



# Earth Negotiations Bulletin

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## FIRST MEETING OF THE CONFERENCE OF THE PARTIES TO THE CONVENTION ON BIOLOGICAL DIVERSITY 28 NOVEMBER - 9 DECEMBER 1994

The first meeting of the Conference of the Parties (COP) to the Convention on Biological Diversity met in Nassau, the Bahamas, from 28 November - 9 December 1994. The Convention entered into force on 29 December 1993 and currently has 106 Parties.

During the course of the meeting, delegates were able to reach agreement on the basic machinery for the Convention's implementation. Notwithstanding some of the problems and setbacks that are inherent in any multilateral negotiations, delegates demonstrated the political will to move forward with the implementation phase. Some of the key decisions taken by the COP include: adoption of the medium-term work programme; designation of the Permanent Secretariat; establishment of the clearing-house mechanism and the Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA); and designation of the Global Environment Facility (GEF) as the interim institutional structure for the financial mechanism.

### A BRIEF HISTORY OF THE CONVENTION ON BIOLOGICAL DIVERSITY

The Convention on Biological Diversity was opened for signature at the Earth Summit in Brazil on 5 June 1992 and entered into force on 29 December 1993. It contains three national level obligations: to conserve, to sustainably use, and to share the benefits of biological diversity.

Formal negotiations began in November 1988 when UNEP convened a series of expert group meetings pursuant to Governing Council decisions 14/26 and 15/34 of 1987. The initial sessions were referred to as meetings of the "Ad Hoc Working Group of Experts on Biological Diversity." By the summer of 1990, a new "Sub-Working Group on Biotechnology" was established to prepare terms of reference on biotechnology transfer. Other aspects of biodiversity were included, such as *in situ* and *ex situ* conservation of wild and domesticated species; access to genetic resources and technology, including biotechnology; new and additional financial resources, and safety of release or experimentation on genetically-modified organisms (also known as "biosafety"). In 1990, UNEP's Governing Council established an "Ad Hoc Working Group of Legal and Technical Experts" to

prepare a new international legal instrument for the conservation and sustainable use of biological diversity. Former UNEP Executive Director Mostafa Tolba prepared the first formal draft Convention on Biological Diversity, which was considered in February 1991 by an "Intergovernmental Negotiating Committee" (INC). The first INC meeting was also known as the third session of the *Ad Hoc* Working Group of Legal and Technical Experts. The INC met four more times between February 1991 and May 1992, culminating in the adoption of the final text of the Convention in Nairobi, Kenya on 22 May 1992.

### FIRST SESSION OF THE ICCBD

In May 1993, UNEP's Governing Council established the Intergovernmental Committee on the Convention on Biological Diversity (ICCBD) to prepare for the first meeting of the Conference of the Parties (COP) and to ensure effective operation of the Convention upon its entry into force. Former UNEP Executive Director, Mostafa Tolba, established four expert panels to provide advice to the first ICCBD: Panel 1-Priorities for Action and Research Agenda; Panel 2- Economic Implications and Valuation of Biological Resources; Panel 3-Technology Transfer and Financial Resources; and Panel 4-Safe Transfer, Handling and Use of Living Modified Organisms Resulting from Biotechnology. In addition, the Norwegian Government and UNEP hosted an Expert Conference on Biodiversity, held in Trondheim, Norway from 24-28 May 1993 to provide input to the work of the ICCBD.

The first session of the ICCBD met in Geneva from 11-15 October 1993. After a difficult start due to procedural problems, that resulted from the 16-month gap between the last session of the INC and this meeting, the ICCBD made progress in addressing the long list of tasks mandated to it. The ICCBD established two Working Groups. Working Group I dealt with the conservation and sustainable use of biological diversity, the scientific and technical work between meetings and the issue of biosafety. Working Group II tackled issues related to the financial mechanisms, the process for estimating funding needs, the meaning of "full incremental costs," the rules of procedure for the COP, and technical cooperation and capacity-building. Despite several sessions of substantive debate, the Working Groups were not able to produce reports that could be approved by the Plenary. As a last minute solution, the Plenary adopted only two decisions: the establishment of a scientific and technical committee that would meet before the second session of the ICCBD; and a request to the Secretariat to use the unadopted working groups' reports as guidance during the intersessional period.

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## SECOND SESSION OF THE ICCBD

The second session of the ICCBD met in Nairobi from 20 June to 1 July 1994. During the two-week session, delegates addressed a number of issues in preparation for the first COP. These included: institutional, legal and procedural matters; scientific and technical matters; and matters related to the financial mechanism. Progress was made on issues including: rules of procedure; the subsidiary body on scientific, technical and technological advice (SBSTTA); and the clearing-house mechanism. However, many delegates felt that substantive negotiations had been hastily postponed on such critical issues as: the need for a biosafety protocol; ownership of and access to *ex situ* genetic resources; farmers' rights; and the financial mechanism.

## REPORT OF THE COP

The first meeting of the COP opened on Monday, 28 November 1994, to the sounds of the Royal Bahamas Police Force Band, a color guard and speeches by UNEP Executive Director Elizabeth Dowdeswell, UN General Assembly Vice-President Mario Lopez de Rosa on behalf of the General Assembly President S.E.M. Amara Essy and UN Secretary-General Boutros Boutros-Ghali, and the Bahamian Prime Minister, the Hon. Hubert. A. Ingraham. The ceremonies ended with the official opening of the Biodiversity Technology Fair sponsored by the Canadian Government and the Canadian Industries Association.

## ORGANIZATIONAL MATTERS

The Plenary opened with the appointment of the President, Sen. Dr. Ivy L. Dumont, the Bahamas Minister of Health and Environment. She reported on Sunday's informal consultations on Rule 21 (size and composition of the Bureau). A president, eight vice-presidents, and a rapporteur are to be elected from parties present at each meeting to serve as the Bureau until the next ordinary meeting. The selection will be made with regard to equitable geographic representation and with adequate representation of SIDS. The Bureau consisted of: Guinea and Mauritius (Africa); the Czech Republic and Estonia (Eastern Europe); Peru (GRULAC); Canada and Denmark (WEOG); and Malaysia and China (Asia). Mr. Viet Koester (Denmark) was elected Chair of the Committee of the Whole.

**ADOPTION OF THE AGENDA:** The provisional agenda for the COP is contained in UNEP/CBD/COP/1/1. Brazil requested that biosafety, access to genetic resources and indigenous knowledge be included in the provisional agenda. Spain called for discussions on the location of the Secretariat. Switzerland supported Spain's request, but noted that at ICCBD-2 the European Union had recommended that discussion of the secretariat location be deferred until COP-II. Germany, on behalf of the EU, supported Brazil's request to discuss biosafety and Spain's proposal to discuss the secretariat. The Chair agreed to add the location issue to the provisional agenda, which was adopted, as orally amended. Delegates then adopted the organization of work as outlined in document UNEP/CBD/COP/1/1/Add.2.

**ADOPTION OF THE RULES OF PROCEDURE:** The second ICCBD recommended for consideration and adoption by the COP, the draft rules of procedure contained in document UNEP/CBD/COP/1/2, despite bracketed text in the following areas: Rule 4, paragraph 1 on periodicity of meetings of the COP; Rule 21 on the Bureau of the COP; and Rule 40, paragraph 1 on voting. The President said that after informal consultations held on Sunday, agreement was reached on the size and composition of the Bureau (Rule 21). The informal consultations also agreed to bracket Rule 4, paragraph 1 (Date of Meetings) and Rule 40 (Voting). Despite Japan's objections to Rule 52 (Working Languages), the Committee adopted the draft rules with the oral amendment to Rule 21 and the brackets around Rules 4 and 40.

**REPORT OF THE ICCBD:** Amb. Vincente Sanchez (ICCBD Chair) introduced the report of ICCBD-II (UNEP/CBD/COP/1/4) and said that the Convention's swift entry into force had focused the ICCBD's deliberations on issues for the first COP including: periodicity of meetings; financial issues; selection of a competent organization to host the secretariat; a clearing-house mechanism; policy, strategy and eligibility for financial resources; institutional structures for a financial mechanism, and the list of developed country Parties and other Parties which voluntarily assume developed country obligations; the SBSTTA; and input to the CSD.

## AGENDA ITEM 6.1 — POLICY, STRATEGY, PROGRAMME PRIORITIES AND ELIGIBILITY CRITERIA REGARDING ACCESS TO AND UTILIZATION OF FINANCIAL RESOURCES (UNEP/CBD/COP/1/5)

ICCBD-II recommended that the Secretariat's document be used as the basis for discussions. Germany, on behalf of the EU, proposed three distinct levels upon which guidelines for the financial mechanism should be developed. Algeria, on behalf of the G-77, questioned the appropriateness of bringing to the COP new interpretations of the substantive provisions of the Convention. He added that the question of poverty, the issues of technology transfer and funding must be concretely addressed. China said that developed countries have a responsibility to assist in the mobilization of financial resources to help finance the incremental costs. Sweden urged against the global list idea. He added that discussion on the draft indicative list of incremental costs in Annex IV should be postponed until the significance of these costs has been fully clarified. The UK noted the important distinction of the role of the COP to provide both policy and operational guidelines for the financial mechanism. India urged that the text agreed in Nairobi be used as the basis of discussions. An open-ended contact group, chaired by Dr. John Ashe (Antigua and Barbuda) worked to resolve these outstanding issues. (See page 7.)

## AGENDA ITEM 6.2 — INSTITUTIONAL STRUCTURE TO OPERATE THE FINANCIAL MECHANISM UNDER THE CONVENTION (UNEP/CBD/COP/1/6)

The COP examined the Secretariat's document, which contains a non-exhaustive list of elements based on the decisions of the ICCBD. The Chair of the GEF, Mohamed T. El-Ashry, addressed the Committee of the Whole, emphasizing the urgency of a decision from the COP on the GEF's role as the institutional structure for the financial mechanism. El-Ashry said a significant portion of the US \$2 billion pledged to the new GEF was intended to finance activities under the Biodiversity Convention. He said that the GEF Council had approved a two-track programme for funding work related to biodiversity. The first track is for an overarching strategy by July 1995, and the second is to follow interim 1995 guidelines approved by the Council in early November. He cautioned, however, that the GEF would not be able to allocate financial resources to biodiversity at its January meeting unless it receives guidance from the COP on policies, strategies, programme priorities and eligibility criteria for activities to be funded under the Convention. He said that the GEF Implementing Agencies have been instructed to designate an \$80 million programme of work for consideration by the Council in January. He noted that the restructured GEF is striving toward universal participation and democratic governance and, since the restructuring, 138 countries have joined the GEF. In support of the GEF's candidacy as the financial mechanism, he also mentioned the collaborative relationship between the GEF and Secretariats of the related conventions, and the extensive negotiations of ICCBD-II to designate the GEF as the interim financial mechanism. He noted that the \$315 million that was allocated to 57

biodiversity projects during the GEF pilot phase is a solid foundation for continued work under the Convention.

Following El-Ashry's speech, several delegations expressed concern over whether the authority and priorities of the COP would be carried out by the GEF. Malaysia, Mauritius, and Malawi asked if the GEF was prepared to accept the authority and supremacy of the COP under Article 21 of the Convention. El-Ashry said that it was the COP's responsibility to provide programme priorities, strategy and policy guidance and that the GEF would translate that guidance into its funding decisions and operations, with the GEF Council retaining the final approval of projects. Mauritania said it was a GEF Council member representing nine of the poorer members, and that the GEF is accountable to decisions of the COP regarding the Convention.

Chile, Brazil and Kenya requested clarification on the relationship between the GEF Science and Technical Advisory Panel (STAP) and the SBSTTA. El-Ashry said the role of the STAP within the GEF had changed since the pilot phase and it would avoid duplicating SBSTTA's work. Chile asked how the GEF would determine what percentage of its resources would be applied to biodiversity, and whether particular funds would be allocated for countries with economies in transition. El-Ashry said there would be no earmarking for regional groups or countries with economies in transition. He said the need for additional funds could be addressed by using GEF funding to leverage contributions from other donors and the private sector. Slovakia, speaking on behalf of Albania, Armenia, Belarus, the Czech Republic, Estonia, Hungary, Kazakhstan, the Slovak Republic and Romania, fully supported the GEF as the permanent financial mechanism. In concluding, El-Ashry said that a permanent designation was preferable, as it would send a signal of certainty.

A statement, which was presented on behalf of a number of NGOs, noted that the financial mechanism must function under the authority and guidance of, and be accountable to, the COP. It was pointed out that the GEF Instrument only mentions guidance and accountability and hence there is clearly some incompatibility on the issue of authority.

The World Resources Institute, which was not associated with the earlier NGO statement, said that the restructured GEF still needed improvement in its responsiveness to the Convention, but the COP should move forward with the GEF, as rejection could lead to a loss of already committed funds.

Germany, on behalf of the EU, stated that the concerns of many governments had been alleviated by the newly restructured GEF. He noted that all country Parties to the Convention are now represented in the GEF. A quick decision on the financial mechanism was requested. Australia supported the GEF as the appropriate permanent institution, especially given the possibility of review not less than two years after the Convention has entered into force and the fact that the GEF is now fully operational with funding for the next three years. The US supported the GEF as the institutional structure for the financial mechanism. Austria noted that the GEF will use its replenished funds (for the next three years at least) regardless of whether the COP decides to use it as the financial mechanism. He urged that efforts be directed towards defining the programme priorities. Norway cited several reasons for supporting the newly-structured GEF as the institutional structure for the financial mechanism: if the COP is to implement the Convention quickly, this crucial part of the process must be clarified; the GEF stands a better chance at resource mobilization from other sources; and all the different players can be activated more expeditiously if this decision is settled sooner rather than later. Japan also supported the GEF as the permanent financial institution, but urged against any hasty decisions in this regard.

After extensive consultations on document UNEP/CBD/COP/1/6/Add.1, Algeria, on behalf of the G-77 and China,

recommended the GEF as the interim, rather than the permanent institutional structure. In a contentious debate, a number of developing countries strongly supported the G-77 position, while most developed countries opposed it. Brazil said that even though it is a member of the GEF Council, membership in that body, which also has non-Parties to the Convention, poses insurmountable difficulties. India said the structure of the financial mechanism is too uncertain and ambiguous to effectively serve the Convention. South Africa called for clear norms and standards for distributing funds without the political interference that characterized past GEF projects. Germany, on behalf of the EU, said it was disappointed in the G-77 and China proposal and had hoped that uncertainty over the financial mechanism would be replaced by certainty regarding the predictability of the flow of funds. He said the Convention had no provisions for: multiple institutional structures for a financial mechanism; new sources of funding; and an additional trust fund. He recommended that the Secretariat survey the availability of funds from existing institutions. Austria said that the COP was preparing to send a signal of hesitation, distrust and dogmatism, that the goodwill of donor countries might be weakened, and that the COP was engaging in an act of "self-mutilation." Malaysia, speaking in support of the G-77 and China, objected to the threat that the replenishment of funds is contingent on selection of the GEF as the permanent mechanism. Algeria, on behalf of G-77 and China, circulated the draft decision on financial resources and a financial mechanism contained in UNEP/CBD/COP/1/CW/L.1. The draft decision called for: the adoption of the programme priorities for access to and utilization of financial resources and the list of developed country Parties in Annex I; designation of the restructured GEF as the interim institutional structure for a financial mechanism; authorization of the Interim Secretariat to sign the Memorandum of Understanding (MOU) with the GEF; a study by the Secretariat for COP-II on modalities for the establishment of the financial mechanism and a second study on the establishment of a Biodiversity Fund and on the mobilization of new and additional resources for the Fund; and a review of financial resources and the interim arrangements of the financial mechanism be addressed by COP-II. An open-ended contact group chaired by Antigua and Barbuda addressed outstanding issues on this agenda item. (See page 7.)

**AGENDA ITEM 6.3—LIST OF DEVELOPED COUNTRY PARTIES AND OTHER PARTIES WHICH VOLUNTARILY ASSUME THE OBLIGATIONS OF DEVELOPED COUNTRY PARTIES (UNEP/CBD/COP/1/7)**

The second ICCBD recommended the list contained in document UNEP/CBD/COP/1/7 as the basis of discussions at the COP. An open-ended contact group, chaired by Antigua and Barbuda addressed this issue as well. (See page 7.)

**AGENDA ITEM 6.4 — CLEARING-HOUSE MECHANISM FOR TECHNICAL AND SCIENTIFIC COOPERATION (UNEP/CBD/COP/1/8)**

The Secretariat introduced the document and the Information Paper (UNEP/CBD/COP/1/Inf.9) on the aims, scope, function and governance of a clearing-house mechanism that was circulated at the request of Sweden. Sweden referred to the Swedish Environmental Institute (SEI) study that it had contracted on the aims, scope, functions and governance of a broad-based clearing-house mechanism. He reported that a workshop sponsored by the Bahamas and Sweden had also been conducted. He said a clearing-house mechanism should promote and facilitate technical and scientific cooperation, particularly for developing countries, in accordance with Article 18 of the Convention. The mechanism should not just be a switchboard for data and services but should

take a more active role in providing brokerage services and facilitating national capacity building. The following organizations were included in the governance section of the information paper: UNDP, UNIDO, FAO, CGIAR, UNEP, WHO, TFAP, the GEF, the World Resources Institute and the SEI.

Algeria, on behalf of the G-77 and China, said that the key issue regarding scientific and technical cooperation was access to, and transfer of environmentally sound technology, taking into account the needs of developing countries. He said the mechanism should be administered by the secretariat under the authority of the COP. Colombia, supported by Chile, was concerned that the mechanism not be extractive in nature regarding traditional knowledge. Germany, on behalf of the EU, supported by Japan and others said that scientific and technical cooperation and information exchange should be improved, stressing cooperation through regional centres funded either multilaterally or bilaterally. He said that the information systems of UNEP, IUCN, World Conservation Monitoring Centre, UNIDO, and UNDP should not be duplicated.

Malaysia suggested a special focus on access to genetic resources and sharing of its benefits, as well as biotechnology and biodiversity prospecting. Japan said that its funding should come from the Convention budget and the mechanism should not engage in brokerage services. New Zealand supported: regional centres; an electronic network with a decentralized structure; focus on the needs of end-users; and administration of the mechanism by the Secretariat. Egypt noted the limited access of developing countries for data management and storage. Australia supported establishment on an incremental basis and functions that would include provision of information on plans and strategies on all levels as well as information on methodologies for assessing and valuating biological resources. Brazil suggested a decentralized clearing-house mechanism and said that information should not be disseminated until rules regarding access are adopted. Canada said that the mechanism should link Parties with problems together with centres for solutions. The UK suggested that the clearing-house mechanism be limited to information retrieval and referral and not be authorized to provide brokerage services. The US recommended that the clearing-house mechanism be a pointer to the data with access open to non-parties and that it not play a brokerage role. India called for its financing to be covered by sources other than the financial mechanism of the Convention. An NGO representative speaking on behalf of NGOs questioned the appropriateness of the clearing-house to deal with such sensitive issues as the right to genetic information. An open-ended contact group chaired by Dr. A. Lazar (Canada) worked to resolve outstanding issues in this agenda item. (See page 7.)

#### **AGENDA ITEM 6.5—SELECTION OF A COMPETENT INTERNATIONAL ORGANIZATION TO CARRY OUT THE FUNCTIONS OF THE SECRETARIAT OF THE CONVENTION ( UNEP/CBD/COP/1/9)**

The COP considered the Secretariat's document, which contains the offers received by the Interim Secretariat in response to the invitation issued by the ICCBD. Most countries favored continuation of the Interim Secretariat until the permanent secretariat is established. There was virtual agreement that UNEP is best suited to take on the permanent secretariat role. Australia said that the selection of UNEP must not influence the decision of the COP on the location issue, nor should it preclude the possibility of drawing from other sources. Many countries preferred one body, rather than a consortium, to carry out secretariat functions. The IUCN, UNDP, FAO, and UNESCO highlighted their areas of expertise and willingness to participate with the secretariat. The EU reiterated the need for this COP to take a final decision regarding the secretariat. A contact group chaired by Mr. El-Ghaouth (Mauritania) met to resolve outstanding issues. (See page 8.)

#### **AGENDA ITEM 6.6—FINANCIAL RULES GOVERNING FUNDING FOR THE SECRETARIAT OF THE CONVENTION (UNEP/CBD/ COP/1/10)**

The draft financial rules contained in the Secretariat's document were used as the basis for deliberations on this matter. Algeria, on behalf of the G-77 and China, said that any assignment of a scale of assessments must consider the economic difficulties of developing countries and the principle of "common but differentiated responsibilities." Germany, on behalf of the EU, supported by Japan, Canada and the US, preferred: assessment Formula I, including a 2.5 percent assessment on the EU for administrative costs; Rule 3(a) for the financing of the Trust Fund; and Rule 15(a) on consensus decisions. Japan said while it is ready to support the budget of the Secretariat, it does not assume any legal obligation to contribute to the Secretariat's budget, and requested the word "voluntary" in the text, which was also supported by the US. Australia called for mandatory assessments, based on the capacity to pay, to assure predictable funding and endorsed Formula I, UNEP as trustee and Rule 15A. New Zealand suggested seeking consensus under Rule 3 by making a minor amendment to Rule 3A, and supported Formula I and 15A. Brazil recommended mandatory contributions, UNEP as trustee, and Rule 15B with a two-thirds majority. A contact group chaired by Mauritania addressed outstanding issues in the agenda item. (See page 8.)

#### **AGENDA ITEM 7—SUBSIDIARY BODY ON SCIENTIFIC, TECHNICAL AND TECHNOLOGICAL ADVICE (SBSTTA) (UNEP/CBD/COP/1/11)**

The President, Dr. Dumont said that after extensive regional consultations, agreement had been reached on the selection of the Chair of the SBSTTA. Dr. J.H. Seyani (Malawi) would serve as Chair of SBSTTA for 1995 and Dr. P. Schei (Norway) would serve as Chair in 1996. Delegates considered terms of reference, organizational and procedural matters, date and venue of its first meeting, and financial arrangements .

Algeria, on behalf of the G-77 and China, reiterated the extreme importance attached by developing countries to the SBSTTA as the main implementing body after the COP. Due regard should be given to geographic representation and full participation by developing countries. The SBSTTA should concentrate on specific matters and examine ways to facilitate the transfer of technology, as well as access to eco-technologies for developing countries. India emphasized that technology transfer should be given due priority in the SBSTTA, the programme of work, and the clearing-house mechanism.

Germany, on behalf of the EU, said that priorities should be set according to the medium-term work programme to prevent overburdening the SBSTTA, adding that its advice should be purely scientific, technical and technological. He recommended specialized panels to ensure efficiency, but objected to the need for a steering committee to meet more often than the entire SBSTTA.

Malaysia recommended that the SBSTTA should: undertake scientific work on protocol issues such as biosafety and the movement of germplasm; develop criteria for sustainable use; and review threats to biodiversity. Brazil, supported by Colombia, suggested that report production is the responsibility of each country Party. He added that the SBSTTA's terms of reference should mention protection of indigenous lifestyles and practices. The UK said the SBSTTA's main objective should be to establish a scientific baseline against which future assessments could evaluate the Convention's effectiveness. New Zealand suggested that the SBSTTA should: communicate with national agencies rather than individual experts; develop a specific priorities list; be cost-effective; and avoid creating burdensome reporting requirements. Japan said that the SBSTTA's terms of reference are too specific

but that it should establish panels focusing on specific priority issues. China suggested that the SBSTTA should provide the COP with scientific information and advice to promote technology transfer. An open-ended contact group chaired by Canada worked to resolve outstanding issues in this agenda item.

The first organizational meeting of the SBSTTA was held on 5 December, and was chaired by Dr. J.H. Seyani (Malawi). It addressed two key issues: the election of officers and the date and venue of the first meeting. Regarding the first issue, the Chair reminded delegates that, in accordance with Rule 21 in the Rules of Procedure, the Bureau is to be composed provisionally of a chair, 8 vice-presidents and a rapporteur. Also, in accordance with paragraph 4 of Rule 26, each region shall elect its own candidates. The Chair noted that he had received provisional nominations from: Tunisia and Malawi (Africa); Hungary and Kazakhstan (Eastern Europe); Brazil and Cuba (GRULAC); India and Indonesia (Asia); and Australia and Italy (WEOG). Peter Schei will be the ex-officio member of the Bureau. Delegates agreed that the first SBSTTA meeting be held on 4-8 September 1995 at UNESCO headquarters in Paris. The draft decision on SBSTTA submitted by the contact group contained in UNEP/CBD/COP/1/CW/L.8 was adopted by the Committee of the Whole.

**AGENDA ITEM 8—PREPARATION OF THE PARTICIPATION OF THE CONVENTION ON BIOLOGICAL DIVERSITY IN THE THIRD SESSION OF THE COMMISSION ON SUSTAINABLE DEVELOPMENT (UNEP/CBD/COP/1/12)**

The COP discussed its relationship with the third session of the CSD, in particular on the follow-up of issues of common concern contained in Agenda 21. Algeria, on behalf of the G-77 and China, said that the COP report to the CSD should focus on substantive issues, such as resource mobilization and technology transfer. Michael Monaghan of the Interim Secretariat read a statement on behalf of Mr. Nitin Desai, Under-Secretary-General for Policy Coordination and Sustainable Development. Desai noted the number of ratifications and called for the closest possible cooperation between the DPCSD and the Convention at both the interagency level and the policy and coordination level within ECOSOC. Ghana said that the SBSTTA should contribute to the work of the CSD's *Ad Hoc* Working Group on Biodiversity. Canada supported the need for a separate convention on forests. Germany on behalf of the EU, recommended that the COP should report on 3 items: significance of the Convention; current state of its implementation; and its relationship to Agenda 21. Australia noted that the conservation and sustainable use of forests will be critical to achieving the objectives of the Convention. Samoa said that the Programme of Action of Small Island States depends on regional cooperation and that this aspect should be reflected as well. Spain noted that the report of the experts workshop held in Madrid should be included in the report. The UK recommended that the medium-term programme of work be reflected in the report to the CSD.

The Netherlands and Finland said that the Forest Principles will be further elaborated on in a possible convention on all types of forests, to be discussed by the CSD in 1995. They recommended that this issue be dealt with by the CSD and not within the Convention. Colombia said that the third CSD should help the COP in the development of a biosafety protocol. The IUCN questioned how the COP will address the forests issue. The WWF called for additional reference to consumption and trade patterns and their impact on biodiversity. An open-ended contact group chaired by Canada worked to resolve outstanding issues in the agenda item. (See page 7.)

**AGENDA ITEM 9 — MEDIUM-TERM PROGRAMME OF WORK OF THE CONFERENCE OF THE PARTIES (UNEP/CBD/COP/1/13)**

The second ICCBD considered the need to outline a medium-term programme of work of the COP. Many delegations expressed their views on the issue of standing and rotating agenda items within the medium-term programme of work. Germany, on behalf of the EU, supported by Australia, Canada, Japan, the US and others, endorsed the medium-term programme of work. He suggested that COP-II focus on the link between national reporting and work programs. Australia noted that more immediate attention was required on capacity building, national reports, the clearing-house mechanism, and the issue of *in situ* and *ex situ* genetic resources. Brazil supported by Colombia, India and others, proposed the following agenda items for COP-II: an ad hoc intersessional working group on the adoption of a biosafety protocol; access to genetic resources and the equitable sharing of benefits; knowledge and practices of indigenous and other local communities; and the relationship with the CSD. The items proposed for COP-III included: access, transfer, and development of technology; incentive measures; special session of the General Assembly to review Agenda 21; and matters pending from COP-II. France said the COP will have to conduct a survey of global biodiversity on the basis of national inventories and highlighted the importance of conservation. India stressed the importance of addressing *in situ* and *ex situ* genetic resources and the knowledge and practices of indigenous and local communities and sharing of benefits with these communities.

A representative of the Caucus of the Indigenous Peoples' Preparatory Committee urged the COP to reorganize the work programme to include the rights of indigenous peoples within the Convention, from 1997 back to 1995. The Third World Network, on behalf of the NGO Task Force on Biosafety, stressed that guidelines would not be an acceptable substitute to a biosafety protocol. Greenpeace International emphasized the importance of a biosafety protocol and highlighted the issue of poverty eradication in relationship to the CSD and the sustainable use of biodiversity.

Sweden said the perennial issues before the COP were: financial matters, transfer of technology and scientific cooperation. He suggested considering: all the ecosystems in relation to the objectives of the Convention; a thematic review linked to the CSD process; and work done by the FAO for consideration by COP-III. Norway stressed issue prioritization for the COP-II and recommended that a biosafety instrument should be developed. The US said the COP should establish both a permanent and a rotating agenda. Malaysia reiterated the importance of convening a working group on biosafety. Kenya urged that COP-II consider biosafety, *ex situ* collections, IPRs, incentives and indigenous knowledge. Germany, on behalf of the EU, called on COP-II to address: national strategies; biodiversity indicators; determination of biodiversity components under threat and the action needed; management of and possible extension of nature conservation areas; and conservation and sustainable use of marine biodiversity. The EU suggested that COP-III address: financial mechanism effectiveness; policies, strategies and eligibility criteria and the list of incremental costs; the role of *in* and *ex situ* conservation; land-use planning; the FAO initiative on plant and genetic resources; indigenous rights; review of the global biodiversity assessment; scientific and technical programs; and conservation and sustainable use of biodiversity in agricultural ecosystems. China called for the first two years to focus on: the clearing-house mechanism; SBSTTA; and technical and technological exchanges and human resources training. China also supported a working group to establish biosafety guidelines with a view towards the possible negotiation of a protocol.

Germany, on behalf of the EU, supported the creation of international voluntary guidelines on biosafety and called on the COP to consider the need for, and modalities of a binding instrument, as well as the establishment of an *ad hoc* work group of technical experts to assist the COP. Chile, Slovakia, on behalf of the Eastern European Group, Zaire, the Philippines, Cuba, Brazil, Malawi and Sri Lanka recommended examination of a biosafety protocol in the medium-term programme of work. The UK said that it was developing national guidelines for biosafety jointly with the Netherlands. Australia said that an open-ended ad hoc working group should conduct a rigorous and objective analysis of the need for a protocol. Slovakia, on behalf of the Eastern European Group, called for biosafety to be considered by COP-II, including a working group on GMOs, and a moratorium on GMOs until a protocol is negotiated. Zaire said a protocol should mention the risk of release of GMOs and recommended the inclusion of monitoring using local experts, risk assessment and *in situ* conservation. UNIDO suggested that the COP consider using the guidelines and the voluntary code of conduct developed by the Interagency Working Group composed of UNIDO, FAO, the WHO and UNEP as a basis for further action.

Australia, speaking on behalf of Japan, the US, Switzerland, Canada, New Zealand and Mexico, recommended a three-year planning horizon with the following routine matters: a report from the financial mechanism; reviews of programme priorities, the SBSTTA, and the clearing-house mechanism; a report on relations with other conventions and institutions; a budget; national plans and related matters under Article 6. She said that COP-II should address guidelines for national reports and progress on genetic resources and *in situ* conservation. The Philippines said that access to genetic resources cannot be separated from the rights of indigenous peoples and underscored the need for community involvement.

The representative from the Ramsar Convention said that the Convention and other related ones, including CITES and Bern have amassed field experience that need not be duplicated. The Bonn Convention noted that it could provide information on migratory species. UNESCO offered assistance in promoting research and education, citing an upcoming meeting on international cooperation for biodiversity and a biodiversity guide for teachers to be distributed globally, especially in developing countries. FAO emphasized its work related to preservation of plant genetic resources for food production and access to *ex situ* genetic collections, including those of the Consultative Group on International Agriculture Research (CGIAR), which it now manages. Sweden stressed the need to consider access to genetic resources and said that COP-III's consideration of intellectual property rights should be coupled with farmers and indigenous peoples' rights. Malaysia recommended coordination with FAO's negotiations on plant genetic resources. An open-ended contact group chaired by Mauritania discussed outstanding issues on this agenda item. (See page 7.)

#### **AGENDA ITEM 10 — BUDGET FOR THE SECRETARIAT OF THE CONVENTION (UNEP/CBD/COP/1/14)**

Algeria, on behalf of the G-77 and China, said that the secretariat is the keystone for the implementation of the Convention and that it required the necessary level of financial resources, particularly for preparatory work for COP-II. He proposed that the Interim Secretariat prepare a comparative note based on the precedents set by other Conventions to provide a clearer picture of budgetary needs. Canada raised the need for: budgetary flexibility; a secretariat that was not top-heavy in nature; and linkage between the host organization and location of the secretariat. Germany, on behalf of the EU, said that costs should be

reduced and the budget for 1995 should be based on the budget of the Interim Secretariat. Australia said the draft budget was consistent with: the needs of the medium-term programme of work; the prompt start of the SBSTTA; and the provision of information to Parties. Japan said that the proposed budget of \$6 million was high and recommended that personnel be streamlined and the number of working languages be reduced in the SBSTTA. Spain said that the discussion of the location of the secretariat and the extension of the Interim Secretariat was important. Switzerland reiterated his Government's offer to house the secretariat free of charge, at least until 1998 and its willingness to provide substantial support for the secretariat beyond its obligations as a Party to the Convention. Sweden questioned who would finance the 1995 budget, which will actually become operational in a few weeks. Norway supported a budget that would maximize the secretariat's effectiveness and urged for realistic figures. UNESCO affirmed its offer to provide, free of charge, several full or part time UNESCO staff in several substantive areas. FAO said that it was prepared to second a biodiversity and agriculture programme officer at its own expense. China supported Brazil that no developing country should contribute more than the developed countries. An open-ended contact group chaired by Mauritania worked to resolve outstanding issues in this agenda item. (See page 8.)

#### **AGENDA ITEM 11 — LOCATION OF THE SECRETARIAT (UNEP/CBD/COP/CW/L.7)**

Kenya, Spain and Switzerland have all offered to host the Secretariat. Delegates considered UNEP/CBD/COP/CW/L.7, a draft decision and annex on the physical location of the permanent secretariat submitted by Australia, the Bahamas, Canada, Japan, and New Zealand. Canada said that while the COP appreciated offers from Kenya, Spain and Switzerland to host the permanent Secretariat, it needed a transparent, systematic, clear, and open process to make the selection. Australia called for detail beyond what is contained in the existing proposals. She also recommended that the COP consider offers from other governments, and that it should not decide on a location until COP-II. She noted that the process proposed was similar to the one used by the GATT in its determination of the location of the World Trade Organization, as well as the selection process used by the Climate Change Convention. The Bahamas questioned how the location could be decided when no consensus can be reached and no decision has been made yet on rules of procedure for decisions. Spain, supported by Uruguay, Kenya, Costa Rica, Venezuela, Slovakia, Chile, Argentina, Portugal, Brazil and Italy, recommended that the COP decide without further delay on a location because the cities in the existing submissions were well known and needed no further study. He said the draft decision violated Rule 35, which requires draft decisions to be submitted 24 hours in advance, noting he had only learned of the proposal in the morning. Kenya said one reason COP-I had been located in the Bahamas was to provide a neutral site for deciding on a secretariat location. He said the draft decision had been submitted at the 11th hour and that the criteria in its annex were extremely biased. The Chair proposed to initiate discussions on the draft decision and promised to report on the conclusions of the consultations at the next Plenary.

Despite protracted negotiations, a decision on the location was not taken at COP-I. The draft decision submitted by Kenya, Spain and Switzerland proposed that the decision be taken at COP-II.

#### **WORK OF THE CONTACT GROUPS**

Three contact groups met during the course of the session to resolve several outstanding issues in the following agenda items. NGOs were allowed to observe all contact groups except for the group that dealt with the Agenda Items 6.5, 6.6, 9 and 10.

**AGENDA ITEMS 6.1, 6.2, AND 6.3:** The contact group chaired by Antigua and Barbuda, on Agenda Items 6.1 (Policy, strategy, programme priorities and eligibility criteria), 6.2 (Institutional structure to operate the financial mechanism) and 6.3 (List of developed country Parties and other Parties) met twice to discuss the progress made on informal consultations, which the group had mandated the Chair to undertake with representatives from all regional and interest groups. The Chair noted that the draft decisions and three annexes should be viewed as a package, reflecting a balanced attempt to reflect all regional groups and other interests in the debate. The draft decision: agrees that the restructured GEF will continue as the interim institutional structure to operate the financial mechanism; instructs the GEF to support the policy, strategy, programme priorities, and eligibility criteria in Annex I of the decision; authorizes the Interim Secretariat to consult with the GEF on the MOU to be considered at COP-II; lists in Annex III interim guidelines for evaluation of the GEF; and requests that the Interim Secretariat produce a report on the financial mechanism and a study on the availability of financial resources additional to those provided by the restructured GEF for COP II. Annex II, the list of developed country Parties and other parties that assume developed country Parties' obligations, lists no countries in the latter category. Antigua and Barbuda said that the interim guidelines in Annex III provided a means for the interim institutional structure to function until COP-II. He stressed that the draft decision reflected a balance of various views. The group adopted the draft decision and recommended that it be adopted by the Committee of the Whole.

**AGENDA ITEMS 6.4, 7, AND 8:** The contact group coordinated by Canada completed discussions on Agenda Items 6.4 (Clearing-house mechanism) and 7 (SBSTTA). The group agreed that the Interim Secretariat should prepare a study to assist the COP in the establishment of the clearing-house mechanism. On Agenda Item 8 (Preparation of the participation of the Convention in the third session of the CSD), delegates agreed to refer to the relationship between poverty and biodiversity. They agreed to remove the reference to work on the protection of traditional knowledge and indigenous communities since the matter would not be taken up by the COP until 1996. Delegates agreed on the importance of conveying to the CSD the new regime established by the Convention. Delegates agreed to the deletion of references to the sovereign rights of States and to national authority to regulate access. On the COP's contribution to the CSD's forests discussions, delegates agreed to new wording that refers to the importance of biodiversity in the ecosystem functioning of forests and the role of the COP in emphasizing the importance of conservation, management and sustainable use for achieving the objectives of the Convention. On agenda item 7, the group chose priority items from the draft medium-term work programme as the basis for the agenda for the SBSTTA's first meeting. The matters for which advice from the SBSTTA is required by the second COP include: the components of biodiversity under threat and the action to be taken; ways and means to promote technology transfer; scientific and technical information to be contained in national reports regarding implementation; contribution of the Convention to the preparation of the 1996 International Technical Conference on the Conservation and Utilization of Plant Genetic Resources for Food and Agriculture; and conservation and sustainable use of coastal and marine biological diversity.

**AGENDA ITEMS 6.5, 6.6, 9, AND 10:** The contact group coordinated by Mauritania finished work on agenda item 6.5 (Selection of competent international organization). The group also agreed to establish an ad hoc working group to consider the need for and modalities of a biosafety protocol. The group met throughout the weekend to address: the medium-term work programme; the budget; and biosafety. The revised text noted that the work programme will be developed on the basis of standing and

rolling issues. Standing issues will include: matters relating to the financial mechanism; report from the Secretariat on the administration of the Convention and budget for the Secretariat; report from, and consideration of recommendations to the SBSTTA; reports by the Parties on implementation of the Convention; report on, assessment and review of the operation of the clearing-house mechanism; relationship of the Convention to the CSD, and biodiversity related conventions, other international agreements, institutions, and processes of relevance to agenda items of the COP.

The rotating agenda will be developed in a flexible manner, in accordance with the decisions of the COP, the SBSTTA and any working groups established by the COP. Several items within the medium-term work programme were deferred pending further consideration by the contact group. These included: biotechnology; thematic ecosystem focus; intellectual property rights; identification, monitoring and assessment; consideration of matters related to benefit-sharing; mid-term activities to be addressed by intersessional open-ended preparatory meeting(s) coordinated by the Chair of the COP; capacity-building regarding articles 6-19 of the Convention; a Secretariat-sponsored study of existing legislation and information on access to genetic resources and the equitable sharing of benefits arising from their utilization; and COP-II consideration of a Secretariat-sponsored study on the implications for and interaction between TRIPs and the Convention. Key elements under consideration on the budget of the Secretariat included: executive direction and management; intergovernmental processes and cooperative arrangements; the financial mechanism and economic analysis; legal advice and support; and scientific, technical and technological matters. Bracketed text in agenda item 6.6 (Financial Rules) was the subject of protracted and intense negotiations with consultations continuing until the final Plenary on the unresolved issue of the scale of contributions. Mauritania reported that the issues assigned for consideration were extremely complex and that many of them had been raised for the first time here in Nassau.

### **FINAL MEETING OF THE COMMITTEE OF THE WHOLE**

After a full day of consultations, the twelfth and final Committee of the Whole meeting was convened at 11:30 pm on Tuesday to adopt the draft decisions of the three contact groups.

**AGENDA ITEMS 6.1, 6.2 AND 6.3:** The first item to be considered was the issue of financial resources and the mechanism, contained in document UNEP/CBD/COP/1/CW/L.10/Rev.1. The contact group Chair, Dr J. Ashe (Antigua and Barbuda) noted that the draft decision and its three annexes represented hours of formal and informal consultations reflecting the views of all regional and other interest groups. The three annexes are: Annex I on policy, strategy, programme priorities and eligibility criteria for access to and utilization of financial resources; Annex II on the list of developed country Parties and other Parties, which voluntarily assume the obligations of developed country Parties; and Annex III on interim guidelines for monitoring and evaluation of utilization of financial resources by the GEF. The decision and its annexes were adopted without objection. The Chair, Mr V. Koester, pointed out that Annex II of this draft decision has been adopted with the understanding that the list of developed country Parties and other Parties will be reviewed and adjusted at COP-II. He also noted that the draft decision UNEP/CBD/COP/1/CW/L.1, submitted by the G-77 and China had been withdrawn. The Chair noted that these agenda items were among the most sensitive and difficult issues addressed.

**AGENDA ITEM 8:** The contact group coordinator Dr. A. Lazar (Canada) introduced UNEP/CBD/COP/1/CS/L.9, which contains the group's draft decision. Representing the first statement

by the COP to an outside body, Lazar said that the COP's statement to the CSD contains an important message, one which emphasizes the cross-cutting nature, the breadth and the goals of the Convention. He added that the statement to the CSD describes the Convention as an instrument that has initiated a new era concerning access to genetic resources, which is intimately related to other issues facing the CSD. The statement also underlines the COP's interest in and enthusiasm for working with other bodies who have complementary interests. Based on the final decision regarding the medium-term work programme, the statement specifies four areas where the COP intends to take immediate action. Because the work programme has deferred traditional and indigenous knowledge and practices to 1996, this topic was not included as an area for immediate action. Brazil noted that while it had joined the consensus on the statement, it sincerely regretted that the COP could not send a clear message to the CSD that it would start work on protecting the knowledge of indigenous and local communities. He urged that action on this issue should begin at COP-II. The draft decision was adopted without objection.

**AGENDA ITEM 6.5:** The Chair invited Mr. M. El-Ghaouth (Mauritania) to introduce draft decision UNEP/CBD/COP/1/CW/L.5/Rev.1 on the selection of a competent international organization to carry out the functions of the secretariat of the Convention, as well as the draft decision UNEP/CBD/COP/1/CW/L.13 on the support to the secretariat by international organizations. The coordinator said that the members of the contact group had made considerable efforts in completing their work on the document. After the decisions were adopted, the Chair congratulated UNEP on its designation to carry out the functions of the secretariat and welcomed the offers of support from FAO, UNESCO and other international organizations.

**AGENDA ITEMS 6.6 AND 10:** Mauritania introduced the draft decision UNEP/CBD/COP/1/CW/L.12 on the budget, without the three annexes, for adoption by consensus in the Committee of the Whole. He noted that the issue of scale of assessments (referred to in paragraph 5 of the draft decision, as well as paragraphs 4 and 15 in annex I) was the subject of protracted debate within his contact group. Brazil highlighted the difficulty of adopting such a decision without an established scale of contributions and proposed postponing adoption of this draft decision until such specification. The draft decision was adopted with a bracketed paragraph 5 (regarding contributions) and informal consultations continued until the final Plenary. Regarding Annex II (proposed budget for 1995 and indicative budget for 1996), concern was expressed that the 1995 figures did not reflect consideration of biosafety issues.

Regarding Annex I (draft financial rules for the administration of the Trust Fund for the Convention), Mauritania requested the Chair to comment on the results of his consultations on bracketed texts in paragraphs 4 and 15. The Chair indicated that consultations would continue until the final Plenary. Brazil expressed dismay at adopting text that remained the subject of substantive discussion. Regarding Annex III (scale of contributions), Mauritania requested that the Chair continue to undertake consultations on this matter and report the results to the final Plenary of the COP.

**AGENDA ITEM 9:** Mauritania introduced the draft decision UNEP/CBD/COP/1/CW/L.11 and its annex on the medium-term programme of work and said that the contact group had adopted the draft decision but that negotiations were continuing between Brazil and the US on the item related to intellectual property rights. Colombia and India asked to participate in these consultations. The decision was adopted on the understanding that the results of the consultations would be included in the final Plenary.

**AGENDA ITEM 13 — ADOPTION OF THE REPORT OF THE COP:** The report contained in UNEP/CBD/COP/1/L.2 and Add.1 was presented by the Rapporteur and adopted by the Committee.

## CLOSING PLENARY

The President, Dr I. Dumont, opened the Plenary by inviting Tennyson Wells, Minister of Agriculture (Bahamas) to introduce the draft declaration by the Ministers of small island States, adopted at COP-I as contained in UNEP/CBD/COP/1/Inf.12. Wells highlighted the special vulnerability and needs of the AOSIS regarding biodiversity and climate change issues. The declaration expressed satisfaction at the inclusion of coastal and marine biodiversity as a priority item in the medium-term work programme and called for action on the implementation of the SIDS Program of Action.

The following decisions were considered and adopted:

**AGENDA ITEM 3:** Regarding the rules of procedure as contained in UNEP/CBD/COP/1/L.12, the President thanked both the work done by Malaysia and the Chair, Mr V. Koester in their consultations. Agreement was reached on the issue of the periodicity of COP meetings (paragraph 1 of rule 4) on the basis of the draft decision UNEP/CBD/COP/1/L.14, submitted by Algeria, on behalf of the G-77 and China. However, paragraph 1 of rule 40 remains in brackets.

**AGENDA ITEM 12:** On the report on the credentials of the representatives to COP-I. The members of the credentials committee were: Mauritius (Chair); Malaysia; Peru; Canada; and Estonia. The credentials for 93 Parties were found to be in order with the credentials of three Parties or States still to be submitted to the Interim Secretariat. These were Armenia, Nauru and Nepal.

**AGENDA ITEMS 6.1; 6.2; and 6.3:** The decision on policy, strategy, programme priorities and eligibility criteria regarding access to and utilization of financial resources, institutional structure to operate the financial mechanism and the list of developed country Parties and other Parties which voluntarily assume the obligations of developed country Parties is contained in UNEP/CBD/COP/1/L.6 and corrigendum.1. The decision was adopted with the understanding that Annex II (List of developed country Parties and other Parties) will be reviewed and adjusted at COP-II. The COP also took note of the position of the G-77 and China regarding the MOU between the COP and the institutional structure for the financial mechanism, contained in document UNEP/CBD/COP/1/Inf.13.

**AGENDA ITEM 6.4:** The clearing-house mechanism contained in UNEP/CBD/COP/1/L.5 was adopted.

**AGENDA ITEM 6.5:** The decision regarding the selection of a competent international organization to carry out the functions of the Secretariat is contained in UNEP/CBD/COP/1/L.7 and L.8 (Support for the Secretariat by international organizations). UNDP was invited to support UNEP with its field work and expertise.

**AGENDA ITEM 7:** The decision on SBSTTA contained in UNEP/CBD/COP/1/L.4/Rev.1 was adopted.

**AGENDA ITEM 8:** The decision on preparation of the participation of COP in CSD contained in UNEP/CBD/COP/1/L.10 was adopted.

**AGENDA ITEM 9:** The medium term work-programme is contained in UNEP/CBD/COP/1/L.11 and corrigendum 1 (text of section 5.4.2 of the work programme). The Chair noted that the medium-term work programme for 1995-97 had been adopted by the Committee of the Whole and that extensive consultations were undertaken on the corrigendum, which states: "To compile information provided by Governments, as well as relevant reports from appropriate international organizations regarding policy, legislative, or administrative measures related to intellectual property rights as provided in Article 16 of the Convention and to access to and transfer of technology that makes use of genetic resources."

Norway, on behalf of the Nordic countries, stressed the importance of addressing the issue of a biosafety protocol. He

regretted that budgetary considerations on the medium-term work programme did not allow for this and hoped that the next COP would address this.

Spain offered to host the meeting of the open-ended *ad hoc* working group of experts on biosafety. Brazil suggested adding a reference to NGOs on this issue. Algeria, on behalf of G-77 and China, reasserted the particular importance of technology transfer for developing countries and said that the quest of IPRs should not be used to hinder the access to and transfer of, environmentally sound technologies. He stressed the need for a biosafety protocol.

The President announced that the following countries have been designated by their respective regional groups to participate in the panel of 15 experts in working group on biosafety: Albania, Belarus, Burkina Faso, Egypt, Hungary, South Africa. Other regional groups will advise the Secretariat of their representatives shortly. The Asian Group met after the final plenary to designate India, China and Japan. Egypt and South Africa also offered to host the meeting of the open-ended *ad hoc* working group on biosafety. Brazil noted that the selection should be done on the basis of technical capacity and government nominated experts and not on a regional basis.

**AGENDA ITEM 6.6 and 10:** The Committee adopted the financial rules governing the funding of the Secretariat and the Secretariat's budget, as contained in UNEP/CBD/COP/1/L.9 and L.18, with the exception of paragraph 5 that now reads: "Urges all the Parties to pay promptly their contributions to the trust fund based on the scale set forth in the appendix to the budget." The scale of contributions is contained in UNEP/CBD/L.9/Add.1. The scale for contributions for 1995 was included in the appendix to the budget. The US said it interprets rule 3(a) that contributions by the Parties to the Trust fund are voluntary. Japan said that the financial rules did not constitute any legally binding obligation and interpreted rule 3(a) as a voluntary contribution. Brazil, supported by China, said that it was unfortunate that the scale of contributions was not based on "common but differentiated responsibilities" and the concept that developing countries should not pay more than developed countries.

**AGENDA ITEM 11:** The decision on the location of the Secretariat contained in UNEP/CBD/COP/1/L.13 was submitted by Kenya, Spain and Switzerland and adopted with an oral amendment to the penultimate sentence of paragraph 6, which now reads: "until only two offers remain and one receives a two-thirds majority vote." Sweden suggested including criteria on the environmental soundness of the proposed facility and resources.

**AGENDA ITEM 12:** The President noted that the Bureau had recommended that COP-II be held from 6-17 November, 1995. Indonesia indicated its interest in hosting COP-II subject to further negotiations with UNEP. The preparation for COP-II, as contained in UNEP/CBD/COP/1/L.17, and submitted by the G-77 and China was presented as the President's text.

**AGENDA ITEM 14:** The decision regarding the adoption of the Report is contained in UNEP/CBD/COP/1/L.2/Rev.1 and L.2/Add.1/Rev.1 on the proceedings of the Committee of the Whole. The Rapporteur presented UNEP/CBD/COP/1/L.1/Rev.1 and L.1/Rev.1 and L.1/Corrigendum 1.

In addition, 29 December, was recognized as the International Day for Biodiversity in a decision contained in UNEP/CBD/COP/1/L.15 introduced by Algeria, on behalf of the G-77 and China. (The UN General Assembly endorsed this decision just before Christmas.) Spain said that it would like to be included as a sponsor. France deplored the fact that translation was not easily available and documents and language was primarily in English and asked the Secretariat to take the necessary steps to ensure that COP-II rectify this situation. Amb. P. Wensley (Australia) introduced UNEP/CBD/COP/1/L.16/Rev.1 (Tribute to the Government of the Commonwealth of Bahamas), which was

sponsored by G-77 and China and supported by many others. NGO representatives from the Biodiversity Action Network and Greenpeace International offered several suggestions: forests and access to genetic resources should be included in the work of the SBSTTA and the medium-term work programme; increased attention to alternative sources of funding; and increased NGO participation. Greenpeace International said that delaying action on forests meant that the COP was turning over political leadership on forests to fora which would not take into account the Convention's broad view of conservation. He said that biosafety was a ticking time bomb, and that the COP was analyzing the lit fuse.

The Executive Secretary, Angela Cropper, and UNEP Executive Director Elizabeth Dowdeswell thanked the host country and all the participants for their hard work. Dowdeswell noted a technological breakthrough of COP-I's translation system and the fact that documents had been transferred via the Internet between the Bahamas and UNEP headquarters in Nairobi. She also pointed out that documents in all languages can be accessed from the UNEP gopher <unep.unep.no>.

### FINAL MINISTERIAL SEGMENT

*Editors' Note: The High-Level Ministerial Segment started on Wednesday, 7 December 1994, and continued until Friday afternoon. This portion of the COP provided ministers with the opportunity to comment on the work of the COP and to highlight key areas of concern. Since Friday's proceedings were not included in any of the daily issues of the Earth Negotiations Bulletin, they are summarized below.*

**CENTRAL AFRICAN REPUBLIC:** Martin Gbafolo, Ministry of Water, Forests, Tourism and Environment, explained that deforestation (for fuel wood), demographic pressures and nomadic agriculture are of particular concern to his country. He underscored the importance of funding developing countries in setting up conservation policies.

**UNITED KINGDOM:** Mr. Robin Sharp, Director of the Global Environment Directorate, expressed hope that now that the COP had addressed the necessary procedural mechanisms, substantive discussion could characterize future meetings. He suggested several themes for early action, including: development of national strategies based on sound science and of national reports for COP-II; intensification of financial and human resources to assist biodiversity-rich developing countries in their conservation efforts (noting a US\$200 million contribution to the GEF, US\$50 million over the last three years in biodiversity-related projects); collaborative and capacity-building efforts; the forging of links with related international instruments such as CITES, RAMSAR and the CMS; a mechanism to address the benefits arising from biotechnology and a protocol on biosafety. He concluded by noting that the striking panel behind the podium, which depicts several tropical species, including a parrot, was an important symbol for the need to conserve biodiversity.

**NEW ZEALAND:** Mr. David Taylor stated that the Convention represents a watershed in world opinion and that its swift entry into force stands testament to its international significance. He noted that biodiversity is crucial to New Zealand as potential sources of future pharmaceutical discoveries and as an attraction for ecotourism. He also expressed support for management of biotechnology safety; cooperation within the South Pacific and Antarctic regions; a scientific and technical advisory body; and consideration of indigenous people issues.

**SWEDEN:** Rolf Annerberg, Director-General of the National Environmental Protection Board, recommended that the COP take a holistic approach by focusing on major ecosystems. He called for an intensive look at marine biodiversity at COP-II, agriculture at COP-III and forests at COP-IV. Preparations for the process toward

developing a biosafety protocol should be carried out with a sense of urgency so that a protocol can be negotiated without delay.

**SPAIN:** Cristina Narbona, Secretary of State for Environment, noted that the COP had not included funds to guarantee the effective functioning of the *ad hoc* working group on a biosafety protocol and offered to host a meeting next spring with the provision of funding for the participation of developing country representatives. She said selection of the secretariat should not only be based on the physical site and administrative support but also on the political will of the host government to drive the Convention forward. She added that NGO participation is a crucial element of the Convention's success.

**ARGENTINA:** Fernando Novillo Saravilla of the Exterior Relations Department's Environment Unit said that the SBSTTA should: have membership from national teams; be an instrument that facilitates access to technology; and ensure sharing of benefits in a just and equitable manner.

**FRANCE:** Bernard Prague, Minister of Foreign Affairs Bernard Prague stressed the aim of conservation, which seems to have been insufficiently addressed in the Convention. He said that the Convention will be unable to realize its goals unless it builds upon an inventory that is precise and exhaustive. He noted that France has created a French environment fund to channel additional development assistance funds to biodiversity beyond the GEF.

**MARSHALL ISLANDS:** Espen Ronneberg said that the GEF should continue as the interim financial mechanism but added that additional resources should be made available. He stressed the need for capacity building because many of the Convention's requirements will necessitate the upgrading of national institutions and facilities. He recommended combining efforts under the Convention with those from the biodiversity chapter of the SIDS programme.

**SOPAC:** Penelope Wensley, Ambassador of Sustainable Development for Australia (current chair of SOPAC), noted that the SIDS Programme of Action is a first cross-sectoral and integrated step at breathing life into Agenda 21 for South Pacific Islands. She expressed hope that future meetings of the COP and the CSD would create linkages with integrated coastal management, and noted that the region's National Environment Management Strategies (NEMS) urgently require financial and technical assistance for their effective implementation.

**THE NETHERLANDS:** Dr. A.N. van der Zande, Deputy-Director for Nature Management, Ministry of Agriculture, Nature Management and Fisheries, drew attention to the establishment of a Pan-European Biological and Landscape Diversity Strategy. Underscoring the importance of agro-biodiversity, he expressed strong support for effective cooperation between the COP and the FAO. He also called for: an international legally binding instrument on biotechnology; and follow-up on the Agenda 21 Principles for Global Consensus on the Management, Conservation and Sustainable Development of All types of Forests.

**GUINEA BISSAU:** Amb. Lopes da Rosa called for international cooperation on the scientific, technological, financial ramifications of the Convention.

**THE GAMBIA:** Sulayman Samba, Ministry of Agriculture and Natural Resources, expressed support for the statements made by Burkina Faso and Algeria as well as for the FAO. He also called for: a vibrant partnership regarding scientific, technological and financial issues; respect for the social dimensions of structural adjustment policies; and an equitable formulation of IPRs.

## A BRIEF ANALYSIS OF BIOCOP-I

Resisting the call of the sun and the surf, delegates were able to reach agreement on the basic machinery for the Convention's implementation. For those who had hoped that the COP would take substantive decisions on such matters as biosafety and the GEF, there was disappointment at the results of this meeting. However, for those who came with more cautious expectations, the first COP was seen as a measured success.

### OVERALL ADVANCES AND GAINS

Despite the overburdened agenda, many delegates and NGOs felt that decisions reached at this COP have laid the groundwork for moving on with the business of biodiversity conservation. Notwithstanding some of the problems and setbacks, most delegates demonstrated the political will to move forward into the implementation phase. This is in part reflected in some of the key decisions.

**The Medium-term work programme:** After protracted negotiations, a medium-term work programme has been put in place to guide the work of the COP over the next three years. The standing issues will include: the financial mechanism; the administration and budget for the Secretariat; SBSTTA; national reports on implementation; the clearing-house mechanism; relationship to the CSD and other biodiversity-related conventions. The rotating agenda will be developed in a flexible manner. It was also agreed that the Secretariat will compile information regarding measures related to IPRs, and technology transfer in the area of access to genetic resources.

**Designation of the Permanent Secretariat:** The Interim Secretariat has been transformed into a permanent body, entrusted with important work in advance of COP-II, including studies on alternative funding sources and the clearing-house mechanism.

**Clearing-house mechanism:** There is general agreement on the need for a clearing-house mechanism, despite the fact that the scope of its operations is yet to be finalized. It is expected that the Secretariat's study on the terms of reference of this body will help to identify where other institutions can coordinate action in the exchange of information.

**The SBSTTA:** The SBSTTA has been given a clear mandate and work programme to deal with such issues as: identification of threatened biodiversity; technology transfer, national reporting; coastal and marine biodiversity; and the FAO initiative on plant genetic resources. Many governments feel that this subsidiary body is off to a good start with a workable agenda, which balances conservation and sustainable use issues. It is hoped that the SBSTTA will be able to provide important objective scientific input, including definitions, criteria, indicators and guidelines, into the political decision-making process. There was broad-based support for the two Chairs, Dr. J.H.Seyani and Dr. P. Schei, who have been designated for 1995 and 1996, respectively.

**Tentative agreement on the GEF:** There was heated debate during the first week of the meeting regarding the GEF and whether it should be selected as the interim or the permanent institutional structure for the financial mechanism of the Convention. Most Northern countries argued that since it had been adequately restructured, the GEF should be designated as the permanent financial structure. Most G-77 countries did not feel that the restructuring adequately met their concerns. They also expressed considerable concern regarding the potentially limited ability of the COP to influence GEF project decisions. In the end, delegates agreed to the designation of the GEF as the interim structure with a decision on its status to be made at the next COP. On a positive note, the GEF debate, although contentious at times, stimulated a frank exchange of views and provide an opportunity for the venting of deeply held positions. Delegates have come to

realize that the GEF, although far from perfect, plays a significant role in funding biodiversity projects. Therefore, many have argued that it is in the best interest of the Convention that a concrete relationship be forged between the COP and the GEF so that the COP can maintain a positive influence on GEF decision-making. Further delay could adversely affect future replenishment. It was largely felt that the Secretariat study on alternative sources of funding, coupled with the GEF review, indicates that most governments do want the Convention to succeed and recognize the extent to which financial support will be a key factor.

**Priority for conservation:** Many NGOs welcomed the priority given to the conservation of components of biodiversity, particularly those which are under threat, in both the medium-term work programme of the COP, as well as the work programme of the SBSTTA. These matters are also included in the list of programme priorities for the financial mechanism. There was some concern that these issues could have been dealt with more substantively at this COP, although it is expected that future COPs will be better equipped to address these matters, now that many of the procedural and organizational issues have been dealt with.

### SETBACKS

**Biosafety Protocol:** Despite the fact that a process has been put in place to consider the need for and modalities of a biosafety protocol. There is considerable concern about the adequacy of that decision. Most NGOs, the G-77 and many Northern countries felt that discussions regarding the need for a protocol had been well resolved in Nairobi, and that the COP should focus its efforts on the modalities. NGOs cited the clear guidance provided by the UNEP Expert Panel on Biosafety and the support displayed in Nairobi that immediate work commence on a protocol. There was also concern that certain non-Parties have had a disproportionate influence on biosafety discussions here at COP-I, despite the overwhelming support among both Northern and Southern governments for a biosafety protocol. The fact that this *ad hoc* process is not directly funded from the general budget, but from voluntary funds, is worrisome to many governments who feel that lack of financial support could jeopardize the work of the *ad hoc* group. The Nordic countries specifically called for the *ad hoc* working group to be funded from the general budget.

**Indigenous issues:** There was disappointment among NGOs and indigenous groups that indigenous issues have been deferred in the medium-term work programme until 1996. Despite passing reference in the COP's statement to the CSD, many felt that such a delay was inappropriate, especially given the very concrete references to the importance of benefit-sharing with indigenous groups and local communities in the Convention itself.

**Disagreement regarding the need for an ecosystem approach to biodiversity conservation:** There is continuing disagreement over the need for an ecosystem approach to biodiversity conservation. Several countries have maintained that biodiversity loss must be addressed within the larger context of forests, agricultural production and fisheries management. Others insist on a more narrow framework for the Convention, with primary focus on monitoring, assessment and nature conservation. Several G-77 countries appear to be more concerned with issues regarding access to genetic resources, technology transfer, biosafety and the sustainable use of biological resources, although countries such as India called for more attention to conservation issues. Many G-77 and OECD countries are also concerned that a broader ecosystem focus could potentially open up discussions that would impinge upon their right to use their natural resources as they see fit and draw attention to unsustainable national practices. Some NGOs have commented that many governments may be reticent towards a broader ecosystem approach on the basis that it is still easier to develop regulatory frameworks for species than for ecosystems.

For example, multiple species fisheries management is extremely complicated and problematic. Good scientific input becomes all the more important in this regard.

**Financing the Medium-term work programme:** One major concern related to the medium-term work programme is the inadequacy of the budget relative to the very burdened work programme. Governments seem to be divided between those who are truly committed to the aims of the Convention and to backing political commitments with the necessary level of financial support, and those governments who are not prepared to give biodiversity conservation the high political and financial backing it deserves. These governments have argued against a larger budget for the Secretariat and have further argued against funding all aspects of the COP's work. For example, the meeting of the *ad hoc* working group on biosafety will be dependent on voluntary funds from those countries who oppose taking a decision now on the need for a biosafety protocol. NGOs maintain that the funds should be provided from the general budget to ensure that the work of the *ad hoc* group is fully executed. They are concerned that financial clout could potentially affect a formal decision by the COP. Other aspects of the preparatory work for COP-II may also be un-funded or at least underfunded. Several delegations warned against undermining substantive work by failing to provide the necessary level of financial support. They see a budget-based veto as an emerging tactic in COP negotiations.

**Forests:** Notwithstanding the COP's intended input on forests to the third session of the CSD, there was considerable disappointment by some governments and most NGOs that the medium-term work programme contains no references to forests. NGOs, such as Greenpeace International, are concerned that the consideration of forests in the context of terrestrial biodiversity has been delayed until COP-III in 1996. This is problematic because COP-III will be meeting well over one and a half years after the forest issue will have been considered by the CSD and the initiation of a forest convention negotiation process (most likely under FAO, which is perceived as lacking the necessary conservation-related expertise and orientation). Many felt that this decision could potentially marginalize the Convention in the area of forest ecosystems. There is also concern that the Biodiversity Convention will not be able to assert itself as the broad-based instrument for the integration of conservation and sustainable use.

**Restricted NGO access:** Many NGOs commented that access to the contact group meetings at ICCBD-2 had been far more liberal than at COP-I. While they understood the need for closed-door discussions on budgetary matters, they expressed disappointment that they could not contribute to the important discussions on the medium-term work programme, especially in light of the Convention's emphasis on broad-based participation. It was felt that the contribution of the technical and scientific expertise among NGOs at COP-I could have resulted in better decisions regarding the choice of issues to be addressed by the COP in the next three years.

**Intellectual Property Rights:** NGOs felt that IPRs should be dealt with as part of a cluster of issues including access to genetic resources, community rights and knowledge systems, benefit-sharing as well as indigenous knowledge and practices. The US and certain OECD countries argued in favour of addressing the IPR issue separately. The US specifically called for a narrower emphasis, in part in response to the pending ratification debate in the US Congress. The IPR issue was one of the major reasons why the Bush Administration did not sign the Convention. Developing countries, led by Brazil, argue that the IPR language in Article 16 warrants a broader consideration. G-77 countries have suggested that the Biodiversity Convention is a more sympathetic forum for the concerns of developing countries, especially in comparison with the GATT and other international agreements. Many NGOs

maintain that IPRs cannot be addressed adequately without consideration of the issue of benefit-sharing in the context of the rights of farmers and indigenous groups to have access to *ex situ* collections and to benefit from the commercial products that have been derived from those collections that have been developed by virtue of their traditional knowledge. Many delegates felt that the politics of US ratification were not a legitimate reason to dilute the Convention's relatively strong position on IPRs.

### CHALLENGES FOR COP-II

A number of challenges await COP-II. From an administrative point of view, the second COP will have to be structured to ensure that concrete decisions are taken on very difficult issues, including the biosafety protocol, the location of the Secretariat, the GEF, and other important issues related to the Convention's implementation. Collaboration must also be undertaken as soon as possible with other UN bodies, such as UNDP, FAO and UNESCO, which have expressed their willingness to work closely with the Permanent Secretariat in its work. Given the Secretariat's daunting workload, coupled with a potentially inadequate budget, collaboration with these and other bodies will be especially critical during the intersessional period.

**Clear Guidance to COP-II:** Many delegates expressed concern that COP-I had waited too long to establish its three contact groups. It was largely felt that in its first week too much time was spent addressing contentious issues in the large and unwieldy forum of the Committee of the Whole. Governments will have to provide concrete guidance to the Secretariat on both the process and structure of decision-making for COP-II.

**Location of the Permanent Secretariat:** COP-II will also be entrusted with the difficult task of selecting the location for the Permanent Secretariat. The location of the Bahamas was chosen for COP-I precisely because it was felt that it would provide a neutral location for the resolution of a highly political issue. Nevertheless, many governments insisted that a more deliberate and methodical process, to be undertaken after COP-I, would diffuse the highly-charged politics surrounding this issue. At COP-I, several countries such as Switzerland, Spain and Kenya had lobbied hard for the Secretariat. The neutral location of the Bahamas grew increasingly divisive as they each attempted to mobilize their own base of support among other countries.

**Defining sustainable use:** One of the biggest obstacles to implementation is the fact that one of the Convention's three objectives — the sustainable use of biodiversity resources, is still subject to much ambiguity. There is much discussion, but very little case knowledge about how to practice sustainable use. This is another important area where NGO input will be extremely valuable towards moving the process towards greater certainty. As with the Desertification Convention, the Biodiversity Convention can only, at the very most, lay down general measures for conservation and sustainable use at the national level. The political realities of national sovereignty preclude the international arena from being able to do more. At the end of the day, the Convention will only be as effective as the political will to implement it. While there is broad agreement about general approaches, the process must be sensitive to the fact that governments will address biodiversity concerns in very different ways, according to their own national political, legal, ecological and economic interests.

**Ensuring local community involvement:** The preamble to the Convention refers clearly to the importance of equitable benefit-sharing with indigenous and local communities, where such benefits arise from the use of their traditional knowledge and practices. As with the issue of sustainable use, the challenge will be

to give some coherence to the concept of benefit-sharing and to ensure that the "benefits" of the Biodiversity Convention actually "trickle down" into the local communities and that the communities are involved in those stages of decision-making that affect their traditional practices and lifestyles. NGOs maintain that issues of access to genetic resources, intellectual property rights, indigenous and local community knowledge, customs and practices, as well as benefit-sharing should be dealt with as a cluster of issues. Given the fact that indigenous issues have been deferred in the COP's medium term work programme until 1996, many have highlighted the need for consultation processes to be established with indigenous people at the national, regional and international levels. The results of these consultations should be transmitted to COP-III, when it takes up this issue.

**Agreement on the GEF:** While governments have at least been able to agree on the GEF on an interim basis, there is still much confidence-building that must be done to bring governments closer to an acceptable agreement regarding the choice of the institutional structure for the financial mechanism. Another related issue is the need to ensure that if indeed the GEF is to be designated as the permanent financial mechanism, the necessary procedures must be put in place to ensure that it is responsive to and supportive of the overall goals of the Convention.

### THINGS TO LOOK FOR IN THE INTERSESSIONAL PERIOD

**FAO FOREST MINISTERS MEETING:** Forest Ministers will meet at FAO headquarters from 17-18 March, 1995 in Rome.

**THIRD SESSION OF THE COMMISSION ON SUSTAINABLE DEVELOPMENT:** The third session of the CSD will meet on 11-28 April, 1995 in New York to consider (among other issues) the following chapters of Agenda 21, which are related to the Biodiversity Convention: 10 (land management); 11 (forests); 12 (desertification); 14 (sustainable agriculture); 15 (biological diversity); and 16 (biotechnology).

**THIRD IUCN GLOBAL BIODIVERSITY FORUM:** The IUCN will host the third Global Biodiversity Forum sometime in May, 1995 in Nairobi. The Forum will bring together scientists, policy-makers and NGOs to address many of the substantive issues. The IUCN will also be organizing two workshops on economic themes. The first one will address the economic roots of biodiversity loss in June 1995 in Turkey. The second one will address alternative sources of funding for biodiversity in September 1995 in Sri Lanka.

**FIRST MEETING OF THE SBSTTA:** The first meeting of the SBSTTA will be convened on 4-8 September, 1995 in Paris. The SBSTTA will address those issues for which COP-I has specifically requested advice for COP-II.

**AD HOC WORKING GROUP ON BIOSAFETY:** The Panel of Experts of the Open-ended Ad Hoc Working Group on Biosafety will meet in Egypt to prepare a background paper for the Working Group that will be held in Spain. The dates for both these meetings have not been finalized.

**SECOND MEETING OF THE CONFERENCE OF THE PARTIES:** The second meeting of the COP for the Convention on Biological Diversity will meet from 6-17 November 1995. The location is not yet determined.