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AD HOC WORKING GROUP OF LEGAL AND  
TECHNICAL EXPERTS ON BIOLOGICAL  
DIVERSITY  
Second session  
Nairobi, 25 February - 6 March 1991

DRAFT CONVENTION  
ON BIOLOGICAL DIVERSITY

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EXPLANATORY NOTE

1. This draft Convention was prepared to fulfill the UNEP secretariat's undertaking to prepare a draft Convention on Biological Diversity. The draft is based upon the Elements for Possible Inclusion in a Global Framework Legal Instrument on Biological Diversity (UNEP/Bio.Div/WG.2/1/3) presented at the first session of the Ad hoc Working Group of Legal and Technical Experts on Biological Diversity (Nairobi, 19-23 November 1990); the outcome of the previous three sessions of the Ad hoc Working Group of Experts on Biological Diversity; and on the outcome of first meeting of the Sub-Working Group on Biotechnology. As directed by the Ad hoc Working Group of Legal and Technical Experts, all options are included and reflected in legal language. The secretariat did not try to make changes or show specific preferences for any options presented by different delegations (Report of the Ad hoc Working Group of Legal and Technical Experts on Biological Diversity on the work of its First Session UNEP/Bio.Div/WG.2/1/4, para. 98).

2. The draft Convention does not cover Chapters II, X, XII, XIII, XIV, XV and XVI of the Elements. Priority was given to the Chapters concerning issues more directly related to substantive biological diversity issues. Some chapters require further consideration in light of discussion on the draft material and/or more detail from delegations. Others, unless countries wish to decide otherwise, will be based on accepted formal provisions. Material from the secretariat relating to chapter XIII is being circulated separately.

3. Definitions and annexes have not been included, as what will be required for them will depend on the outcome of further discussions on the substantive issues.

4. Language and precedents from existing treaties have been drawn on when consistent with the elements and comments from delegations. To the extent possible, the language and style used by delegations has been retained. It can be refined as necessary during the negotiation process as choices are made about retention, rejection or modification of specific elements and suggestions.

The approach results in:

- i) Some duplication and inconsistency;
- ii) Lack of certain operative provisions matching all the points raised for the preamble and the fundamental principles;
- iii) The "concreteness" sought by some (see paragraphs 17(a) of UNEP/Bio.Div.WG.2/1/4) may not yet have been achieved. The Secretariat has sought to forecast what may be desired;
- iv) Some of the elements may be more appropriately placed in chapters other than the ones in which they currently appear.

5. The chapter framework used by the Ad hoc Working Groups has been retained but, as suggested, a new chapter on objectives has been incorporated. Minor rearrangement within chapters was done (e.g. see chapter V), to accommodate suggestions from delegations and avoid unduly repetitious drafting. Countries may wish to consider the structure further, e.g. the necessity of retaining the distinction in chapter IX (Financial Mechanisms).

6. Paragraph 111 of UNEP/Bio.Div/WG.2/1/4 states:

"The Chairman made the following proposals for inclusion in the session's final report:

"There was general agreement that the views on individual issues reflected in this report together with the list of elements to be put forward by the meeting, including the Annex to the report of the Sub-Working Group on Biotechnology, were not exhaustive and did not necessarily represent views common to all delegations. Nevertheless, they are put forward as the basis for future consideration and negotiation".

There were no objections to the inclusion of this paragraph. Consistent with this, the Secretariat has made no assumptions about whether there might be agreement or comments. Most were not discussed conclusively during the session. Therefore in the interests of simplicity, square brackets have been used only where two or more choices have been put forward for the same point, or where differences within elements in UNEP/Bio.Div/WG.2/1/3 were not dealt with by the Ad hoc Working Group.

7. To facilitate discussion on the draft and further drafting after each paragraph of the draft Convention, references have been made to specific source material used when these provisions were elaborated.

8. The complexity of the material, as well as the practical problems engendered by drafting at the same time as reports were being prepared and documents collated and translated, means that some omissions may have occurred. If anything has been left out, it is because of error or misunderstanding, and not intention.