNEP established four expert panels to prepare recommendations on specific issues for the first meeting of the Intergovernmental Committee on the Convention on Biological Diversity (ICCBD) (which was subsequently constituted by the Governing Council of the UNEP in May 1993).

Panel 1—Priorities for Action and Research Agenda—This panel developed a methodology for setting priorities for action arising out of the Convention. It recommended an agenda for scientific and technical research and called for an interim scientific and technological advisory committee to be established as soon as possible.**

* The *Indian Express*, New Delhi dated 30 September 1993

** The reports of these panels are available on request from the Interim Secretariat.

Panel 2—Economic Implications and Valuation of Biological Resources: This panel identified the socio-economic factors that lead to biodiversity loss. The Panel recommended:

- identifying policies and incentive systems that work against biological diversity conservation;
- conducting additional research regarding the potential of economic instruments to combat biodiversity loss; and
- assessing the values of biodiversity.**

Panel 3—Technology Transfer and Financial Resources: This panel concluded that access to information and capacity building are key to the implementation of the Convention's technology transfer provisions. The panel suggested that the ICCBD develop guidelines for international cooperation in this regard. Regarding funding arrangements, the panel suggested that the ICCBD propose substantive modifications to the GEF. The Panel concluded that the ICCBD should develop a procedure for estimating the level of funding needed to implement the Convention.**

Panel 4—Safe Transfer, Handling and Use of Living Modified Organisms resulting from Biotechnology: This panel concluded that only Conference of the Parties (COP) can take a decision regarding the creation of a bio-technology protocol. The panel recommended that such an instrument should only cover genetically-modified organisms and should aim at preventing and/or mitigating the consequences of unintended releases.**

Subsequently, an Expert Conference on Biodiversity was hosted by the Norwegian Ministry of Environment in cooperation with UNEP in Trondheim (Norway) from 24 to 28 May 1993. One of the primary purposes of this meeting was to bring together scientists, managers, bureaucrats and policy-makers from 80 countries to provide input to UNEP's preparatory work for the first session of the ICCBD. The themes discussed in this meeting included: ecosystem functions of biodiversity; loss and conservation of biodiversity; marine biodiversity; biodiversity inventory and monitoring; forestry and biodiversity conservation; socio-cultural aspects of biodiversity; the economic aspects of biodiversity conservation and use; and the transition from scientific knowledge to political action.

The Expert Conference on Biodiversity was followed by the first session of the ICCBD held in Geneva from 11 to 15 October 1993. It was convened by the Executive Director of the UNEP with the objective of preparing for the first

** The reports of these panels are available on request from the Interim Secretariat.

meeting of the Conference of the Parties (COP) and ensuring an early and effective operation of the Convention once it enters into force.

The Bureau elected for the ICCBD consisted of the following:

- Chairman—Ambassador Vincente Sanchez (Chile);
- Vice-Chairmen—Veit Koester (Denmark)
S.K. Ogeri (Kenya)
Geogry Zavarzin (Russian Federation);
- Rapporteur—Sarfraz Ahmed (Pakistan)
- Vice-Chairman of Working Group I—Frantisek Urban (Czech Republic)
- Vice-Chairman of Working Group II—Balmiki Prasad Singh
- Rapporteur of Working Group I—Nordahl Roaldsoy (Norway)
- Rapporteur of Working Group II—Sulayman Samba (Gambia).

The plenary adopted, first of all, the rules of procedure for the ICCBD contained in document No. UNEP/CBD/IC/1/2 subject to certain amendments. The agenda adopted contained the following items:

- election of officers;
- adoption of the agenda;
- procedural matters and organization of work;
- preparation for the first meeting of the Conference of the Parties to the Convention, in accordance with the resolutions of the Nairobi Final Act of the Conference for the Adoption of the Agreed Text of the Convention on Biological Diversity;
- other matters; and
- adoption of the Report of the ICCBD.

It was agreed that Working Group I would deal with the conservation and sustainable use, including the full range of important activities for reducing the loss of biodiversity, the scientific and technical work between meetings and the issue of biosafety. Working Group II would deal with the institution operating the financial mechanism, a process of estimating funding needs, the meaning of 'full incremental costs', the rules of procedures for the Conference of the Parties (COP) and technical cooperation and capacity building.

The plenary sessions were devoted to reviewing the progress made with regard to ratification of the Convention, its implementation, and the conservation of biological diversity.

Working Group I agreed to submit the following list of proposed activities to the ICCBD for its consideration and possible transmission to the COP: (Dec. No. UNEP/CBD/IC/WG. 1/L. 1):

- All parties should conduct country studies and prepare national biodiversity strategies with the provision of technical, scientific and financial support as needed. The Interim Secretariat should report to the Conference of the Parties on progress. (Country studies should not be mandatory or a precondition for provision of financial support for implementation of the Convention).
- To facilitate access to and exchange of information, it should be made available in computerized form, using existing software. The Interim Secretariat should develop format for data entries and institute regional training programmes on the use of such formats;
- Finance support should be provided for the purchase of relevant classical literature and other publications;
- Conservation and sustainable use measures should emphasize the participation of local communities, women and youth, and should improve local standards of living;
- Regional approaches should be devised, i.e. through workshops, seminars, to address shared concerns;
- *Ex situ* and *in-situ* programmes should be integrated and should include micro organisms;
- All existing identified conservation aspects falling under different conventions should be integrated;
- Restoration of ecosystem, which may include the elimination of alien species, should be considered;
- Capacity-building, including institutional strengthening and human resource development, particularly of taxonomists, should receive greater attention;
- Conservation of biodiversity outside the protected areas should receive greater attention;
- National legislation should be revised to reflect the needs of the Convention;
- Traditional knowledge should be integrated in modern management practices to conserve biodiversity;
- Educational programmes to raise the public awareness of biodiversity issues should be developed; and
- All parties should designate the appropriate protected areas, paying due attention to the management of the surrounding areas;

Factors to Determine the Priority of Activities—Working Group I identified the following broad indicative categories of factors to be possibly taken into account for the setting of national action priorities:

- ecological (including the extent of threatened species and ecosystems, rehabilitation of threatened habitats and ecosystems, air and water pollution, atmospheric changes, deforestation and disaster);
- socio-economic and cultural (including population, change in land use, soil

degradation, and ensuring integration of traditional knowledge) and institutional (including involvement of governmental and non-governmental organizations and other groups, adjustments in management approaches, capacity for implementation, compliance and monitoring, and level of financial resources).

Scientific and Technical Work between Sessions—Working Group-I recommended that, before the next session of ICCBD, the UNEP should convene a scientific meeting to report on several issues including:

- international cooperation and research to implement the Convention;
- Scientific and technical assessment of status of biodiversity; and
- state-of-the-art technology. Governments should nominate competent experts. There should be one meeting with tightly defined terms of reference.

Working Group II in its report (Doc. No. UNEP/CBD/IC/IWG.II/L.1 and Add.1) proposed the following recommendations:

Institution or institutions operating the Financial Mechanism:

- The financial mechanisms should meet the requirements of Article 21 of the Convention, which established the financial mechanisms in the first place. No further interpretation of this article should be necessary.
- Channels of communication to the mechanisms should be established.
- There should be clear procedures for processing requests for funding.
- The need for a regular flow of information.
- The need for a capacity to respond quickly to funding requirements.
- The need for cost-effectiveness and efficiency in its operations.
- Funds should be replenished quickly.
- Regular advice should be given to the financial mechanisms on the resources needed, and
- There should be possibilities for multiple sources of funding, in which information on practices and eligibility criteria applied for by other institutions funding biodiversity-related projects would be relevant, as well as working relationships with these institutions.

Rules of Procedure for the COP—It was agreed that all the observations made on this topic would be taken into account by the Secretariat when it proposes a further draft for consideration by the Working Group at its next session.

Full Incremental Costs—The Working Group II agreed that the Secretariat be requested to examine the methodologies in order to define and understand the

meaning of the term 'full incremental costs' and in the light of this examination, provide an indicative list. This list should build on current projects and, to the extent possible, be made in collaboration with organisations such as UNESCO, FAO, the Multilateral Fund for the Implementation of the Montreal Protocol, the Secretariat for the Climate Change Convention and the GEF.

Technical cooperation and capacity building—Working Group II agreed to recommend that the Secretariat

- identify existing clearing-house mechanisms and existing mechanisms for information exchange and report on their expertise;
- catalogue existing databases of relevance to the Convention and identify their gaps and linkages; and
- examine and report on existing examples and possible models for national legislation for regulating access to genetic resources.

Assessment

Despite the hectic work done by the two Working Groups, they were not able to produce reports that could be approved by the Plenary. When their reports were presented to the Plenary, a number of delegates expressed concern that they had not seen the documents in their final form, and, due to the large number of amendments and changes, could not adopt them. As a last minute solution, the Plenary adopted only two decisions, the establishment of a scientific and technical committee that will meet before the next session of the ICCBD and a request to the Secretariat to use the unadopted Working Group reports as guidance during the intersessional period.

The suggested dates for the first meeting of the Conference of the Parties (COP), which is required to be held before the end of 1994, are 28 November to 9 December 1994. As for the meeting of the Interim Scientific and Technical Advisory Committee (ISTAC), it is required to be convened one month before the next session of the ICCBD. Mexico has offered to host this meeting between January and March 1994. As to the next session of the ICCBD, the suggested dates are either 10 to 19 March 1994 or 20 to 30 June 1994 with the venue being either Nairobi or Geneva.

IX. International Trade Law

A. Legal Aspects of Privatization

(i) Introduction

At the Thirtieth Session of the Asian-African Legal Consultative Committee (AALCC) held in Cairo in April 1991, it was noted by the Standing Sub-Committee on International Trade Law Matters that in the economies of most of the Member States of the AALCC, public sector enterprises or undertakings (PSEs or PSUs) played an important role and that their economies were dominated by such enterprises. It was further noted that in recent years, various multilateral financial and monetary institutions had put pressures on developing countries to go in for privatization of these undertakings, almost making it a precondition for the grant of financial assistance and the extent thereof. The Sub-Committee, taking note of these developments, requested the Secretariat to commence a study on the legal issues involved in the matter of privatization with the final objective of preparation of a guide or guidelines on legal aspects of privatization in Asia and Africa. The principal aim of such a guide or guidelines would be to assist the Member Governments in carrying their privatization programmes in an orderly manner which would be consistent with their national interests.

Since the preconditions, basic methods and procedures for privatization and the legal issues involved would vary from country to country, the view was expressed that it would be necessary for the Secretariat first to collect the relevant information from the Member Governments so that it was able to identify the macro- and micro-legal issues involved before commencing a study on the topic. Consequently, the Secretariat prepared and circulated a questionnaire to assist the Member Governments in furnishing the required information. It requested the relevant authorities of the Member Governments to respond as early as possible.

Before the Islamabad Session (1992) only the Governments of Singapore and Thailand had responded to the questionnaire. Only a preliminary study was presented at the Islamabad Session and the topic was discussed in the Trade Law