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Rep

1989

094

**Draft Articles Prepared by IUCN for Inclusion  
in a Proposed Convention on the Conservation  
of Biological Diversity and for the Establishment  
of a Fund for that Purpose  
with Explanatory Notes**

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CH - 1195 Gland



The World Conservation Union  
l'Alliance mondiale pour la nature

Draft 6: June 1989  
(Final — Revised)

## TABLE OF CONTENTS

### PREAMBLE

### PART I - INTERPRETATION Article 1

### PART II - FUNDAMENTAL PRINCIPLE Article 2

### PART III - CONSERVATION OF BIOLOGICAL DIVERSITY

- Article 3 - General Obligation
- Article 4 - Surveys and Inventories
- Article 5 - Conservation of Areas
- Article 6 - General Conservation Measures
- Article 7 - Conservation of Species in situ
- Article 8 - Conservation of Species ex situ
- Article 9 - Recovery Plans
- Article 10 - Pollution
- Article 11 - Alien Species
- Article 12 - Man-made Organisms
- Article 13 - Preservation of the Biological Diversity of Other States or Beyond the Limits of National Jurisdiction
- Article 14 - Environmental Impact Assessments

### PART IV - ACCESS TO BIOLOGICAL DIVERSITY

- Article 15 - Access to Specimens
- Article 16 - Evaluation of Biomaterials

### PART V - THE CONFERENCE

- Article 17 - Organisation of the Conference
- Article 18 - Functions of the Conference
- Article 19 - Financial Arrangements

### PART VI - ADVISORY COMMITTEE ON CONSERVATION OF BIOLOGICAL DIVERSITY

- Article 20 - Establishment
- Article 21 - Functions

### PART VII - INTERNATIONAL FUND FOR THE CONSERVATION OF BIOLOGICAL DIVERSITY

- Article 22 - Institution of the Fund
- Article 23 - Purpose of the Fund
- Article 24 - Privileges and Immunities
- Article 25 - Administration of the Fund
- Article 26 - Contributions
- Article 27 - Resources of the Fund
- Article 28 - Payments from the Fund

**PART VIII - CONSERVATION PROJECTS**

- Article 29 - Eligibility of Projects for Financing
- Article 30 - Approval of Payments from the Fund
- Article 31 - Technical Assistance

**PART IX - SECRETARIAT**

- Article 32

**PART X - MISCELLANEOUS PROVISIONS**

- Article 33 - Research
- Article 34 - Training and Public Awareness
- Article 35 - Inter-State Cooperation
- Article 36 - Implementation and Compliance
- Article 37 - Reporting

**PART XI - RELATIONS WITH OTHER INTERNATIONAL CONVENTIONS AND WITH NATIONAL LEGISLATION**

- Article 38 - Relations With Other Conventions, Agreements or Organisations Dealing With the Conservation of Biological Diversity
- Article 39 - Stricter Measures

**PART XII - FINAL CLAUSES**

- Article 40 - Protocols
- Article 41 - Amendment of the Convention or Protocols
- Article 42 - Adoption and Amendment of Appendices
- Article 43 - Settlement of Disputes
- Article 44 - Signature
- Article 45 - Ratification, Acceptance or Approval
- Article 46 - Accession
- Article 47 - Relation between the Convention and its Protocols
- Article 48 - Entry into Force
- Article 49 - Reservations
- Article 50 - Withdrawal
- Article 51 - Termination of Parts VII and VIII
- Article 52 - Depositary
- Article 53 - Authentic Texts

Annex I - Procedure for the appointment of members of the Advisory Committee

Annex II - Voting on matters relating to the Fund

Appendix I - Biomaterials and classes of biomaterials to which Article 26(1)(a) applies

Appendix II - Persons or classes of persons to which Article 26(1)(b) applies

DRAFT ARTICLES PREPARED BY IUCN FOR INCLUSION IN A PROPOSED  
CONVENTION ON THE CONSERVATION OF BIOLOGICAL DIVERSITY AND FOR  
THE ESTABLISHMENT OF A FUND FOR THAT PURPOSE

PREAMBLE

The States Parties to this Convention:

1. AFFIRMING that Man has the responsibility to conserve the biological richness of the Earth for the well-being of future generations;
2. AFFIRMING, FURTHER, that wild species have a right to exist independently from the benefits they may provide to humanity and that Man has a duty to share the Earth with other forms of life;
3. DEEPLY CONCERNED by the increasing rate of extinction of wild species and by the resulting irreversible loss in genetic resources which may be of immense value for the advance of biological and medical sciences as well as for potential biotechnological applications;
4. ALARMED that hundreds of thousands of species may become extinct in the coming decades, mainly through the destruction of natural habitats, unless the international community resolves to undertake a major concerted effort to conserve this heritage;
5. RECOGNISING that States, in the exercise of their sovereign rights under international law, are the guardians of biological diversity and as such have the responsibility to conserve biological diversity in areas under their jurisdiction and a further responsibility to ensure that activities under their jurisdiction or control do not cause significant damage to biological diversity in other States or in areas beyond the limits of national jurisdiction;
6. DESIRING by this Convention to implement certain of the principles of the Declaration of the United Nations Conference on the Human Environment, adopted by that Conference on June 16, 1972, in particular Principles 2, 3 and 4, as well as certain of the principles embodied in the World Charter for Nature, adopted and solemnly proclaimed by the General Assembly of the United Nations by Resolution 37/7 of October 28, 1982, in particular Principles 1, 2, 3 and 4;
7. RECOGNISING that the international community has a duty to assist in the conservation of biological diversity in those parts of the world where the capacity of the States concerned to discharge their responsibility in this regard is not commensurate with the magnitude and cost of the conservation measures required;

8. CONVINCED that the conservation of biological diversity can in most cases best be achieved by the conservation of wild species within the ecosystems of which they form a part, this being the only means to conserve a large range of intra-specific genetic diversity together with the evolutionary potential of species and the relationships and interactions between them;

9. FURTHER CONVINCED, as a consequence, that a major goal in conservation is the establishment and maintenance of a world-wide network of areas of adequate size and distribution to conserve ecosystems containing the greatest feasible proportion of the Earth's biological diversity;

10. BELIEVING that the codification and progressive development of the law governing biological diversity achieved in this Convention will contribute to the strengthening of peace, security, cooperation and friendly relations among all nations, in conformity with the principles of justice and equal rights, and will promote the economic and social advancement of all peoples of the world, in accordance with the Purposes and Principles of the United Nations as set forth in the Charter;

HAVE AGREED AS FOLLOWS:

PART I - INTERPRETATION

Article 1

For the purpose of this Convention:

a) "States Parties" means States which have consented to be bound by this Convention and for which this Convention is in force; this Convention applies mutatis mutandis to the entities referred to in Article 44 paragraphs 1(b) and 1(c) which become Parties to this Convention, and to that extent "States Parties" refers to those entities;

b) "Territory" in respect of any State means all areas over which that State exercises sovereign rights or exclusive jurisdiction in accordance with the rules and principles of general international law, and includes the continental shelf and Exclusive Economic Zone or Fisheries Jurisdiction Zone, as the case may be;

c) "Species" means any species of living organism and includes any defined subspecies or recognisable variant of any such species;

d) "Wild species" means a species which has not been deliberately modified genetically by Man;

e) "Indigenous species" means, with regard to a particular State, a species whether sedentary, migratory or occurring occasionally, whose natural range includes or included the whole or a part of the territory of that State;

f) "Endemic species" means, with regard to a particular State or area, a species whose range is entirely confined to the territory of that State or to that area;

g) "Species threatened with extinction at world level" means a species which has been listed as such by the Advisory Committee;

h) "Alien species" means, with regard to a particular State or area, a species which is not indigenous to the territory of that State or to that area;

i) "Biological diversity" means the diversity of species living on the Earth or, in respect of any State or area, the diversity of indigenous species living in that State or area; biological diversity includes genetic diversity, which is the diversity of genes and genotypes within each species; taxonomic diversity, which is diversity between species; and ecological diversity, which is the diversity of the different types of communities formed by living organisms and the relations between them;

j) "Specimen" means:

i) any individual member of a wild species, whether live or dead, which has been removed from the natural environment or is a descendant of such a member;

ii) any part of an individual member of a wild species whether it has been removed directly from the natural environment or obtained from such an individual member or part thereof so removed, or from a descendant of such an individual member so removed or from a part obtained from such a descendant; for the purpose of this definition a part means any fraction of an individual member of a wild species, including DNA, chromosomes and genes, as well as any substance contained in or produced by such a member;

k) "in situ conservation" means: the conservation of organisms in their natural habitat within the communities of which they form a part, or, in the case of land races, of plants in their area of cultivation where they originated;

l) "ex situ conservation" means: the maintenance of organisms outside their natural habitat, that is as living collections in habitats other than those in which they originated or (if they are domesticates) in the form of seeds, pollen, vegetative propagules, tissue or cell culture in the case of plants, or semen, embryos or gonadal tissue in the case of animals;

m) "Biomaterial" means:

i) any specimen;

ii) any product, not being itself a specimen, wholly or partly made of a specimen or specimens;

iii) any seed or other propagating material not being itself a specimen obtained from a plant to which one or more genes of wild species have been transferred by cross-breeding, hybridisation, genetic engineering, or by any other method, where such seed or propagating material is traded for the purpose of propagation;

iv) any substance obtained by the alteration or chemical synthesis of a substance contained in or produced by a wild species;

v) any substance obtained as a result of transferring a gene of a wild species to any organism by genetic engineering;

vi) any other product or substance as may be agreed by the Conference by a two-thirds majority;

n) "Viable population" means a population of a species which, so far as can be judged, is in a position to maintain itself in nature for an indefinite period;

o) "Conference" means the Conference of the States Parties to this Convention established pursuant to Article 17;

p) "Advisory Committee" means the Advisory Committee on Conservation of Biological Diversity established pursuant to Article 20;

q) "Fund" means the International Fund for the Conservation of Biological Diversity established pursuant to Article 22;

r) "Secretariat" means the Secretariat established pursuant to Article 32;

s) "World List" means the World List of Areas of Outstanding Importance for the Conservation of Biological Diversity to be drawn up by the Advisory Committee pursuant to Article 5;

t) "Protocols" means protocols to this Convention.

## PART II - FUNDAMENTAL PRINCIPLE

### Article 2

States recognise that biological diversity constitutes a heritage which must be conserved for the benefit of present and future generations as well as in its own right and, subject to the principles of general international law and to the provisions of this Convention:

- the guardianship of which should be the concern of all;
- the benefits of which should be available to all; and
- the conservation costs of which should be shared equitably by all.

### PART III - CONSERVATION OF BIOLOGICAL DIVERSITY

#### Article 3 - General Obligations

1. In recognition of their responsibilities as guardians of biological diversity States shall, to the maximum extent possible:

a) ensure the conservation of biological diversity within their territory;

b) refrain from any action that may be harmful to the conservation of biological diversity in the territory of other States or in areas beyond the limits of national jurisdiction;

c) cooperate with other States, directly or through the appropriate international organisations, in the conservation of biological diversity.

2. States shall adopt and implement conservation policies to maintain biological diversity.

3. States shall co-operate in the formulation of agreed measures, procedures and standards for the implementation of this Convention with a view to the adoption of protocols, annexes and appendices.

#### Article 4 - Surveys and Inventories

States shall make every effort to carry out surveys and draw up inventories of biological diversity in their territory, with a view to identifying areas requiring urgent conservation action. They shall, in particular, endeavour to identify for that purpose areas with endemic species, areas of particular ecological distinctiveness, or harbouring particular communities of species, rare species or species threatened with extinction, and areas of high biological diversity. They shall carry out these surveys and draw up those inventories on the basis of criteria and guidelines adopted by the Conference and shall pay particular attention to the inclusion in these surveys and inventories of areas which benefit from legal protection under their legislation but which have become degraded.

#### Articles 5 - Conservation of Areas

1. Where it appears from the results of such surveys and inventories, or from any other relevant information, including information on actions taken pursuant to other conventions or agreements, that areas which are important for the conservation of biological diversity are or may be at risk from human



activities, States shall, to the best of their abilities, seek to ensure that biological diversity within such areas is adequately preserved from the effect of such activities, whether exercised within or outside these areas, and whether or not such areas benefit from legal protection pursuant to this Convention or otherwise.

2. States shall use as a basis for the selection of the areas referred to in paragraph 1 of this Article the World List of Areas of Outstanding Importance for the Conservation of Biological Diversity (hereinafter designated as the "World List") which shall be drawn up, kept under review, and amended as may be required by the Advisory Committee.

3. The World List shall include a sufficient number of areas adequate in size, distribution and species richness to conserve the greatest feasible proportion of the Earth's biological diversity.

4. The Conference shall at its first meeting, or as early as possible thereafter, agree upon the criteria by which areas shall be included in the World List or deleted from the World List.

Such criteria shall include, but shall not be limited to, the importance of an area as one displaying high biological diversity, the existence in the area of wild relatives of cultivated plants or domesticated animals, or the existence in the area of significant populations of species threatened with extinction.

5. The World List shall be published, together with maps and appropriate information about the value to biological diversity of the areas listed.

6. In respect of any area they have selected for the purpose of applying paragraph 1 of this Article which is listed on the World List, States shall, to the fullest extent possible:

a) carry out surveys and inventories of the biological diversity therein, make evaluations of the threats to such biological diversity, and monitor the status of such biological diversity on a long-term basis;

b) prepare a management plan, on the basis of scientific advice, addressing both the short-term and long-term aspects of the management of the area, with particular reference to the features which have given rise to its entry on the World List; manage the area in accordance with that plan; and review such plan from time to time and revise it as necessary;

c) when management needs occur which the State lacks the financial or technical capacity to fulfill, prepare a plan describing in detail the funding and technical assistance required to meet those needs and make all possible efforts to meet those needs including, when appropriate, through the submission of projects for international financing from the Fund.

7. States shall, to the best of their abilities, apply the provisions of paragraph 6 above to any other area they have selected for the purpose of applying paragraph 1 of this Article.

#### Article 6 - General Conservation Measures

1. States shall develop appropriate procedures for the purpose of monitoring the status of biological diversity throughout their territory and, where possible, maintaining and, as may be necessary and feasible, restoring as high as possible a degree of biological diversity outside areas they have selected for the purpose of applying Article 5.

2. They shall, in particular, promote and provide support to forms of land-use and other activities compatible with the maintenance of such a degree of biological diversity.

3. They shall, to the best of their abilities, refrain from undertaking, authorising or subsidising activities that would result in the fragmentation of areas which they have identified as important for the maintenance of biological diversity, in addition to those appearing on the World List, or that would otherwise detrimentally affect the maintenance of biological diversity in such areas, or impede the natural movements of wild animals between areas which are important for the conservation of biological diversity, whether or not included in the World List.

#### Article 7 - Conservation of Species In Situ

1. States shall, to the maximum extent feasible, seek to ensure the conservation in situ, throughout their range, of viable populations of all wild indigenous species occurring within their territory. They shall, in discharging this obligation, pay particular attention to the conservation of:

a) wild species and communities of wild species which are threatened with world-wide extinction, especially where such species or communities are endemic to their territory;

b) any other wild species or communities of wild species endemic to their territory;

c) wild species which are relatives of domestic animal species or of cultivated plant species; and

d) wild species or communities of wild species which have been designated by the Conference as requiring priority attention.

2. In pursuance of this obligation, States shall, in particular:

a) seek to ensure that activities carried out on their territory and, in particular, the collection or harvesting of wild species or the destruction or alteration of the habitats of such species do not result in any species becoming extinct or threatened with extinction at national levels, and most particularly at world level;

b) seek to ensure that activities carried out outside the limits of national jurisdiction by natural or juridical persons possessing their nationality or by natural or juridical persons operating their ships or other craft under their jurisdiction or control, in particular the collection or harvesting of wild species or the destruction or alteration of the habitats of such species, do not result in any species becoming extinct or threatened with extinction;

c) seek to ensure that the collection or harvesting of wild species is carried out on a sustainable basis and to this end regulate and where appropriate prohibit indiscriminate methods of collection or harvesting as well as the possession of and trade in specimens of wild species.

#### Article 8 - Conservation of Species Ex Situ

1. While recognising that the conservation of species in situ is normally preferable to their conservation ex situ and should, therefore, receive priority in national and international conservation programmes, States shall take measures to preserve species ex situ wherever this is essential for their survival or may contribute substantially to that end. They shall pay particular attention for that purpose to:

- a) species threatened with extinction;
- b) species of medicinal importance;
- c) species which are wild relatives of domestic animal species and cultivated plant species;
- d) species, including local races or semi-domesticates, which hybridise with and form a common gene pool with wild species;
- e) any other species, including varieties, of importance as reservoirs or sources of genetic material for the breeding of new or improved cultivated plants or domestic animals;
- f) species which have been designated by the Conference as requiring ex situ conservation measures.

2. In respect of the categories of species listed in paragraph 1 of this Article, States shall:

- a) maintain the most complete inventories practicable of such species indigenous to their territory;
- b) maintain, support or facilitate the preservation of such species in botanic gardens, arboreta, zoological gardens and other living collections, and in seed and gene banks and other specialised facilities;
- c) ensure that the taking of individuals for purposes of conservation ex situ does not compromise the survival or integrity of the species concerned in situ;

d) ensure that policies of ex situ and in situ conservation within their territories are complementary and secure the maximum practicable perpetuation of the genetic diversity of the species concerned;

e) where practicable, promote the restoration in situ of species that have been maintained ex situ.

#### Article 9 - Recovery Plans

1. States shall, on the basis of guidelines adopted by the Conference, develop and implement recovery plans for species which are threatened with world-wide extinction or in respect of which the Conference has established that a recovery plan is required.

2. A recovery plan shall include all those measures, whether in situ or ex situ, which are required to restore a population of any such species to a level such that it constitutes a viable population and shall, in particular, wherever appropriate, identify the habitats that are critical for the survival and recovery of that species and provide for the measures that are necessary to ensure the conservation of such habitats.

3. States shall, as appropriate, collaborate with other States, with a view to ensuring the conservation of the species referred to in paragraph 1 of this Article throughout their range through the joint development and implementation of commonly agreed recovery plans.

#### Article 10 - Pollution

1. States shall have regard to the objectives of this Convention in the development and implementation of their domestic legislation, and in the discharging of their international obligations relating to the prevention, reduction and control of pollution.

2. They shall, in particular, seek to ensure that no significant damage shall be caused to biological diversity, especially within areas included in the World List, as a result of the release into the environment of any substance, or of radioactivity or heat.

3. They shall pay particular attention to any list of substances liable to cause significant damage to biological diversity as well as to any guidelines for the use, storage, transport or disposal of such substances which may be adopted by the Conference.

#### Article 11 - Alien Species

1. States shall adopt stringent measures to prevent or control the intentional or accidental introduction or release into their territory, or into any part of their territory, and most particularly into areas included in the World List, of wild

species which are alien to their territory, or to that part of their territory, or to those areas, where such species through their natural expansion are likely to cause significant damage to biological diversity.

2. They shall seek, to the maximum extent feasible, in appropriate cases, and by the means of ecologically viable and environmentally compatible measures, to eradicate such species when they have already been introduced. In the performance of these obligations, they shall pay particular attention to any list as may be adopted by the Conference, of species the introduction of which should be prohibited or strictly controlled, as well as to any guidelines adopted by the Conference for the evaluation and minimisation of the risks of adverse effects arising from introductions or releases, or pertaining to eradication requirements and eradication methods.

#### Article 12 - Man-made Organisms

States shall rigorously control the intentional or accidental release into the environment of man-made or genetically engineered organisms. They shall pay particular attention to any security guidelines adopted by the Conference in this regard.

#### Article 13 - Preservation of the Biological Diversity of Other States or Beyond the Limits of National Jurisdiction

States shall refrain from any action or omission that may result in significant damage to biological diversity beyond the limits of their territory.

To this end, they shall:

a) ensure that activities carried out on their territory, or under their jurisdiction or control in areas beyond the limits of national jurisdiction, do not result in significant damage to biological diversity in the territory of another State or of other States, or beyond the limits of national jurisdiction;

b) ensure that activities they carry out, authorise or finance, or which are carried out, authorised or financed by their State enterprises, directly or through the appropriate international organisations, on the territory of another State, do not result in significant damage to biological diversity in the territory of that State, or of any other State, or in areas beyond the limits of national jurisdiction;

c) seek to ensure that activities by natural or juridical persons possessing their nationality, or activities effectively controlled by such persons, do not result in significant damage to biological diversity in the territory of any State or in areas beyond the limits of national jurisdiction.

## Article 14 - Environmental Impact Assessments

1. States shall require that proposals for any activity which may result in significant damage to biological diversity shall as far as possible be subjected to an assessment of their consequences for biological diversity, including possible direct, indirect and cumulative effects. They shall always require such an assessment whenever a proposed activity may result in significant damage to an area included in the World List.

2. States shall take into consideration the results of this assessment in reaching a decision to authorise or not to authorise any such activity. Should they decide to authorise the activity, States shall plan and carry them out in such a manner as to avoid or minimise any adverse effects on biological diversity and shall monitor such effects with a view to taking remedial action as appropriate.

3. The provisions of this Article apply to any proposed activity which may result in significant damage to biological diversity in the territory of the State where it has been proposed or in areas in the territory of another State or of other States or in areas beyond the limits of national jurisdiction and whether the proponent is a State, any other public body, an international organisation, or a private person.

4. Where the proponent of a proposed activity is an international organisation, States Parties to this Convention which are Member States of that organisation shall seek to ensure, in exercising their voting rights in that organisation, or otherwise, that the provisions of this Article are adhered to by the organisation concerned.

5. When an activity which may result in significant damage to biological diversity is proposed to be undertaken or financed by one State on the territory of another State, the two States concerned shall cooperate with a view to reaching an agreement on the manner in which the environmental impact assessment shall be carried out.

6. The Conference shall adopt guidelines for the preparation of the impact assessments required under this Article, as well as for the determination of measures to minimize adverse effects of authorised activities and for the monitoring of the effects of such activities.

## PART IV - ACCESS TO BIOLOGICAL DIVERSITY

### Article 15 - Access to Specimens

1. States shall provide small numbers of specimens of wild indigenous species or allow the collection in the wild of such specimens, and authorise their export, when such specimens have been requested for the purposes of scientific research, animal or plant breeding, ex situ conservation or reintroduction into the natural environment.

2. Notwithstanding paragraph 1 of this Article, the exercise of the right to obtain specimens of any species shall be restricted if it is necessary to do so for the purpose of the conservation of that species or of any other species.

3. Specimens shall be made available on mutually agreed terms. Such terms may provide for payments in addition to those which may be required under this Convention provided that such payments do not amount in practice to the denial of the right of access.

4. The provisions of this Article are without prejudice to the provisions of the Convention on International Trade in Endangered Species of Wild Fauna and Flora signed at Washington on March 3, 1973.

#### Article 16 - Evaluation of Biomaterials

1. The Conference may establish within the Secretariat a specialised unit which shall be responsible, on behalf of the Fund, for the collection of specimens from the natural environment and for the evaluation of potential commercial applications of any biomaterial constituted by such specimens or obtained or derived therefrom.

2. The Secretary General may file applications for the granting of patents or other intellectual property rights in any State or with any competent international organization in respect of any scientific discovery or invention resulting from such an evaluation.

3. Any intellectual property right granted as a result of any such application shall be vested in the Fund.

4. Any State Party may, at any time after the establishment of the specialised unit referred to in paragraph 1 of this Article, notify the Secretariat in writing that the right of access to specimens referred to in Article 15 shall, as far as it is concerned, only be exercised by or through the Fund. This notification shall become effective one hundred and twenty days after the date at which the Secretariat has notified all other State Parties of its reception.

5. Any State Party which has made to the Secretariat the notification referred to in paragraph 3 of this Article may, at any time, withdraw that notification. The withdrawal of any such notification shall become effective one hundred and twenty days after the date at which the Secretariat has notified all other State Parties of the reception of the notification of withdrawal.

#### PART V - THE CONFERENCE

##### Article 17 - Organisation of the Conference

1. A Conference of the Parties is hereby established to review and promote the implementation of this Convention.

2. The Conference shall consist of all the States Parties to this Convention.

3. The Depository shall call a meeting of the Conference not later than one year after the entry into force of this Convention. Thereafter, the Secretariat shall convene ordinary meetings of the Conference at regular intervals of not more than ... years and extraordinary meetings as may be deemed necessary by the Conference or at the written request of any State 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 States Parties.

4. The Conference shall consist of all the States Parties to this Convention.

5. Except as provided by paragraph 8 of this Article, each State Party shall have one vote. The organisations referred to in Article 44, paragraph 1 c), 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 States Parties to the Convention. Such organizations shall not exercise their right to vote if their member States exercise theirs, and vice versa.

6. By written notification to the Chairman of the Conference, any State Party may authorise, under its own responsibility, any other State Party to represent its interests and to cast its votes at any meeting of the Conference.

7. Except as otherwise provided for in this Convention, decisions by the Conference shall be by simple majority vote of the States Parties present and voting.

8. Decisions relating to the methods of calculation and of collection of contributions made to the Fund, as well as decisions relating to payments made from the Fund, shall be taken according to the distribution of votes and voting procedure laid down in Annex II to this Convention.

9. For the purposes of this Article, the phrase "States Parties present" means "States Parties present at the meeting at the time of the vote" and the phrase "States Parties present and voting" means "States Parties present and casting an affirmative or negative vote". States Parties who abstain from voting shall not be considered as voting.

10. The Conference may create such subsidiary bodies as it deems necessary for the performance of its functions.

11. The Conference shall adopt its own rules of procedure.

12. a) The United Nations, its Specialised Agencies, the International Atomic Energy Agency, any other inter-governmental organisation, including inter-governmental development assistance organisations, development banks and the International Tropical



Timber Organisation, the bodies designated by the Parties to any conventions or agreements dealing with the conservation of biological diversity, natural areas or wild species, as well as any State not a Party to this Convention, may be represented by observers at the meetings of the Conference.

b) Any agency or body scientifically or technically qualified in the matters dealt with in this Convention, in the following categories, which has informed the Secretariat of its desire to be represented at meetings of the Conference by observers, shall be admitted unless at least one-third of the States Parties present object:

i) international non-governmental agencies or bodies, and national governmental agencies and bodies; and

ii) national non-governmental agencies or bodies which have been approved for this purpose by the State in which they are located.

c) Observers shall have the right to participate but not to vote.

#### Article 18 - Functions of the Conference

1. The Conference of the Parties shall, on the basis of the reports on the status of biological diversity prepared by the Advisory Committee, keep under continuous review the implementation of this Convention, and, in addition shall:

a) Agree as soon as possible on criteria for inclusion of areas in, and deletion of areas from, the World List;

b) Acting on the proposal of the Advisory Committee, prepare, review, and where necessary update a long-term Action Plan for the conservation of biological diversity and determine priority scientific requirements for the implementation of that Action Plan;

c) Consider and adopt, as required, in accordance with Articles 41 and 42, amendments to this Convention, to its annexes and its appendices;

d) Consider amendments to any protocol, as well as to any annexes or appendices thereto, and if so decided, recommend their adoption to the parties to the protocol concerned;

e) Consider and adopt as required, in accordance with Article 41, additional annexes to this Convention;

f) Consider and adopt as required, in accordance with Article 42, additional appendices to this Convention;

g) Consider and adopt, as required, protocols in accordance with Article 40;

h) Consider any proposal made by the Advisory Committee pursuant to Article 21 with regard to lists, criteria or guidelines with a view to approving them;

i) Perform any other task which has been entrusted to it by this Convention.

2. The Conference may make recommendations to States and international organisations on any measure that may lead to an improvement in the status of biological diversity, including any measure to maintain, develop or support sustainable economic activities consistent with the maintenance of biological diversity.

#### Article 19 - Financial Arrangements

1. Expenses incurred in the operation of the Conference, of the Advisory Committee, of the Fund and of the Secretariat, as well as expenses incurred in respect of the technical assistance referred to in Article 31, shall be borne by the Fund.

2. The Conference shall establish and keep under review the financial regulations of the Convention and shall, at each ordinary meeting, adopt a budget for the next financial period. Financial regulations, including the budget, shall be adopted by a two-thirds majority of the States Parties present and voting. The total annual budget in respect of matters relating to the administration of the Fund and its organs shall not, however, exceed ... percent of the income of the Fund during the preceding year unless the Conference decides otherwise by a two-thirds majority.

3. The Conference may, by a two-thirds majority, institute a system of contributions to finance expenses incurred in respect of matters which do not relate to the operation of the Fund. The scale of such contributions or modifications thereof shall also be adopted by a two-thirds majority.

4. In the event of the establishment of the specialised unit referred to in Article 16(1), the Conference may make special arrangements for the financing of the operations of that unit. It may, in particular, authorise the Secretary General to enter on behalf of the Fund into specific agreements for that purpose with any State, organisation or corporation.

#### PART VI - ADVISORY COMMITTEE ON CONSERVATION OF BIOLOGICAL DIVERSITY

##### Article 20 - Establishment

1. The Conference shall establish at its first meeting an Advisory Committee on the Conservation of Biological Diversity.

2. The Advisory Committee shall be composed of no fewer than fifteen members, and no more than a number of members equal to one-third of the number of States Parties to this Convention.

3. The members of the Advisory Committee shall be appointed by the Conference according to the procedure described in Annex 1 to this Convention. They shall be chosen by reason of their experience and expertise in matters relating to the conservation of biological diversity, due regard being paid to the requirements to ensure an adequate representation of the various scientific disciplines concerned by the conservation of biological diversity as well as of the different biogeographical zones of the Earth.

4. Members of the Advisory Committee shall serve in their individual capacity.

5. Members of the Advisory Committee shall be appointed for a period of .... years and may be reappointed.

6. The conditions of service of members of the Advisory Committee shall be determined by the Conference.

7. Subject to the approval of the Conference, the Advisory Committee shall establish its own rules of procedure.

#### Article 21 - Functions

1. The Advisory Committee shall:

a) make recommendations to the Conference as to the measures required for the conservation and management of biological diversity and, in particular, for the establishment, maintenance and management of areas, the conservation of which should be ensured for those purposes;

b) prepare, and where required, update, for submission to the Conference:

i) criteria and guidelines for the carrying out of surveys and inventories and for the identification by States of areas requiring urgent conservation action pursuant to Articles 4 and 5, due regard being given to adequate biogeographic representation and geographic networking;

ii) criteria for inclusion of areas into and deletion of areas from the World List pursuant to Article 5(4);

iii) the list of wild species and communities of species requiring priority attention pursuant to Article 7;

iv) guidelines for the development and implementation of recovery plans pursuant to Article 9;

v) in collaboration with the appropriate international organisations, the list of substances which may cause significant damage to biological diversity and guidelines relating to the use of such substances, pursuant to Article 10;

vi) lists of species the introduction of which should be controlled, guidelines to reduce the risk of adverse effects arising from introductions and guidelines on eradication requirements and methods, pursuant to Article 11;

vii) security guidelines relating to the use and release into the environment of man-made or genetically engineered organisms pursuant to Article 12;

viii) guidelines relating to the preparation of environmental impact assessments pursuant to Article 14;

ix) guidelines for the determination of the nature and level of damage which constitutes significant damage for the purposes of Articles 10, 11, 13 and 14;

x) criteria for eligibility of projects for international financing from the Fund pursuant to Article 29(3);

c) prepare, keep under review, and update as may be required, the World List pursuant to Article 5(2);

d) prepare, keep under review and update as may be required a list of species threatened with world-wide extinction;

e) prepare the long-term Action Plan referred to in Article 18(1)(b) for the conservation of biological diversity; make proposals for priorities in the implementation of that Action Plan; advise the Conference or the Board as the case may be each year as to the priority scientific requirements for the conservation of biological diversity during the following year for the purposes of Article 29(2);

f) Advise States on any conservation and management measures required to achieve the purposes of this Convention;

g) report to the Conference at each of its meetings on the status of biological diversity and on the progress achieved in its conservation;

h) provide advice as to expenditures from the Fund pursuant to Article 30;

i) carry out, or cause to be carried out, subject to the approval of the Conference, any research or monitoring activity which may be required to further the objectives of this Convention;

j) discharge such other functions as the Conference shall from time to time direct.

2. The Advisory Committee shall, in discharging its functions, draw upon the expertise of any international or national agency or body scientifically or technically qualified in matters relating to the conservation of biological diversity. It may, with the approval of the Conference, enter into working arrangements with any such agency or body for that purpose. Expenditures incurred by any such agency or body in the execution of such working arrangements shall be shared by mutual agreement or shall be borne by the budget of the Conference.

**PART VII - INTERNATIONAL FUND FOR THE  
CONSERVATION OF BIOLOGICAL DIVERSITY**

**Article 22 - Institution of the Fund**

1. There shall be established by the States Parties an International Fund for the Conservation of Biological Diversity (hereinafter designated as "the Fund"). The seat of the Fund shall be determined by the Conference.

2. The Fund shall be recognised by each of the States Parties as possessing the necessary legal personality under the laws of that State Party to enable it to discharge its functions under the Convention.

**Article 23 - Purpose of the Fund**

The purpose of the Fund shall be to advance the objectives of this Convention by making, in accordance with Articles 28 and 29, payments or loans to States or to certain organisations to enable or assist them in undertaking the conservation of biological diversity.

**Article 24 - Privileges and Immunities**

1. The Fund, its assets, income (including contributions) and other property, shall enjoy in all States Parties exemption from taxation.

2. Irrespective of existing or future regulations concerning currency or transfers, States Parties shall authorize the transfer and payment in convertible currency of any contribution to the Fund and of any sums required to be transferred by it in the discharge of its functions.

**Article 25 - Administration of the Fund**

1. The Fund shall be administered by the Conference. It shall have a Director who shall be the Secretary-General referred to in Article 32.

2. The Conference may appoint a Board for the purpose of administering the Fund, and delegate to that Board any of the powers referred to in paragraph 5 of this Article.

3. The Board shall be composed of no less than one-fifth and no more than one-third of the States Parties to this Convention. Members of the Board shall be appointed by the Conference for a period of two years and may, at the expiry of that term, be re-appointed for a further period of two years.

4. In appointing the members of the Board, the Conference shall pay due regard to the necessity of ensuring an adequate geographic representation as well as an adequate representation of the major biogeographic zones of the Earth.

5. The Conference shall have the power to:

- a) determine, after consideration of the opinion of the Advisory Committee, and on the basis of the priority scientific requirements which it shall adopt pursuant to Article 18(4), the payments or loans that are to be made by the Fund;
- b) determine the financial conditions attached to loans made by the Fund;
- c) adopt regulations for the proper functioning of the Fund;
- d) appoint auditors and approve the accounts of the Fund;
- e) give directions to the Director concerning the administration of the Fund;
- f) authorize the Secretary General to borrow funds;
- g) perform such other functions as may from time to time be necessary for the proper operation of the Fund.

#### Article 26 - Contributions

1. States Parties shall ensure that contributions shall be paid to the Fund according to the provisions of this Article.

2. Contributions to the Fund shall be made in respect of each State Party by:

a) any person who within its territory or under its jurisdiction uses in any commercial operation any biomaterial or any biomaterial belonging to a class of biomaterials listed in Appendix I of this Convention;

b) any person belonging to a class of persons listed in Appendix II to this Convention.

3. a) Each State Party may at the time when it deposits its instrument of ratification or accession or at any time thereafter declare that it assumes itself obligations that are incumbent under this Convention on any person who is liable to contribute to the Fund. Such declaration shall be made in writing and shall specify which obligations are assumed;

b) a declaration made according to this paragraph may be withdrawn by the relevant State giving notice thereof in writing to the Secretary General. Such notification shall take effect ninety days after the Secretary General's receipt thereof;

c) any State which is bound by a declaration made under this paragraph shall, in any proceedings brought against it before a competent court in respect of any obligation specified in the declaration waive any immunity that it would otherwise be entitled to invoke.

4. Method of calculations and of collection of contributions shall be agreed by the Conference according to the procedure provided for in Annex II to this Convention.

5. The Conference may, at any time, by a two-thirds majority, amend Appendix I to include biomaterials or new classes of biomaterials or delete biomaterials or classes of biomaterials according to the procedure laid down in Article 48.

6. No payments shall be due in respect of the commercial use of any biomaterial or class of biomaterial listed on Appendix I which has been specifically exempted from such payments by the Conference by a two-thirds majority.

7. The Conference shall decide in respect of each biomaterial or class of biomaterial listed on Appendix I on the date as from which payments in respect of the commercial use of such biomaterial shall be due. No payment shall be due for the commercial use of any biomaterial prior to the date at which it has been listed.

#### Article 27 - Resources of the Fund

1. The resources of the Fund shall consist of:

- a) the contributions referred to in Article 26;
- b) licence fees and royalties accruing from intellectual property rights vested in the Fund;
- c) voluntary contributions including contributions in kind, gifts or, where appropriate, bequests which may be made by:
  - i) any State;
  - ii) intergovernmental organisations, including development aid organisations;
  - iii) public or private bodies or individuals;
- d) any interest due on the resources of the Fund;
- e) funds raised by collections and receipts from events organised for the benefit of the Fund;
- f) funds borrowed by the Fund; and
- g) all other resources authorized by the Conference.

2. Contributions of the kinds referred to in paragraph 1(c) above may be made subject to the condition that they be used only for a certain project or in respect of a specific area and such condition shall be respected provided that such project or projects are included in the long-term Action Plan and are consistent with the priority scientific requirements referred to in Article 18(1)(b), or have been made for the purpose of meeting a conservation emergency under the procedures referred to in Article 29(7).

3. No other conditions shall be attached to contributions, gifts or bequests made to the Fund.

#### Article 28 - Payments from the Fund

Payments from the Fund shall be made in accordance with the following provisions:

a) where it is possible to identify the State from which the biomaterial, or the species from which the biomaterial was obtained or derived, originated, the following payments shall be made to the State that has been so identified:

i) .... percent of the contributions paid into the Fund in respect of the use of such biomaterial;

ii) .... percent of any licence fee or royalty paid into the Fund in respect of such biomaterial.

b) all other payments, except for the repayment of monies borrowed by the Fund and the payment of interests relating thereto, shall be made for the purposes of Articles 19 and 31 or to support projects as provided in Articles 29, 30 and 38.

#### PART VIII - CONSERVATION PROJECTS

##### Article 29 - Eligibility of Projects for Financing

1. Payments by the Fund made to recipient States shall be applied to the conservation of biological diversity.

2. At each of its meetings, the Conference, on the basis of the long-term Action Plan for the conservation of biological diversity and of the priority scientific requirements referred to in Article 18(1)(b) shall adopt a list of priority conservation projects. Projects may include scientific research; surveys and inventories; elements essential to the identification, establishment, or maintenance of areas the conservation of which should be ensured (including actions such as the establishment or maintenance of buffer zones, the abatement of pollution outside the area itself, and compensation to local populations), and the development or support of sustainable economic activities relating to the use of wild species or of the natural environment which are consistent with the maintenance of biological diversity. Projects may also include the financing over a period of several years of operational costs incurred in the conservation of biological diversity including, but not limited to, costs incurred in the operation of research facilities or programmes, staff training, maintenance of infrastructure and equipment, and education and information activities. Pending the completion of the long-term Action Plan mentioned above, the Conference shall evaluate the degree of priority to be given to project proposals on the basis of provisional guidelines that it shall adopt at its first meeting or as early as possible thereafter.



3. The eligibility of projects for financing from the Fund shall be governed by criteria to be developed and approved by the Conference upon the advice of the Advisory Committee. In developing such criteria, the Conference shall give priority to the goal of conserving biological diversity in situ and, in particular, of ensuring the conservation of the biological diversity of the areas included in the World List.

4. The Advisory Committee shall, in respect of each project application, give its opinion to the Conference on the eligibility of the proposed project, paying due regard to:

- a) the criteria developed pursuant to paragraph 3 of this Article;
- b) the importance of the project to the conservation of an area or areas included in the World List;
- c) the urgency of the conservation measures proposed;
- d) the relative importance of the measures proposed to conservation of biological diversity on a world-wide scale;
- e) the scientific, economic and technical soundness of the project.

#### Article 30 - Approval of Payments from the Fund

1. Eligible projects shall be submitted to the Conference or, if the Conference has approved the establishment of a Board to administer the Fund, to the Board upon delegated authority of the Conference.

2. The Conference, or the Board, as the case may be, may at its discretion approve the full or partial financing of a project, refuse to finance a project or approve the full or partial financing of a project subject to certain conditions as to its execution.

3. When considering whether or not a payment shall be made out of the Fund to any State for the financing of a project, the Conference, or the Board, as the case may be, shall take into consideration, inter alia:

- a) the measures which have been taken by that State (having regard to its capacity and resources) to achieve the objectives of this Convention;
- b) any payments received by that State under the terms of Article 15(3) and Article 28(a);
- c) the opinion of the Advisory Committee required pursuant to Article 29(4);
- d) the capacity of the Fund to finance the project;
- e) the extent to which other sources of funds are or could be available to finance the project.

4. A State may submit an application to the Fund for the total or partial financing of any eligible project on its territory. Projects relating to areas of high biological diversity extending over the territory of more than one State may be the subject of joint application by such States.

5. Applications shall be accompanied by detailed plans and cost estimates.

6. The Conference shall develop and adopt procedures for the submission, screening and approval of projects, the conclusion of project agreements with recipient States, the monitoring of project implementation including the submission of progress reports and the final acceptance of projects upon completion.

7. The Conference shall develop and adopt procedures to provide for the expeditious screening and, where appropriate, approval of project applications in the event of a conservation emergency. It may, for that purpose, authorize the Advisory Committee to declare such a project eligible for financing and to approve the disbursement of funds, within a specified ceiling, to meet the initial costs of the project pending formal approval by the Conference or the Board.

8. When a project application is submitted to the Conference, or the Board, by a State, or jointly by two or several States, such State or States shall not participate in the vote relating to the financing of that project.

9. Payments in respect of any approved project may be suspended by the Conference or the Board when the conditions referred to in Article 27 (2), the conditions referred to in paragraph 2 of this Article, the procedures referred to in paragraph 6 of this Article or any condition set forth in the project agreement have not been complied with.

The Conference shall develop and adopt procedures providing for an automatic suspension of payments, subject to confirmation by the Conference or the Board, when certain of these conditions or procedures have not been complied with.

10. The Conference shall develop and adopt procedures for making available to other potential fundors project proposals which are deemed meritorious by the Conference or the Advisory Committee which are not fully financed by payments from the Fund.

#### Article 31 - Technical Assistance

Technical assistance to States for the purpose of carrying out research, surveys, inventories, or feasibility studies with regard to the conservation of biological diversity, environmental impact assessments, management plans, recovery plans, or the preparation of project applications for international financing, may be provided directly by the Secretariat with the approval of the Conference or of the Board. Requests by States for such technical assistance shall be processed according to a simplified procedure which shall be developed and approved by the Conference.

## PART IX - SECRETARIAT

### Article 32

1. A Secretariat shall be established for the purpose of this Convention.

2. The functions of the Secretariat shall be:

a) to arrange for and service meetings of the Conference, the Board, the Advisory Committee and of any other body established or authorised by the Conference;

b) to maintain liaison with the bodies designated by the Parties to other treaties, conventions or agreements relating to the conservation of biological diversity and with any national or international organisation having expertise in this field;

c) to maintain an updated register of all areas designated by States for the purpose of ensuring the conservation of biological diversity;

d) to maintain and service the Fund;

e) to provide for information of the general public concerning this Convention and its objectives;

f) to perform the functions assigned to it by any protocol;

g) to perform any other function entrusted to it under this Convention or by the Conference.

The Secretary-General shall be appointed by the Conference. The Conference shall make provisions for the appointment of such other personnel as may be necessary. It shall determine the terms and conditions of service of the Secretary-General and personnel.

## PART X - MISCELLANEOUS PROVISIONS

### Article 33 - Research

States Parties shall, individually or in cooperation with other States or appropriate international organisations, promote and, whenever possible, support scientific and technical programmes of relevance to the conservation and management of biological diversity, including monitoring, research, the exchange of technical information and the evaluation of results.

### Article 34 - Training and Public Awareness

1. States shall take such steps as are necessary to ensure that adequate provision is made for the training of personnel engaged in the identification, conservation, and management of wild species and natural habitats. Particular attention shall be paid to the training of such personnel in:

- a) taxonomy and field identification;
- b) the contribution which may be made by traditional knowledge in the field of natural resource management;
- c) ecology; and
- d) ecosystems management.

2. States shall promote, through formal education programmes in the schools and by other means, public awareness of the significance of the measures adopted for the purpose of conserving biological diversity and of the relationship of such measures to sustainable development activities, and to present and future human welfare.

#### Article 35 - Inter-State Cooperation

States shall cooperate, directly or through the Secretariat or the appropriate international organisations, with a view to conserving biological diversity. They shall, in particular, cooperate in the development of joint conservation programmes for areas of high biological diversity situated within the territory of more than one State or in areas beyond national jurisdictional limits; they shall, as appropriate, develop, in cooperation with the appropriate international organisations, joint recovery and management plans for species of which they share the range or part of the range, paying particular attention to species which are endemic to the area formed by their adjoining territories.

#### Article 36 - Implementation and Compliance

1. The States Parties shall take all necessary legislative, regulatory and administrative measures to implement and enforce the provisions of this Convention and, in particular, measures to impose appropriate penalties for violations of their legislation pertaining to the conservation of biological diversity and to require, whenever possible, the reparation of the damage or adequate compensation measures.

2. Each State Party may, whenever it deems it necessary, draw the attention of the Conference to any activity which in its opinion affects the implementation of the objectives and principles of this Convention or the compliance by any State Party with its obligations under this Convention.

3. The Conference shall draw the attention of all States Parties to any activity which, in its opinion, affects the implementation of the objectives and principles of this Convention or the compliance by any State Party with its obligations under this Convention.

4. The Conference shall draw the attention of any State which is not a State Party to this Convention to any activity undertaken by that State, its agencies or instrumentalities, natural or juridical persons, ships, or other craft which, in the opinion of the Conference, affects the implementation of the objectives and principles of this Convention. The Conference shall inform all State Parties accordingly.

5. States shall encourage and support the establishment of non-governmental organisations active in the field of the conservation of biological diversity, and shall provide for their participation, on a consultative basis, in decision-making procedures, including the preparation of the environment impact assessments referred to in Article 14, relating to the approval of projects or activities which may affect the maintenance of biological diversity. They shall give legal standing to such organisations to institute legal proceedings to ensure the enforcement of their domestic legislation relating to the conservation of biological diversity.

6. Where there is a risk of irreversible damage to biological diversity arising from an action or a proposed action undertaken or proposed to be undertaken in violation of their domestic legislation relating to the conservation of biological diversity, States shall take such action as may be required, administratively or judicially, to prevent such action from being undertaken or to bring about the prompt cessation of such action. They shall, as may be required, institute the administrative and judicial procedures which may be necessary for that purpose.

7. The States Parties may develop a protocol to govern their liability in the case of damage caused by their State entities, or by persons, ships or other craft under their jurisdiction or control to biological diversity within the territory of any State or in areas beyond the limits of national jurisdiction.

#### Article 37 - Reporting

The States Parties shall transmit to the Secretariat reports on the measures adopted in implementation of this Convention in such form and at such intervals as the Conference may determine. They shall, in particular, provide to the Secretariat information on such areas as they may have established in their territory for the purpose of ensuring the conservation of biological diversity, including maps showing the boundaries of such areas, information on the species, communities, ecosystems and environmental processes and interactions so protected, human population and activities, potential threats, and management measures taken or known to be required. They shall, in addition, communicate to the Secretariat copies of their laws and regulations implementing this Convention as well as of the outcome of any legal proceedings against alleged offenders. The Secretariat shall communicate to all State Parties any information it has received from any State Party pursuant to this Article.

**PART XI - RELATIONS WITH OTHER INTERNATIONAL CONVENTIONS AND WITH NATIONAL LEGISLATION**

**Article 38 - Relations with Other Conventions, Agreements or Organisations Dealing with the Conservation of Biological Diversity**

1. The provisions of this Convention shall in no way affect the rights or obligations of any State Party deriving from any existing convention or agreement dealing with the conservation of biological diversity or of particular species or habitats.

2. States Parties to this Convention, when they proceed to or participate in the designation of areas to be included in international networks of protected areas established under other conventions or agreements, or under an international governmental programme, shall give due regard to the designation of areas included in the World List.

3. The Advisory Committee shall review, as a matter of priority, areas established or designated as conservation areas under other conventions or agreements, or under an international governmental programme, with a view to determining whether such areas meet the criteria adopted by the Conference for the inclusion of areas in the World List. The Conference, or the Board, shall give due regard to projects relating to the conservation or management of such areas when establishing the list of priority conservation projects referred to in Article 29(2).

4. The World Heritage Committee established under the Convention concerning the Protection of the World Cultural and Natural Heritage, adopted at Paris on November 16, 1972, may submit to the Conference, or to the Board, project applications relating to the conservation and management of areas listed on the World Heritage List established under that Convention. Payments from the Fund in respect of approved projects relating to such areas shall be made to the World Heritage Fund established under that Convention.

5. The bodies designated by the Parties to other conventions or agreements, whether global, regional, sub-regional or bilateral, relating to the conservation of biological diversity may submit to the Conference, or to the Board, project applications concerning research, surveys, inventories and feasibility studies in their particular field of activity. When any such project has been approved by the Conference, payments from the Fund shall be made to the body concerned.

6. Articles 29 and 30 shall apply mutatis mutandis to project applications and payments from the Fund made in pursuance of paragraphs 4 and 5 of this Article.

7. The Conference shall invite the World Heritage Committee, the bodies designated by the Parties to conventions or agreements relating to the conservation of biological diversity, and the international governmental and non-governmental organisations having expertise in this field, to contribute to the development of the long-term Action Plan for the conservation of biological diversity and to the determination of priority scientific requirements referred to in Article 18(4) of this Convention.

8. The Conference may, at its own initiative, or upon the request of some or all of the bodies designated by the Parties to conventions or agreements relating to the conservation of biological diversity or international organisations concerned, invite representatives of such bodies or organisations and the heads of their secretariat to participate in meetings for the purpose of facilitating joint action for the conservation of biological diversity.

#### Article 39 - Stricter Measures

Without prejudice to the provisions of Part IV, the provisions of this Convention shall in no way affect the rights of Parties to adopt stricter measures concerning the conservation of biological diversity.

### PART XII - FINAL CLAUSES

#### Article 40 - Adoption of Protocols

1. The Conference may, at any of its meetings, adopt protocols.
2. The text of any proposed protocol shall be communicated to the States Parties by the Secretariat at least six months before such a meeting.
3. Each Party to any protocol shall have one vote unless otherwise provided in the protocol in question. The organisations referred to in Article 44, paragraph 1 c), 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 Parties to the relevant protocol. Such organisations shall not exercise their right to vote if their member States exercise theirs, and vice versa.

#### Article 41 - Amendment of the Convention or Protocols

1. The annexes to this Convention or to any protocol shall form an integral part of this 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.
2. Any State Party may propose amendments to this Convention or to any protocol.

3. Amendments to this Convention shall be adopted at a meeting of the Conference of the Parties. Amendments to any protocol shall be adopted at the 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 States Parties 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.

4. Any comment on the text of any proposed amendment shall be communicated to the Secretariat not less than sixty days before the beginning of the meeting of the Conference or of the meeting of the Parties to the protocol in question, as the case may be. The Secretariat shall, immediately after the last day for submission of comments communicate to all States Parties all comments submitted by that day.

5. Amendments to this Convention shall be adopted by a two-thirds majority of States Parties present and voting.

6. An amendment so adopted shall enter into force for all States Parties which have accepted it on the first day of the third month following the date on which two-thirds of the States Parties have deposited an instrument of acceptance with the Depositary. For each State Party which deposits an instrument of acceptance after the day on which two-thirds of the States Parties have deposited an instrument of acceptance, the amendment shall enter into force for that State Party on the first day of the third month following the deposit of its instrument of acceptance.

7. The procedure mentioned in paragraphs 4 to 6 of this Article shall apply to the proposal, adoption and entry into force of:

a) amendments to any protocol except as may be otherwise provided in such protocol;

b) additional annexes to this Convention;

c) additional annexes to any protocol, except as may be otherwise provided in that protocol.

#### Article 42 - Adoption and Amendment of Appendices

1. The appendices to this Convention or to any protocol shall form an integral part of this 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 appendix hereto.

2. Any State Party may propose amendments to any appendix to this Convention or to any appendix to any of its protocols.



3. Amendments to any appendix to this Convention shall be adopted at a meeting of the Conference. Amendments to any appendix to a protocol shall be adopted at a meeting of the Parties to the Protocol in question. The text of any proposed amendment to an appendix to this Convention or to an appendix to any protocol, except as may be otherwise provided in such protocol, shall be communicated to the States Parties 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.

4. Any comment on the text of any proposed amendment shall be communicated to the Secretariat not less than sixty days before the beginning of the meeting of the Conference or of the meeting of the Parties to the protocol in question, as the case may be. The Secretariat shall, immediately after the last day for submission of comments communicate to all States Parties all comments submitted by that day.

5. Amendments to the appendices to this Convention shall be adopted by a two-thirds majority of States Parties present and voting.

6. An amendment to the Appendices to this Convention shall enter into force for all States Parties ninety days after the meeting of the Conference of the Parties at which it was adopted, except for those States Parties which make a reservation in accordance with paragraph 7 of this Article.

7. During the period of ninety days provided for in paragraph 5 of this Article, any Party may by notification in writing to the Depositary make a reservation with respect to the amendment. A reservation to an amendment may be withdrawn by written notification to the Depositary and thereupon the amendment shall enter into force for that Party ninety days after the reservation is withdrawn.

8. The procedure mentioned in paragraphs 3 to 7 of this Article shall apply to the proposal, adoption and entry into force of:

- a) amendments to any appendix to any protocol, except as may be otherwise provided in such protocol;
- b) additional appendices to this Convention;
- c) additional appendices to any protocol, except as may otherwise be provided in that protocol.

#### Article 43 - Settlement of Disputes

1. If any dispute arises between two or more States Parties as to the interpretation or application of this Convention, those States Parties shall consult among themselves with a view to resolving the dispute by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means as they shall think appropriate.

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

3. The States Parties may develop a protocol to govern the settlement of disputes.

#### Article 44 - Signature

1 This Convention shall be open for signature by:

- a) any State;
- b) any self-governing associated State which has competence over the matters governed by this Convention including the competence to enter into treaties in respect of these matters;
- c) any international or regional organisation of an integration or other nature, provided such organisation is constituted by sovereign States and has competence in respect of the negotiation, conclusion and application of treaties in matters covered by this Convention.

2. This Convention shall remain open for signature until ... at ... and shall remain open for accession indefinitely thereafter.

#### Article 45 - Ratification, Acceptance or Approval

1. This Convention and any protocol shall be subject to ratification, acceptance or approval by States and by the self-governing associated States and organisations referred to in Article 44, paragraphs 1.b) and 1.c).

Instruments of ratification, acceptance or approval shall be deposited with the Depositary.

2. Any organisation referred to in paragraph 1 above which becomes a Party to the Convention or any protocol without any of its member States being a Party shall be bound by all the obligations under the Convention or the protocol, as the case may be. In the case of such organisations, one or more of whose member States is a Party to the Convention or relevant protocol, the organisation and its member States shall decide on their respective responsibilities for the performance of their obligation under the Convention or protocol, as the case may be. In such cases, the organisation 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 organisations 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 organisations shall also inform the Depositary of any substantial modification in the extent of their competence.

#### Article 46 - Accession

1. This Convention and any protocol shall be open for accession by States and by the self-governing associated States and organisations referred to in Article 44, paragraphs 1.b) and 1.c) from the date on which the Convention or the protocol concerned is closed for signature. The instruments of accession shall be deposited with the Depositary.

2. In their instruments of accession, the organisations 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. Those organisations shall also inform the Depositary of any substantial modification in the extent of their competence.

3. The provisions of article 45, paragraph 2, shall apply to the organisations referred to in paragraph 1 above which accede to this Convention or any protocol.

#### Article 47 - Relationship between the Convention and its Protocols

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

2. Decisions concerning any protocol shall be taken only by the parties to the protocol concerned.

#### Article 48 - Entry into Force

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

2. Any protocol, except as otherwise provided in such protocol, shall enter into force on the ninetieth day after the date of deposit of the eleventh instrument of ratification, acceptance or approval of such protocol or accession thereto.

3. For each State Party which ratifies, accepts or approves this Convention or accedes thereto after the deposit of the twentieth instrument of ratification, acceptance, approval or accession, it shall enter into force on the ninetieth day after the date of deposit by such State 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 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 party deposits its instrument of ratification, acceptance, approval or accession, or on the date on which the Convention enters into force for that Party, whichever shall be the later.

5. For the purposes of paragraphs 1 and 2 of this Article, any instrument deposited by an organisation referred to in Article 44, paragraph 1.c) shall not be counted as additional to those deposited by member States of such organisation.

#### Article 49 - Reservations

No reservations may be made to this Convention.

#### Article 50 - Withdrawal

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

2. Except as may be provided in any protocol, at any time after four years from the date on which such protocol has entered into force for a party, that party may withdraw from the protocol by giving written notification to the Depositary.

3. Any such withdrawal shall take effect 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.

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

5. No payments from the Fund shall be made to a State which has withdrawn from this Convention after the date on which such withdrawal has taken effect.

#### Article 51 - Termination of Parts VII and VIII

1. Parts VII and VIII of this Convention shall cease to be in force on the date when the number of States Parties falls below...

2. In the circumstances referred to in paragraph 1 above, the Conference shall take all appropriate steps to complete the termination of the Fund, including the distribution in an equitable manner of any remaining assets among those who have contributed to the Fund.

3. For the purposes of this Article, the Fund shall remain a legal person.

#### Article 52 - Depositary

1. The ..... shall assume the functions of depositary of this Convention and any protocols.

2. The Depositary shall inform the States Parties, in particular, of:

- a) The signature of this Convention and of any protocol, and the deposit of instruments of ratification, acceptance, approval or accession in accordance with Articles 45 and 46;
- b) The date on which the Convention and any protocol will come into force in accordance with Article 48;
- c) Notifications of withdrawal made in accordance with Article 50;
- d) Amendments adopted with respect to the Convention and any protocol, their acceptance by the parties and their date of entry into force in accordance with Article 41;
- e) All communications relating to the adoption and approval of appendices and to the amendment of appendices in accordance with Article 42;
- f) Notifications by the organisations referred to in Article 44, paragraph 1.c) of the extent of their competence with respect to matters governed by the Convention and any protocols, and of any modifications thereof;
- g) Declarations made in accordance with Article 26, paragraph 3.

3. Any instrument of ratification, acceptance approval or accession deposited after the entry into force of any amendment to this Convention shall be deemed to apply to the Convention as modified by that amendment.

#### Article 53 - 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.

Annex I Procedure for the appointment of members of the  
Advisory Committee

Annex II Voting on matters relating to the Fund

Appendix I Biomaterials and classes of biomaterials to which  
Article 26(1)(a) applies

Appendix II Persons or classes of persons to which Article  
26(1)(b) applies

## **Explanatory Notes**

EXPLANATORY NOTES TO DRAFT ARTICLES PREPARED BY IUCN FOR  
INCLUSION IN A PROPOSED CONVENTION ON THE CONSERVATION OF  
BIOLOGICAL DIVERSITY AND FOR THE ESTABLISHMENT OF A FUND FOR THAT  
PURPOSE

PART I : GENERAL COMMENTS

I. BACKGROUND

1. The need for a world convention on the conservation of biological diversity is now widely recognized in view of the increasing threats to natural ecosystems, particularly tropical forests, and of the anticipated extinction or serious genetic erosion of hundreds of thousands, if not millions, of species in the coming decades as a result of human activities if no major effort is undertaken to reverse this trend.
2. As early as 1972, the United Nations Conference on the Human Environment, meeting in Stockholm, adopted a number of principles relating to the conservation of species, ecosystems, and genetic resources. Ten years later, in 1982, the General Assembly of the United Nations further developed these principles and incorporated them in a Charter for Nature which it solemnly proclaimed.
3. Yet, in spite of repeated appeals by the scientific community and the heavy emphasis placed by the World Conservation Strategy on the necessity to preserve genetic resources, little has been done at the international level to transform these general principles into universally applicable rules of law.
4. Existing conventions, although important in their respective spheres of application for the conservation of biological diversity, are either sectoral and therefore cover only limited aspects of the problem (world heritage sites, wetlands, trade in wild species, migratory species) or are regional in their scope. Moreover the financial means available to implement most of the existing conventions are extremely limited. This makes it impossible to carry out conservation projects in the countries where they are the most urgently needed and where the resources available for that purpose are very limited. Thus, prompt and effective action at world level is more than ever necessary, if the anticipated wave of extinction is to be prevented.
5. In line with this requirement, the report of the World Commission on Environment and Development recommends that "Governments investigate the prospect of agreeing to a "species convention" similar in spirit and scope to the Law of the Sea Treaty and other international conventions reflecting the principles of "universal resources" (Our Common Future, p. 162). The question is also referred to as a matter of importance by the UNEP Governing Council report: "Perspectives for the Year 2000 and Beyond".



6. On the IUCN side, a resolution adopted at the 15th Session of the General Assembly at Christchurch in 1981 instructed the Secretariat of the Union to carry out a preliminary study on the conservation, accessibility and use of genetic resources, with a view to providing a basis for an international management and for rules to implement it (Resolution 15/10). The World National Parks Congress in Bali in 1982 invited IUCN to investigate the possible development of international instruments to regulate the commercial exploitation of wild genetic resources (Recommendation 10). At its 16th Session in Madrid in 1984, the IUCN General Assembly requested the Director General to promote the implementation of a number of Principles to serve as a basis for a preliminary draft for a global agreement on the conservation of the world's wild genetic resources (Resolution 16/24). Such a draft was prepared and submitted for discussion to a special workshop at the 17th Session of the IUCN General Assembly in San José, Costa Rica, in 1988. The workshop agreed that the draft should be further developed, and the General Assembly endorsed this view in its Resolution 17/22. IUCN worked intensively on the draft articles in the period that followed, consulting extensively within the IUCN organizational structure and with the IUCN network of experts in both the developing and developed world. Thus the IUCN/WWF plant Advisory Group as well as IUCN Commissions and thematic programmes were consulted and their advice reflected in a succession of drafts.

7. In parallel, the Governing Council of UNEP at its 14th Session in 1987 expressed concern about the disappearance of plant and animal species, recognized the need for adequate protection and preservation of biological diversity, and requested the Executive Director to establish an ad hoc working group of experts "to investigate the desirability and possible form of an umbrella convention to rationalize current activities in this field, and to address other areas which might fall under such a convention". (Decision 14/26 of 17 June 1987).

8. The Executive Director invited a small group of top-level scientists to assist him in the preparations for the meeting of the Ad Hoc Group of Experts. This small group met in Nairobi in August 1988, reviewed the preliminary IUCN draft and concluded that a global convention would be a powerful catalyst drawing together the efforts of the various sectoral and regional conventions in the field of biological diversity conservation because it would give overall shape and strategic direction to the whole world effort. It cautioned, however, that a Convention should not be adopted as a substitute for action and should, therefore, only proceed if it:

a) has a sound basis in science;

b) is truly comprehensive in scope ... and is in harmony with and supplement existing conventions in this broad field; c) is practical in defining obligations and goals, leaving to Contracting Parties the responsibility of achieving them;

d) has the commitment of Governments to funding at a realistic level;

e) provides realistically for the transfer of resources to allow implementation of the Convention by the poorer countries which are also the custodians of much of the biological heritage of the earth;

f) is capable of catalysing and co-ordinating the efforts of Governments and other agencies under other conventions in this field.

9. The Ad Hoc Group of Experts met in Geneva from 16th to 18th November 1988. In his introductory note to the meeting the Executive Director took up the conclusions of the group of top level scientists and recommended to the Ad Hoc Group that a Convention be prepared. He also outlined the possible scope, aims and objectives of such a Convention as well as the main obligations that it could contain.

The Ad Hoc Group agreed that there was a need for one or more mechanisms dealing with the conservation of biological diversity at the international level. Most of the experts were in favour of the elaboration of a binding convention. The Group also agreed on some of the basic principles on which a convention could be founded and considered that the proposals of the Executive Director were a reasonable starting point for the future consideration of the most important measures and obligations to be dealt with in a new Convention.

10. The present proposed draft was prepared by IUCN pursuant to the relevant resolutions adopted by the 15th and 16th Sessions of its General Assembly, committing the Union to this course. It is based on the general principles outlined in IUCN Resolution 16/24, and on the results of the extensive consultations held within IUCN on the scientific and legal aspects of the proposed draft. It also takes into consideration the findings and recommendations of UNEP group of top-level experts, on the proposals contained in the note submitted by the Executive Director of UNEP to the Ad Hoc Working Group of Experts at its meeting in Geneva in November 1988.

11. Further consultations are still, however, necessary to ascertain the acceptability and practicability of the funding mechanism which is proposed in the present draft. The matter was discussed at a brainstorming session organised and financed by WWF, which was held in January 1989 in London, with the participation of representatives of various industries that would be potentially concerned. The meeting concluded that there were sources of funds worth exploring and that a more detailed study of funding mechanisms, to be financed by WWF, would be justified. It is expected that an interim report from the consultant with which WWF has contracted for that purpose will be available within a few months.

## II. INTRODUCTION

1. The purpose of the proposed Convention is to ensure the conservation of the biological diversity of our planet.

2. Biological diversity is defined as encompassing all species of plants, animals and micro-organisms and the ecosystems of which they are a part. It includes genetic diversity (the variability of individuals within each species), species diversity (the variety between species) and ecosystems diversity (the variety of the habitats, biotic communities and ecological processes in the biosphere). Biological diversity must be conserved on each of these three levels.

3. The proposed Convention purports to address this problem in a comprehensive and global way. It deals with all aspects of species and ecosystem conservation including in situ and ex situ conservation measures, the prevention of over-exploitation, the control of pollutants that may affect biological diversity and the introduction of exotic species or man-made organisms. The main emphasis, however, is placed on ecosystem conservation as an essential means to reach the objectives of the Convention.

Global threats to biological diversity arising from the depletion of the ozone layer, the greenhouse effect, or widespread pollution are, however, not covered as they are increasingly dealt with under separate conventions or programmes and generally require the taking of measures that are very different in nature from those required to conserve particular ecosystems and species.

4. The proposed Convention is intended to be a global convention open to all the States of the world and should constitute a major step in the development of international conservation law, in line with the report of the World Commission on Environment and Development, which considers that a "species convention" should be similar in spirit and scope to the Law of the Sea Treaty and other international conventions reflecting principles of "universal resources" (p. 162). Accordingly, in each provision which should be of universal application, instead of a reference to State Parties there is merely a reference to States.

5. The new Convention does not propose to replace existing global conventions dealing with certain sectoral aspects of the conservation of biological diversity but to provide a coherent framework within which the action of these other treaties could be catalysed through the establishment of global priorities, criteria and guidelines and the provision of funds to assist in their implementation.

6. The proposed draft is based on two fundamental principles: the principle of responsibility of States, as guardians of biological diversity for the benefit of present and future generations; the principle of solidarity between States for the conservation of that heritage.

7. In contrast with most existing conservation conventions, the obligations contained in the proposed draft relate to the achievement of a certain result, not to the means required to achieve that result. Thus, instead of providing for the prohibition to take certain species, the proposed text merely requires that no species should become extinct or threatened with extinction as a result of exploitation. States remain, therefore, free to choose their own means to reach this result. The proposed Convention and the financial mechanism it contains should, as a result, be understood as means to assist States in meeting their universal obligations, not as an instrument to ensure compliance with mandatory rules of behaviour.

8. The draft proposes a certain number of new rules of international conservation law which apply more particularly to inter-State relations and to the high seas. These include obligations to refrain from action that may be harmful to the conservation of biological diversity in other States or in the high seas and to prepare environmental impact assessments for foreign aid projects.

9. A number of questions require more detailed treatment, either in an Annex to the proposed Convention or in a separate protocol. This applies in particular to the problem of the liability of States for damage caused to biological diversity in other States or in the high seas (as provided in article 36 (7)) and to the matter of settlement of disputes in respect of which adequate institutions and procedures still need to be developed. Protocols will probably be required to deal with these two points. Should other protocols appear to be necessary, article 40 of the proposed draft provides for the possibility to conclude them. Other matters requiring further study are the procedure for the appointment of members of the Advisory Committee (article 20) and voting on matters relating to the Fund (article 17(5)). These two questions could be dealt with in Annexes to the proposed Convention. They must, however, first be thoroughly examined by experts. Another matter which probably also requires detailed examination is whether there should be a split between contributing States and recipient States or whether all States will contribute to the funding mechanism and be entitled to receive payments from the Fund.

### III. MAIN OBLIGATIONS

#### 1. Duty to conserve biological diversity

a) The proposed Convention lays down the principle that States are the guardians of biological diversity and that, as a consequence, they have a duty to do their utmost to ensure their conservation.

b) The main thrust of the draft is geared towards the conservation of ecosystems, whether in areas specially set aside for that purpose or in the general countryside. As an important complementary measure, there is also a requirement to conserve particular species, especially endangered species, by appropriate measures, including in situ and ex situ conservation and the development of recovery plans.

c) As mentioned in the introduction, the conservation obligations embodied in the proposed draft are for the most part related to results to be achieved, leaving the Contracting Parties free to adopt whatever specific means are the most appropriate under their legal and administrative systems. In particular, the case of certain federal States where land-use controls, the protection of species and the establishment of protected areas are constitutionally under the jurisdiction of the federated states, provinces or regions had to be taken into consideration.

d) As a consequence, care has been taken in the draft to avoid the use of the expression "protected area" as it is often associated to strict controls such as the ones generally applied in national parks and equivalent reserves, whereas the results mandated by the proposed Convention may often be achieved by other means, such as the imposition of restrictions to certain activities or land-use controls.

e) Pursuant to this obligation to ensure the conservation of biological diversity, States are required to carry out surveys and draw up inventories of biological diversity on their territory (Article 4) to identify, on that basis, areas that are important for conservation and to seek to ensure that biological diversity in these areas is adequately preserved (Article 5.1). To assist States in the identification of these areas, the Scientific Advisory Committee to be established under the Convention will prepare and keep up to date a World List of Areas of Outstanding Importance, comprising a sufficient number of areas adequate in size, distribution and species richness to conserve the greatest possible proportion of the Earth's biological diversity (Article 5.3).

States would not, however, be bound to conserve the areas so listed. The main purpose of the list is to provide a statement of scientific requirements against which progress in the implementation of the Convention can be measured and priorities for the financing of projects allocated. The List would include all areas of outstanding importance whether or not they are yet adequately preserved.

f) Although the draft accords priority to areas of particular significance for the maintenance of biological diversity, conservation obligations are not as such limited to particular areas. This matter is addressed in several ways. Article 6, which deals with general conservation measures, requires States to develop appropriate procedures to monitor and when possible maintain and restore as high as possible a degree of biological diversity throughout their territory. The obligation in article 14 to prepare environmental impact assessments in respect of proposed activities which may result in significant damage to biological diversity not only applies to the whole territory of the States concerned but also to activities which could harm biological diversity in other States or in areas beyond national jurisdiction limits.

g) Other conservation obligations relate to the prevention of over-exploitation and the control of pollutants, and of the introduction of alien species and man-made organisms.

h) Clearly, most of the obligations in the conservation article cannot be absolute. Maximalists will object that as in so many other conservation conventions they are too weak to achieve an effective conservation of biological diversity and that IUCN should propose more binding provisions. Minimalists, on the other hand, will claim that even as they stand, these objectives are too strong for any government to accept to be committed to their implementation.

It would seem, however, that IUCN has a duty to make realistic proposals that have a sound basis in science, and are legally achievable. An obligation for a State to ensure the conservation of all species on its territory could not be scientifically justified, as many species are still unknown to science and, therefore, a State could not be expected to conserve them.

## 2. The funding mechanism

a) Clearly, the obligations to achieve the results mandated by the proposed Convention will be impossible to meet for a large number of countries in the developing world unless the international community provides the necessary financial and technical assistance. The establishment of a funding mechanism is, therefore, the most important element of the draft.

b) It will be recalled that, in its conclusions, the UNEP Group of top-level experts urged that any convention should only proceed if it has the commitment of governments to funding at a realistic level and provides realistically for the transfer of resources to allow implementation of the convention by the poorer countries, which are also the custodians of much of the biological heritage of the Earth. Similarly, the Ad Hoc Working Group at its November 1988 meeting emphasized the need for sufficient funds to achieve conservation of biological diversity, and recognized that a convention without a functioning secretariat and financial means would be meaningless. It went on to state that since contribution from contracting parties might not be sufficient to achieve the aims of the convention, the elaboration of fund raising mechanisms needed to be examined.

c) The proposed draft is based on the assumption that the conservation of biological diversity in tropical countries will require the transfer of large sums of money over a long period of time, from the industrialised countries which are the main users of the resources originating from wild species, to the countries of the Third World that are the custodians of most of these species. As there seems to be little hope, at the present time at least, that governments will be prepared to provide the amounts required, the only alternative would appear to be a secure a stable source of income from the private sector.



Hence, the proposal for a fund which is indeed the keystone of the draft and without which all the conservation provisions contained therein would be of little practical value.

d) The concept of a fund supplied by contributions from the users of certain goods or services to compensate damages caused to third parties or to the environment is not a new one. Such funds have been established, for instance, to compensate victims of air pollution (e.g. Dutch Air Pollution Fund - financed by a levy of fossil fuels), marine pollution (e.g. Maine Coastal Protection Fund - funded by a levy on the amount of oil transported) or of the dumping of toxic waste (the U.S. Federal Super Fund, financed by a levy on oil and feedstock chemicals and by an environmental tax on corporations). Other examples of environmental taxes include a one percent tax on construction to finance land acquisition and a tax on the extraction of stones, gravel and sand in the Austrian land of Vorarberg to finance the conservation of natural habitats. At international level the only environmental fund in existence so far is the International Fund for Compensation for Oil Pollution Damage established by an international convention under the International Maritime Organisation. The fund is financed by a levy on oil imported by sea. At the recent World Conference on the Changing Atmosphere held in Toronto in June 1988, proposals were made to establish a World Atmosphere Fund financed in part by a levy on fossil fuel consumption in industrialised countries.

Existing funding systems are for the most part based on the Polluter (or potential polluter) Pays Principle. There is, therefore, usually a link between the taxed activity and the potential damage.

With regard to biological diversity, however, such a link is generally more difficult to establish as many of the activities that destroy the natural environment, such as for instance shifting cultivation, cannot be taxed. There are, of course, some exceptions. Logging by timber companies or the clearing of large tracts of land for plantations are easy to tax. Paradoxically, however, if a tax is applied to the direct destruction of ecosystems or extraction of species the greater the destruction the larger will be the proceeds from the tax, and the more money there will be available for conservation. Care must be taken, therefore, not to develop a system providing incentives to destroy biological diversity!

It would seem that the concept of damage which is at the very basis of most other funds could, with regard to the conservation of biological diversity, usefully be replaced by the notion of use. It may be reasonably assumed that the industrial or commercial users of nature's products have an interest, although they may not always be conscious of it, in the preservation of the resource base on which their industry or trade in the long-term depends. The link between the tax and the tax payer is therefore, present and the tax constitutes a simple means to internalise the cost of preserving the resource base into the consumer price of the products.

e) Two main categories of users could be addressed by the system: the users of animal or plant products obtained from the wild or derived from products obtained from the wild, as for instance timber, medicinal plants, fish or products derived therefrom; and the users of products obtained by means of the transfer of genes from wild species to domesticated organisms.

Clearly other sources of income could be imagined and provisions should be made to enable the Convention Fund to benefit from them should they become available. For instance, activities resulting in the emission of CO<sub>2</sub> could be taxed to assist in the preservation, restoration or plantation of forests, as a means to reduce further increases in CO<sub>2</sub> levels. Here again, there would be a link between the polluting activity and the purpose of the tax. There is, however, a risk that the bulk of the money so collected could be used for other purposes, such as the development of more efficient combustion methods for fossil fuels.

For these reasons, it was felt that the financing mechanisms should be based on contributions from the users of the resources, it being understood that if it appears that it will be easier to obtain the amounts required from other sources, the proposed mechanism could be amended accordingly. Further consultations are at any rate necessary to determine the feasibility and acceptability of the system as well as the basis and mode of collection of the proposed levies. It is of course important to bear in mind that the larger the tax basis, the lower will be the rates and the larger the total amounts collected. This may go a long way towards making the system acceptable to all.

The second aspect of the funding mechanism relates to the payments which will be made out of the Fund. This gives rise to two major questions: to what countries should payments be made and what kinds of activities or projects should be financed by the Fund?

Clearly, if the proposed system is to provide maximum conservation benefits, the funds available should be used to meet conservation priorities in those countries which are the least able to finance conservation measures themselves.

On the other hand, in all fairness, provision should also be made to ensure that the country of origin of a resource, when it can be identified, receives a certain return from the benefits accruing from the use of that resource by others. This should be considered as a contribution to the conservation efforts of the country of origin as well as an incentive to do more.

f) The proposed system endeavours to strike a balance between these two requirements in that it provides for the payment of a certain percentage of the proceeds of the levy to identified countries of origin, to be used for priority conservation action in these countries, and for the payment of the remainder to countries where priority conservation action is required.



This would not preclude payments to countries of origin over and above the amounts that would be due under the percentage rule should priority conservation requirements in these countries necessitate additional payments.

With regard to the categories of projects which should be eligible to international financing, the proposed draft applies not only to projects in the narrow sense of the term but also to conservation programmes including staff training, education and operational costs in those countries which lack the financial means to meet, fully or partly, the costs of these programmes out of their own resources. In addition, provision has been made to enable the Fund to finance the development of certain sustainable economic activities consistent with the maintenance of biological diversity.

This should be considered as a fair form of contribution to those countries that have set aside areas and limited certain development activities to comply with their duties as custodians of biological diversity as well as an incentive to develop sustainable activities in the future.

The financing of such projects will, however, depend on the financial possibilities of the Fund, as priority should as a rule be given to conservation projects and programmes. But the interest there is to develop and finance integrated conservation and development projects is enormous, and it is, therefore, to be hoped that it will be possible to finance at least a certain amount of pilot projects of that kind. In addition, it is expected that when these projects are considered by the Conference or the Advisory Committee to be meritorious but cannot be financed by the Fund they will be recommended for approval to other aid agencies as provided under Article 30 (10) of the proposed draft.

g) All the provisions relating to the financial mechanism should, however, be considered for the time being as only tentative pending the results of a detailed feasibility study.

### 3. Guaranteeing access to specimens of wild species

a) In his Note to the Ad Hoc Working Group of Experts, the Executive Director of UNEP stated that the matter of guaranteed access to genetic resources both in situ and ex situ should be one of the elements of a proposed Convention. The Working Group recognized that the question of access to genetic resources, including the question of free access to such resources (including genetic resources that had been manipulated) should be examined.

b) A guaranteed access to specimens of wild species is considered essential for two reasons: to ensure that genetic material is widely available for the benefit of mankind; to provide a counterpart to the obligation to pay for their use.

Wild genetic processes have so far been universally recognized as natural phenomena and as such as being incapable of being owned or patented. Freedom of access was a consequence of this recognition. This remained, however, an unwritten principle until the adoption of the FAO Undertaking on Plant Genetic Resources in 1983.

c) The Undertaking is based on the principle that these resources are a heritage of mankind and consequently should be available without restriction (Art. 1). It provides that "it will be the policy of adhering Governments and institutions having plant genetic resources under their control to allow access to samples of such resources, and to permit their export, when the resources have been requested for the purposes of scientific research, plant breeding or genetic resource conservation" (Art. 5).

d) On the other hand, the patentability of man-made or man-altered organisms to which wild genes have been incorporated is now increasingly accepted by legislation and by the courts. There is, therefore, a risk that States will claim proprietary rights over wild genes originating from their territory. This may, in turn, impede research and development and limit the availability to mankind of the benefits accruing from the use of these resources.

e) Important as it may be to solve this problem at least partially, the FAO Undertaking has failed to gain universal acceptance mostly because it applies not only to wild plant genetics resources but to cultivated varieties, including special genetic stock, as well. Furthermore, the Undertaking applies only to plants and, therefore, ignores animals and micro-organisms. Finally, the Undertaking is not a binding agreement.

f) It was, therefore, considered that a specific provision was required to ensure that genetic material from any wild organism could be made widely available for the benefit of mankind. In addition, if the users of biomaterials of wild origin are to be asked to make payments in support of conservation requirements it would only seem fair that they obtain something in exchange. As long as the principle of freedom of access remained almost unchallenged, a guarantee that those biomaterials would be maintained would probably not have been a very powerful argument. But the situation may now be changing, and to embody the principle of free access into a binding international convention may, therefore, contribute to a better acceptance of the obligation to pay.

g) In line with the FAO Undertaking, access to genetic material is limited to certain purposes, which are essentially research, whether pure or applied, and conservation. The proposed Convention does not, therefore, allow access for any other purposes such as, for instance, the commercial exploitation of a wild species.

It provides, furthermore, for the possibility to restrict the right of access when this is necessary for conservation reasons. This provision represents a compromise between two opposing legitimate concerns: the fear that unrestricted access could result in environmental damage through over-collection or habitat destruction and the fear that an excessive limitation of access could hinder scientific research.

h) Access does not mean that States must ensure that researchers have physical access to the specimens themselves, or the right to collect in protected areas or on private land. It only means that specimens should be made available on request without impediments arising from the legislation or administrative practices of the State of origin. In addition, access should not be understood as meaning that specimens must be made available free of charge. The proposed draft clearly provides that specimens shall be made available on mutually agreed terms and that such terms may include payments. Such charges must, however, be reasonable and not amount in practice to a denial of the right of access.

i) Along the lines of the FAO Undertaking, the proposed draft does not specify the categories of persons that have a right of access to wild specimens. These include, therefore, public bodies and private corporations as research institutes. As a consequence, however, of the recognition of the universal value of biological resources, it was felt that the right of access should also be given to the world community as a whole through the organization (the Fund) established under the Convention. Therefore, article 16 of the proposed draft empowers the Conference of the Parties to establish within the Secretariat a specialized unit which shall be responsible, on behalf of the States Parties, for the collection of specimens from the wild and for the evaluation of the potential commercial applications of biomaterials or genetic processes obtained or derived from these specimens. It is hoped that these provisions will facilitate the exploration of new resources, as well as the development and dissemination of new commercial applications for the benefit of all.

j) The Fund would be entitled to file for patents or plant breeders' rights for any invention resulting from the research work that it would have so undertaken. The ownership of such rights would be vested in the Fund. The proceeds from royalties paid to the Fund for the commercial use of such inventions would be used to finance conservation projects.

k) The proposed draft also provides that if a State Party so wishes, it may decide that the right of access to specimens found in its territory shall only be exercised by or through the Fund. This gives the possibility to a State Party to deny access to specimens of wild species to any person other than the Fund. This provision has been included as a possibly acceptable compromise for those States that may have objections to the principle of a complete freedom of access for reasons of national sovereignty.

#### IV. RELATIONSHIP WITH OTHER CONSERVATION CONVENTIONS

1. The proposed Convention builds upon existing conventions in that it lays down a certain number of new universal conservation rules. These includes:

a) an obligation to conserve biological diversity in the high seas (there are no such rules in the Law of the Sea Convention except as regards activities in the 'Area');

b) a duty to prevent damage to biological diversity in other States; this applies to activities originating in the territory of one State which may have an impact on the territory of another State or on the high seas. It also applies, most importantly, to activities resulting from bilateral or multilateral aid programmes; here again, the obligation lies in the result which must be achieved: biological diversity in other countries must not be significantly impaired;

c) an obligation to carry out environmental impact assessments for projects liable to significantly affect biological diversity. This requirement applies not only to national projects but also to projects, including aid projects, carried out in other countries.

2. The most severe gap in existing conservation conventions is the lack of an adequate financing mechanism to assist Parties in carrying out their obligations. The financing system is, therefore, the cornerstone of the new proposed Convention. It could not only be used to finance activities directly undertaken to implement the Convention but also constitute a means to assist in the implementation of other conventions, and in so doing contribute at the same time to implement the proposed Convention in an indirect way.

Provision is, therefore, made to enable the Fund to contribute to the financing of projects carried out under other conservation conventions, provided such projects are consistent with the long-term Action Plan and scientific priorities approved by the Conference.

3. Provision is also made to associate the governing bodies of other conservation conventions as well as the international governmental and non-governmental organisations having expertise in the field of biological diversity in the development of that Action Plan and in the determination of the scientific priorities. Joint meetings may also be organised to facilitate common action for the conservation of biological diversity.

## PART II : EXPLANATORY NOTES ON CERTAIN INDIVIDUAL ARTICLES

### Preamble

The Preamble is largely based on generally accepted principles, and in particular those of the World Charter for Nature. It recognizes that Man has a duty to share the Earth with other forms of life and a responsibility to conserve biological diversity for future generations. As a consequence, States, in the exercise of their sovereign rights, must act as the guardians of biological diversity. Conversely, the international community has the duty to assist those States which do not have the means to do so in taking the conservation measures required. Particular emphasis is placed on the importance of in situ conservation. The last paragraph is adapted from a corresponding paragraph in the preamble of the Convention on the Law of the Sea.

### Article 1 - Interpretation

Most of the definitions given in this article are self-explanatory.

The definition of biomaterials, a term which is almost exclusively used in the draft in respect of financial contributions, may need to be elaborated further as a result of future consultations on the funding mechanism.

As this definition now stands, biomaterials include individual specimens of wild species or parts thereof, products made of such specimens and substances obtained by the alteration or chemical synthesis of substances contained in wild species (e.g. certain drugs), or by genetic engineering. Seeds or other propagating material obtained from plants to which wild genes have been transferred are considered to be biomaterials only when they are traded for the purpose of propagation. This means that seeds traded for consumption are excluded from the definition. Thus, seeds produced for the purpose of growing crops, such as wheat, maize or rice, are covered by the definition, whereas the produce of the crop itself is not, when it is to be used for consumption, as it will usually be the case. In other words, the financial contributions provided for by the proposed Convention for the operation of the funding mechanism would not in principle be collected on food products, unless the Conference of the Parties decides otherwise.

Although the definition of biomaterials is quite broad, and may even be extended as provided by paragraph (m) (vi) if the Conference so decides, it must be noted that according to article 26, only those biomaterials which will have been specifically selected by the Conference shall be the subject of financial contributions.

## Article 2 - Fundamental Principle

This article purports to highlight, as an introduction to the proposed Convention, the three main inter-related principles upon which the Convention is based. These principles are not couched as imperative rules but as a statement of policy and objectives. The following articles, however, lay down a certain number of obligations to assist in reaching these objectives.

## Article 3 - General obligation

This article develops the first principle laid down in article 2 and establishes certain basic obligations: States must ensure the conservation of biological diversity within their territory, refrain from actions that may be harmful to biological diversity beyond their borders and co-operate with other States in the conservation of biological diversity. These obligations, however, are binding only to the extent to which a State is able to fulfill them, given its capabilities and resources.

## Article 4 - Surveys and inventories

This article recognizes that an essential pre-requisite to adequate conservation measures is the availability of information on the most important areas that should be preserved. States have, therefore, the obligation to carry out the surveys and inventories required for that purpose. Again, the obligation is not absolute as it is clear that many States do not have the means to do so. They are, however, required to make every effort to achieve that aim. Financing from the Fund may, of course, be made available for that purpose. To facilitate the obtention of comparable information, there will be criteria and guidelines adopted by the Conference.

## Article 5 - Conservation of areas

This is a key article in the proposed Convention, as it deals with the conservation of ecosystems. As a result of the surveys and inventories referred to in the preceding article, States have an obligation to identify areas which are important for biological diversity and which are at risk from human activities. They must then seek to ensure that biological diversity within these areas is adequately preserved and to prepare and implement management plans for that purpose.

This article also recognizes that there are in the world many areas that are still of outstanding importance for the conservation of biological diversity and that a list of such areas, whether or not they benefit from statutory protection, must be drawn up, as a means to guide States in the identification of areas the conservation of which they should ensure, as a shadow list against which progress achieved in the conservation of biological diversity may be assessed, and as a basis for the determination of financing priorities. This list, which is called the World List of Areas of Outstanding Importance for the Conservation of Biological Diversity, will be prepared by the Scientific Advisory Committee established under article 20 of the proposed draft.

There is no obligation for States to designate areas on the World List as areas the conservation of which must be ensured. They are required, however, to use the World List as a basis when they select areas to be conserved. This means that they must seriously consider, at least, the possibility of preserving these areas. Once they have selected an area listed on the World List, States must, to the fullest extent possible, prepare a management plan for that area and manage the area according to the plan. If they do not have the financial or technical capacity to do so, they may submit projects for international financing from the Fund.

#### Article 6 - General conservation measures

This article deals with the conservation of biological diversity outside areas selected pursuant to the preceding article. The obligations it contains are of a very general nature as the most appropriate means to conserve biological diversity outside designated areas may vary considerably from one country to another. Under this article States are, therefore, merely required to develop procedures for monitoring the status of biological diversity throughout their territory, and, when possible, for maintaining or restoring the highest possible degree of diversity. They must, in particular, develop and support forms of land-use and other activities compatible with the maintenance of biological diversity. This article should be understood as a statement of policy the implementation of which will necessarily require time as well as technical and financial assistance, the ultimate goal being a thorough integration of conservation and development. One of the means to achieve this result is provided by article 29, which lists among the types of projects which may benefit from financing by the Fund the development, or support of sustainable economic activities relating to the use of wild species or of the natural environment which are consistent with the maintenance of biological diversity.

#### Article 7 - Conservation of species in situ

As a complement to the provisions dealing with the conservation of ecosystems, this article lays down a general obligation for States to seek to ensure the conservation of viable populations of all wild species occurring on their territory. This provision should be considered more as a goal that States should try to reach to the maximum extent feasible rather than an absolute obligation, which in many cases would be impossible to fulfill; because on the one hand there are so many species which are still unknown to science, and on the other hand because for many of those which are known, it is still impossible to determine what constitutes a viable population.

Particular emphasis is, however, placed on certain categories of species the conservation of which should be considered a matter of priority. These include species, and particularly endemic ones, which are threatened with world-wide extinction, wild relatives of cultivated plants and domestic animals, and species which have been designated by the Conference as requiring priority attention.



In addition, this article requires States to control certain activities which could result in the extinction of species or their becoming threatened with extinction at world level. These activities include the collection or harvesting of wild species, including the incidental taking of non-target species, and the destruction of habitats. These rules also apply to activities carried out outside the limits of national jurisdictions. This article also provides as a general rule that States must seek to ensure that the collection or harvesting of any wild species is carried out on a sustainable basis.

#### Article 8 - Conservation of species ex situ

This article establishes an obligation to conserve certain species ex situ, when this constitutes an appropriate complement to in situ conservation. The species concerned include species threatened with extinction, species of medicinal importance and wild relatives of domestic animal species or cultivated plant species. The Conference may also designate species that require specific ex situ conservation measures. States must ensure that their ex situ and in situ conservation policies are complementary and secure the maximum practicable perpetuation of the species concerned.

#### Article 9 - Recovery plans

This article requires the development of recovery plans for species threatened with world-wide extinction or for which the Conference has established that a recovery plan is required. Recovery plans should in principle include measures for the conservation of the critical habitats of the species concerned. Where the range of a species to be covered by a recovery plan is shared by two or more States, these States must co-operate in the development and implementation of a joint recovery plan.

#### Article 10 - Pollution

This article does not aim at controlling pollution in general as this is not among the purposes of the proposed draft. Its objective is to require States to seek to ensure that in taking measures to control pollution they pay due regard to the necessity of preserving biological diversity, an often neglected aspect in national legislation. This could entail the taking of stricter preventive measures in certain areas or at certain times as well as special prohibitions or controls with regard to certain substances (e.g. certain pesticides). To assist States in the taking of such measures, it is expected that guidelines will be prepared by the Advisory Committee and approved by the Conference.



#### Article 11 - Alien Species

This article tries to strike a balance between the views of those who would like a total prohibition of introductions and those who consider that many introductions can be beneficial provided proper precautions are taken. The prohibition laid down in this article, and the consequent eradication obligation, only apply to species which are likely to cause significant damage. As it is impossible to provide in the Convention for a definition of significant damage that would be applicable to all cases, it is expected that the Conference will adopt guidelines for the evaluation and minimisation of the risks arising from introductions, on the advisability of attempting eradications, and on the eradication methods that should be employed.

This article applies not only to introductions into any particular country but also to introductions from one part to another of the same country, particularly into areas entered on the World List.

#### Article 12 - Man-made Organisms

The term man-made organisms may not be appropriate. It has been provisionally kept in pending scientific advice. This article aims at preventing, through strict controls, harmful effects which could result from the release of organisms which have been genetically modified by man.

#### Article 13 - Preservation of the Biological Diversity of Other States or Beyond the Limits of National Jurisdiction

This article lays down several important obligations which are designed to ensure that activities carried out by states or by persons under their jurisdiction or control do not cause significant damage to biological diversity in other states or in areas beyond the limits of national jurisdiction. These provisions are introduced to cover not only activities carried out in a State that may affect another State or the high seas but also carried out in another State, as for instance under a foreign aid or technical assistance programme. Guidelines on the determinations of what may constitute significant damage will be made by the Conference. Environmental impact assessments will also have to be prepared under the next article, to assess the risk of significant damage, particularly to areas appearing on the World List.

#### Article 14 - Environmental Impact Assessments

Environmental impact assessments are required for proposed activities that may result in significant damage to biological diversity. This obligation is, however, qualified in that it applies only "as far as possible". It was felt that for many States the obligation would be otherwise difficult to discharge. When, however, the activity may result in significant damage to an area on the World List, an environmental impact assessment is always required.

These provisions apply to proposals relating to activities within the State where the proposals are made as well as to proposals relating to activities carried out in other States or in the high seas and whether the author of the proposal is a State, an international organisation, including therefore international aid agencies, or a private person. Foreign aid projects are, therefore, covered by this article. The question of who - the donor or recipient State - has to make the assessment must be the subject of an agreement between the States concerned.

Guidelines are to be adopted by the Conference on how to determine that there is a risk of significant damage to biological diversity as well as for the preparation of environmental impact assessments, mitigation measures and the monitoring of the effects of authorised activities.

#### Article 15 - Access to Specimens

The rationale for this proposed article has already been explained in the first part of these introductory notes. Its wording is based on the corresponding article (Art. 5) of the FAO Undertaking. Unlike this latter instrument, however, this provision is not limited to plants but covers all wild organisms. Its only purpose is to deal with access. In no way, therefore, does it prejudge of any form of intellectual property rights (e.g. patents or plant breeder's right) which could or could not be granted as a result of research carried out on specimens for which the proposed Convention recognizes a right of access. These matters have purposely been excluded from the scope of the draft.

The proposed article contains an important safeguard: the obligation to make specimens available does not apply to the areas where collection would be detrimental to the conservation of the species, or of any other species, or of a community of species. In addition, CITES requirements will always have to be complied with. Finally, this article expressly gives the right to States, as in the FAO Undertaking, to charge, on mutually agreed terms, for making specimens available. Such charges must, however, be reasonable.

#### Article 16 - Evaluation of Biomaterials

Explanations on this proposed article have already been given in the first part of these introductory notes. It should, however, be noted that the proposed text of paragraph 3 of this article allows for a considerable degree of flexibility in the implementation of this provision in that the decision of a State Party to permit access only to the Fund may apply either to all types of specimens or only to certain categories of specimens. The terms "by or through the Fund" mean that the Fund may exercise its right of access either in its own right, or on the request of another person. The proposed article provides for a notification procedure which has to be followed whenever a State Party wishes to avail itself of the faculty to allow access only to the Fund. Such a notification may, however, be withdrawn at any time. The effect of the withdrawal will be that the exercise of the right of access will be recognized to all.

## Article 17 - Organisation of the Conference

### a) Voting

It has been necessary to introduce a dual voting system to safeguard the interests of the two categories of State Parties: those that will predominantly contribute to the Fund and those that will predominantly receive payments from the Fund. For all decisions relating to contributions and payments a voting system based on a distribution of votes between the two categories of Parties will be used. Such a system is provided for instance, in the International Tropical Timber Convention. For all other decisions, including decisions on criteria or guidelines, each State Party shall have one vote. Details of the voting system based on the distribution of votes will need to be further elaborated in an Annex to the proposed Convention. In order to allow a State Party that may have financial or other difficulties in attending a session of the Conference to be adequately represented, provision is made to enable that Party to authorize any other Party to represent its interests at the Conference and to cast its votes. There is a similar provision in the International Tropical Timber Convention.

In line with similar provisions in other conventions (e.g. International Tropical Timber Convention) or in the rules of procedure adopted under other Conventions (e.g. CITES, Migratory Species Convention, Ramsar Convention), States Parties that abstain from voting shall not be considered as voting.

### b) Rules of Procedure

In accordance with the practice of many international conventions (e.g. CITES), procedural matters such as the election of officers and voting procedures have been left to the rules of procedure that have to be adopted by the Conference.

### c) Observers

The list of organisations which may attend meetings of the Conference as observers has been made as explicit as possible in paragraph 7 of this article. It includes any inter-governmental organisation without any restrictions and, therefore, any regional or sub-regional organisation. Mention is specifically made of development aid organisations and banks. The World Bank is therefore included both as a UN specialised agency and as a development bank. The mention of the IAEA is due to the fact that this agency occupies a place of its own in the United Nations family. It is not a part of the United Nations itself (as is the case for UNEP, UNICEF and UNCTAD for instance) nor is it a specialised agency such as FAO, UNESCO, WHO, the World Bank, etc. There seems, therefore, to be no way other than mentioning it specifically following the practice of many international conventions, for instance CITES (Article XI.6) and the Migratory Species Convention (Article VII.8).

Other observers include non-governmental international organisations and national governmental and non-governmental agencies and bodies which have been approved for this purpose in the State in which they are located. Observers belonging to these categories are admitted to the Conference unless at least one third of the parties object. This provision follows the practice of CITES and of the Migratory Species Convention (CITES, Article XI.7, Migratory Species Convention, Article VII.9).

#### Article 18 - Functions of the Conference

One of the important tasks of the Conference will be to adopt, on the proposal of the Advisory Committee, a long-term Action Plan for the conservation of biological diversity and to determine priority scientific requirements for the implementation of that Plan. It is primarily on the basis of this Plan and priorities that disbursements from the Fund shall be made.

Other major functions of the Conference include the approval of proposals made by the Advisory Committee with regard to lists, criteria and guidelines, and the administration of the Fund. This latter matter is dealt with in Article 25 of the draft.

The Conference is also empowered to make recommendations to States and international organisations on any measure that may lead to an improvement in the conservation status of biological diversity, including the development of sustainable economic activities compatible with the maintenance of biological diversity.

#### Article 19 - Financial Arrangements

This article deals with the administrative expenses which will be incurred for the operation of the Conference, the Advisory Committee, the Fund and the Secretariat. These expenditures will be paid out of the Fund. They must not, however, exceed a certain proportion (still to be determined) of the total annual income of the Fund.

The Conference may, however, if it so wishes, decide to institute a system of State contributions to finance administrative expenditures.

#### Article 20 - Establishment of the Advisory Committee

The Advisory Committee is expected to play a role of paramount importance in the implementation of the proposed Convention. It will be called, for instance, to draw up the World List, to designate species threatened with extinction at world level and species requiring particular attention, to prepare large numbers of guidelines and criteria for approval by the Conference, and to advise on payments made from the Fund. It will also have to prepare the long-term Action Plan for the conservation of biological diversity and to propose priority scientific requirements for the implementation of that plan.

It is clearly of extreme importance that the Advisory Committee be able to discharge these numerous duties in the most effective way. To achieve this, it would seem that the Committee should be composed of a relatively small number of independent scientists able to devote a considerable part of their time to Convention affairs. In addition, the Committee should be provided with all necessary means to perform its many tasks.

Before any concrete proposals can be made in the form of draft articles, further consultations seem, however, to be required in view of the many legal and practical problems that arise and of the almost complete absence of precedents in other conventions.

Article 20, as provisionally drafted, therefore only provides a broad framework for the appointment of the Advisory Committee. Details, especially with regard to the method and the procedure which should be used for the appointment of committee members, could be included in an Annex to the proposed Convention which could be drafted after this consultation has taken place.

Questions which could be the subject of further discussion include:

1. The number of members of the Committee: this number should not be too large; it is suggested in the proposed text of Article 20 that it should not exceed one third of the number of Parties; a committee with as many members as Parties would surely become unmanageable if, as it is to be hoped, the number of Parties becomes large.
2. Members should represent a wide range of different disciplines: e.g. botany, various zoological disciplines, ecology, marine sciences, limnology, protected areas management, etc.
3. There should also be representation of different geographic, or biogeographic areas.
4. There should be a good degree of continuity in the operation of the Committee. This poses the problem of the duration of the term of office of members and of the mode of renewal.
5. In view of the expected amount of work it would be reasonable to expect that members of the Committee would have to work full-time. But even if they only work part-time, the problem of their remuneration arises. To ensure their independence, this remuneration should come from the Fund.
6. The Committee should have access to all available information. It should be able to work in cooperation with existing international (and national) organisations competent in the field of biological diversity. For that purpose institutional links will probably have to be established with IUCN, WCMC, ICBP, etc. The Committee will also need administrative and financial support from the Secretariat.

7. The mode and procedure of appointment of Committee members is of particular importance as it will govern the extent to which it will be possible to have an independent and fully competent Committee. There are several options which should be investigated both from the legal and practical points of view:

a) Appointment by the Parties: under the system used in the Migratory Species Convention, for instance, any Party may appoint a qualified expert to serve on the Scientific Council. In addition, the Conference of the Parties may select and appoint a number of other qualified experts.

b) Designation of a Particular Organisation to Provide Scientific Advice: the International Council for the Exploration of the Sea (an intergovernmental organisation) has been designated by several fisheries and pollution control conventions to act as scientific adviser to the Parties. In other cases this role has been assigned to an international NGO. IUCN and ICOMOS advise the World Heritage Committee on the listing of sites under the World Heritage Convention. SCAR is the scientific advisory body for the Convention for the Conservation of Antarctic Seals.

c) Members of the Advisory Committee could be designated by the heads of certain international organisations having particular competence in the field of biological diversity. These could be UNEP, UNESCO, FAO, IUCN and also ICSU and some of its member unions or special committees. Thus, for instance, a marine scientist could be appointed by SCOR, an ecologist by SCOPE, a botanist and a zoologist by IUBS, etc. The Conference would have the right to object to any designation and to ask for a new designation.

d) A system whereby a slate of candidates for each seat in the Committee would be presented by the organisations mentioned above among whom the Conference would choose.

e) A mixed system whereby some of the members of the Committee would be designated by organisations and the others appointed by the Conference is another possibility.

Consultations on these various options should at least take into consideration the three following factors: independence; representation of all scientific disciplines concerned and of biogeographical areas; political acceptability.

#### Article 21 - Functions of the Advisory Committee

The functions of the Advisory Committee fall into three main categories:

a) it advises States and makes recommendations to the Conference on measures required for the implementation of the Convention. It provides advice on expenditures from the Fund. It reports at each session of the Conference on the status of biological diversity and progress achieved for its conservation;

b) it prepares the long-term Action Plan and the list of priority scientific requirements for approval by the Conference. It also prepares criteria and guidelines on the implementation of most of the substantive articles of the Convention as well as the list of species requiring priority attention for approval by the Conference;

c) it prepares the World List and the list of species threatened with world-wide extinction. These lists should be considered as statements of scientific facts in respect of which no approval by a political body should be required.

This Article also requires the Advisory Committee to draw upon the expertise of other international or national agencies and to enter into working arrangements with these agencies for that purpose. This provision is intended to lay down a basis for close co-operation between the Advisory Committee and other scientific or conservation bodies or organisations.

#### Article 25 - Administration of the Fund

The Fund shall, in principle, be administered by the Conference. If the number of Parties exceeds, however, a certain number, this system may well become extremely cumbersome. It is, therefore, provided that the Conference may appoint a Board with a limited membership. The members of the Board would be renewed every two years.

#### Article 26 - Contributions

This article must be considered as merely tentative pending the results of the study under way on the financing mechanism, as mentioned in the first part of these explanatory notes. Classes of biomaterials to which the contribution system will apply will be listed in a separate Appendix. A procedure providing for the approval by the Conference of the methods of calculation and collection of contributions will also have to be developed after the completion of the study mentioned above. It will be included in an Annex.

Persons liable to contribute to the Fund shall in principle pay their contributions directly to the Fund. Any State Party may, however, decide that it will assume itself this obligation in lieu of persons under its jurisdiction. This provision has been taken up from Article 14 of the International Convention on the Establishment of the International Fund for Compensation for Oil Pollution Damage. It gives State Parties the possibility to choose between two different systems of payment.

## Article 28 - Payments from the Fund

This Article provides that, where the State of origin of particular biomaterial or of a species from which a particular biomaterial has been derived can be identified, a certain percentage (still to be determined) of the contributions, licence fees or royalties paid into the Fund in respect of that biomaterial shall be paid to that State. This should be considered as an incentive to States to preserve biodiversity. There are no obligations on how the money so received should be spent. It may, therefore, be used to finance other projects than conservation projects. Note, however, that the Conference or the Board, when considering the financing of a conservation project, would take into consideration any payment made under this particular provision (see Article 30(2)(b)).

## Article 29 - Eligibility of Projects for financing

Criteria governing the eligibility of projects for financing by the Fund will be developed by the Conference on the advice of the Advisory Committee. This article provides a non-exhaustive list of the broad categories of projects which would in principle be eligible for financing if they meet the criteria referred to above. These include not only specific conservation projects, such as the establishment of conservation areas but also national conservation programmes extending over a period of years. This is designed to allow for a certain degree of continuity in the financing of national conservation measures. Such programmes may include the carrying out of surveys, staff training, education activities and the meeting of operational costs incurred by national conservation agencies. The Fund may also finance the development of sustainable economic activities compatible with the maintenance of biological diversity.

The degree of priority to be attached to eligible conservation projects will be determined by the Conference on the basis of the long-term Action Plan and priority scientific requirements which are to be drawn up pursuant to Article 18(4) of the proposed draft. Pending the completion of this Plan, priorities will be determined on the basis of provisional guidelines to be adopted by the Conference.

The Advisory Committee must provide advice to the Conference with regard to the eligibility and degree of priority of all proposed projects. This advice will be based on the Action Plan, priority scientific requirements and provisional guidelines mentioned above. It must, in particular, take into consideration the importance of the project to the conservation of areas on the World List, the urgency of the conservation measures proposed, the relative importance of the measures proposed in the light of global conservation requirements and the scientific, economic and technical soundness of the project.



### Article 30 - Approval of Payments from the Fund

This Article gives to the Conference or to the Board the discretionary power to approve, approve subject to conditions, or refuse to finance, totally or partially, any eligible project. It provides, however, for guidelines to assist the Conference, or the Board in its decision. The following factors should, in particular, be taken into consideration: the extent to which the State concerned has demonstrated its willingness to achieve the objectives of the Convention; the payments which that State may already be receiving under other provisions of the Convention; the availability of other sources of financing; the opinion of the Advisory Committee.

Provision is also made for the development of procedures governing the processing of project applications and the implementation of projects, including procedures for the expeditious processing of applications in the event of a conservation emergency.

This Article also provides for the possibility to suspend payments when certain conditions and procedures have not been complied with.

### Article 36 - Implementation and Compliance

Paragraph 1 of this proposed Article requires States Parties to take measures to implement and enforce the provisions of the Convention, to penalise violations of their legislation pertaining to the conservation of biological diversity, and to provide, wherever possible, for the reparation of the damage caused to biological diversity as a result of a violation of their legislation.

Paragraphs 2, 3 and 4 are drawn from the new Convention on the Regulation of Antarctic Mineral Resources Activities. They invite States Parties to draw the attention of the Conference to any activity affecting the implementation of the Convention and require the Conference to draw the attention of any State to any such activity.

Paragraph 5 emphasises the prominent role that NGOs can play in the implementation of the Convention and requires States to provide for the participation of these organisations in decision making procedures.

Paragraph 6 requires States to establish procedures empowering them to take action to prevent irreversible damage to biological diversity.

Paragraph 7 deals with the question of State liability for damage caused to biological diversity in another State or in the high seas. This is an extremely complex legal matter with no real precedents in international law. It is, therefore, suggested that it be the subject of a separate protocol concluded under the proposed Convention.

### Article 38 - Relations With Other Conventions and Organisations

The purpose of this article is to facilitate cooperation with other conservation conventions and organisations and to allow the Fund to contribute financially to the activities undertaken under these conventions or by these organisations when they are consistent with the Action Plan and priority scientific requirements approved by the Conference. This includes:

- a) consultations for the purpose of facilitating joint action; these consultations could, for instance, concern the preparation of the long-term Action Plan or the determination of priority scientific requirements.
- b) an incentive for States to give international recognition and protection to areas important for the conservation of biological diversity by listing them as World Heritage sites, Ramsar sites, biosphere reserves, etc. As the proposed Convention does not purport to award yet another label to protected areas of outstanding value, the intention in this Article is to encourage States to use existing "labelling" systems more fully. The incentive provided to this effect by this proposed article is that the Conference, when it considers a project application relating to a site, will have to pay due regard to the "label" of that site. This means that, provided scientific priorities are the same, preference should normally be given to sites which already form a part of existing international networks. This should act as an incentive for States to include these sites in any of these networks before they apply for international financing, or alternatively for the Conference to withhold approval of a project until the State concerned has proceeded to such a designation.

As for any other projects, applications for financing relating to "labelled" sites will follow the normal procedure: application will be submitted by the State concerned and payments from the Fund will be made to that State. There is one exception, however, which concerns World Heritage sites. As there exists a World Heritage Fund, it was felt that it would be more expeditious to channel all payments from the Fund intended for those sites through that particular fund.

- c) Financial Assistance: other international conventions dealing with the conservation of biological diversity have budgets which barely allow them to meet administrative expenses and have to seek funds to finance vital projects. This proposed Article would allow the Fund to be a potential source for the financing of such projects, provided they are consistent with the Action Plan and priority scientific requirements. Financing from the Fund would here be limited to projects of a preliminary nature, such as surveys, inventories or feasibility studies falling within the competence of the conventions concerned and in respect of which the secretariats of these conventions would be particularly qualified with regard to their preparation, execution, monitoring and follow-up.

It is, therefore, provided that applications for the financing of projects of this kind may be submitted directly to the Fund by the organisations established under the conventions concerned and payments from the Fund made directly to such organisations. This does not mean that projects relating to, for instance, the establishment and management of protected areas belonging to recognised international networks cannot be financed by the Fund. All it means is that project applications relating to such areas will have to follow the normal procedure. In other words, that applications for the financing of these projects will have to be made by the States concerned and that payments from the Fund will be made directly to these States.

As it stands the text of the proposed article only allows payments from the Fund to States or to organisations established under other conventions or agreements dealing with the conservation of biological diversity and not to other organisations having similar purposes. This matter remains open for discussion. It was felt, however, that in view of the large number of the organisations concerned which would all be interested to obtain financial assistance from the Fund, there would be a serious risk of dispersion of efforts and global inefficiency. On the other hand, it could be argued that as projects for which financing would be requested by such organisations would have to be consistent with the long-term Action Plan and priority scientific requirements as approved by the Conference, this would, on the contrary, lead to more effective conservation action.

It must be pointed out, however, that the financing by the Fund of activities undertaken by other organisations is perfectly possible under the present proposed system, as the Advisory Committee under Article 21.2 may enter, with the approval of the Conference, into working arrangements which may provide for payments with any organisation dealing with the conservation of biological diversity.

#### Article 40 - Protocols

This Article is drawn from the corresponding provision of the Vienna Convention for the Protection of the Ozone Layer.

#### Article 41 - Amendment of the Convention or Protocols

This article provides for a procedure to amend the Convention, including its annexes, and the protocols. Annexes are intended to deal with certain specific matters in respect of which further consultations are still required. These matters are the procedure for the appointment of Advisory Committee members (see note on Article 20) and voting on matters relating to the Fund (see note on Article 26).

When this is done, it will perhaps be felt that it will be more convenient, in order to avoid potential confusion between annexes and appendices, to incorporate the missing provisions into the body of the Convention instead of dealing with them in separate annexes. In such an event, references to annexes will have to be deleted. Alternatively, if it is considered that annexes may serve a useful purpose, this article provides for the possibility of adding new annexes to the Convention should the Conference so decide. The amendment procedure provided for in this article, which is the same for the Convention, its annexes and any protocol, is drawn from the corresponding articles in the Migratory Species Convention and the Convention for the Protection of the Ozone Layer.

#### Article 42 - Adoption and Amendment of Appendices

Appendices differ from annexes in that they can be amended by the means of a simplified procedure which does not require the lengthy ratification process. The procedure proposed in this article is again drawn from the Migratory Species Convention and the Convention for the Protection of the Ozone Layer. Two appendices at least should be developed for the operation of the financial provisions of the Convention: the list of biomaterials in respect of which payments shall be made to the Fund and the list of classes of persons that will be called to make such payments as provided by Article 26. Provision is also made to empower the Conference to adopt additional appendices should the need arise. These could, for instance, deal with such matters as species or habitat types requiring priority conservation measures.

#### Article 43 - Settlement of Disputes

This matter raises complex legal problems which require detailed examination. Unlike other conservation conventions where substantive disputes hardly even arise, the system of contributions and payments provided by the proposed Convention will certainly generate disputes. There is, therefore, probably a need to develop dispute avoidance and settlement mechanisms from the very outset, in an Annex, or possibly in a separate protocol. In addition, some mechanism should also be provided to allow the conservation community or international conservation NGOs approved by the Conference to be heard in the event of a serious violation of the Convention.

## Final Clauses

### Articles 44 to 53

These articles are based on the corresponding provisions of the Vienna Convention for the Protection of the Ozone Layer. Two of these articles, however, contain particular provisions which are specific to the proposed draft Convention.

Article 44 on signature has been designed to allow for the greatest possible participation by self-governing associated states and international organisations to the extent compatible with international law. The language is based on that of the corresponding provision in the Law of the Sea Convention.

Article 50 on withdrawal provides, inter alia, that no payment from the Fund may be made to a State that has denounced the Convention.

