



INTERNATIONAL LAW
FELLOWSHIP PROGRAMME

The Hague, The Netherlands
22 June – 31 July 2015

INTERNATIONAL ENVIRONMENTAL LAW
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Codification Division of the United Nations Office of Legal Affairs

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15. Principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities (United Nations General Assembly resolution 61/36 of 4 December 2006)
For text, see *The Work of the International Law Commission*, 8th ed., vol. II, p. 420
16. Articles on the prevention of transboundary harm from hazardous activities (United Nations General Assembly resolution 62/68 of 6 December 2007)
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18. *Minors Oposa v. Secretary of the Department of Environment and Natural Resources*, Supreme Court of the Republic of the Philippines, 30 July 1993, 33 I.L.M. 174 1994, p. 185
19. *United States — Standards for Reformulated and Conventional Gasoline*, Report of the Appellate Body of the World Trade Organization, WT/DS2/AB/R, 29 April 1996, pp. 13, 15, and 16-18
20. *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J. Reports 1996, p. 226, pp. 241-244, paras. 27-36
21. *Gabcíkovo-Nagymaros Project (Hungary/Slovakia), Judgment*, I.C.J. Reports 1997, p. 7, paras. 53 and 140
22. *United States — Import Prohibition of certain Shrimp and Shrimp Products*, Report of the Appellate Body of the World Trade Organization, WT/DS58/AB/R, 12 October 1998, paras. 128-131, 152-153, 167-169 and 185-186
23. *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) / Nigeria*, Communication 155/96, African Commission on Human and Peoples' Rights, 27 May 2002, paras. 53-58, 68-69 and findings
24. *Award in the Arbitration Regarding the Iron Rhine ("Ijzeren Rijn") Railway between the Kingdom of Belgium and the Kingdom of Netherlands*, 24 May 2005, reproduced in *Reports of International Arbitral Awards*, Vol. XXVII (2005), pp. 35-125, paras. 58-59 and 221-223
25. *European Communities – Measures Affecting the Approval and Marketing of Biotech Products*, Report of a Panel of the World Trade Organization, WT/DS291/R, WT/DS292/R, WT/DS293/R, 29 September 2006, paras. 7.65, 7.67-7.76 and 7.86-7.96
26. *Brazil – Measures affecting Imports of Retreaded Tyres*, Report of the Appellate Body of the World Trade Organization, WT/DS332/AB/R, 3 December 2007, paras. 139-155 and 178-183

27. *Albania: Power Sector Generation and Restructuring Project (IDA Credit No.3872-ALB)*, World Bank's Inspection Panel, Investigation Report, 7 August 2009, paras. 322-332
28. *Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010*, p. 14, paras. 101, 164, 177, 188, 204-205, 215-217 and 219
29. *Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area*, Seabed Disputes Chamber of the International Tribunal of the Law of the Sea, Advisory Opinion of 1 February 2011, paras. 121-137 and 141-163

RECOMMENDED READINGS (*electronic format*)

Legal instruments and documents

1. Vienna Convention for the Protection of the Ozone Layer, 1985
2. Montreal Protocol on Substances that Deplete the Ozone Layer, 1987
3. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1989
4. Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, 1998
5. Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, 1998
6. Stockholm Convention on Persistent Organic Pollutants, 2001

Legal writings (*not reproduced*)

7. Laurence Boisson de Chazournes, "Technical and financial assistance", *The Oxford Handbook of International Environmental Law*, Daniel Bodansky, Jutta Brunnée and Ellen Hey (eds.), Oxford, Oxford University Press, 2007, pp. 948-972
8. Laurence Boisson de Chazournes and Makane Moïse Mbengue, "Trade, environment and biotechnology: on coexistence and coherence", *Genetic Engineering and the World Trade System – World Trade Forum*, Cambridge, Cambridge University Press, 2008, pp. 205-245
9. Laurence Boisson de Chazournes, "Freshwater and International Law: The Interplay between Universal, Regional and Basin Perspectives", *The United Nations World Water Assessment Programme – Insights*, Paris, UNESCO, 2009
10. Laurence Boisson de Chazournes and Makane Moïse Mbengue, "A 'Footnote as a Principle'. Mutual Supportiveness and its Relevance in an Era of Fragmentation", *Coexistence, Cooperation and Solidarity – Liber Amicorum Rüdiger Wolfrum*, Holger P. Hestermeyer et al. (dir.), Leiden, Martinus Nijhoff Publishers, 2011, Vol. II, pp. 1615-1638

11. Laurence Boisson de Chazournes, "Introduction: Features and Trends in International Environmental Law", *The Transformation of International Environmental Law*, Yann Kerbrat and Sandrine Maljean-Dubois (eds.), Oxford and Paris, Hart Publishing and Editions A. Pedone, 2011
12. Laurence Boisson de Chazournes, "The Climate Change Regime - Between a Rock and a Hard Place?", *Fordham Environmental Law Review*, vol. 25, no. 3, 2013, pp. 625-651

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International environmental law

- I. International environmental law: notions and principles**

- II. The Climate change regime and the prospects for a post-2012 arrangement**

- III. Nature conservation and biodiversity, with special emphasis on trade issues**

- IV. Fresh water and international law, with special emphasis on the protection of the environment**

General Agreement on Tariffs and Trade (article XX), 1947

The General Agreement on Tariffs and Trade (GATT 1947)

Article XX: General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:

- a. necessary to protect public morals;
- b. necessary to protect human, animal or plant life or health;
- c. relating to the importations or exportations of gold or silver;
- d. necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement, including those relating to customs enforcement, the enforcement of monopolies operated under paragraph 4 of Article II and Article XVII, the protection of patents, trade marks and copyrights, and the prevention of deceptive practices;
- e. relating to the products of prison labour;
- f. imposed for the protection of national treasures of artistic, historic or archaeological value;
- g. relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;
- h. undertaken in pursuance of obligations under any intergovernmental commodity agreement which conforms to criteria submitted to the CONTRACTING PARTIES and not disapproved by them or which is itself so submitted and not so disapproved;*
- i. involving restrictions on exports of domestic materials necessary to ensure essential quantities of such materials to a domestic processing industry during periods when the domestic price of such materials is held below the world price as part of a governmental stabilization plan; *Provided* that such restrictions shall not operate to increase the exports of or the protection afforded to such domestic industry, and shall not depart from the provisions of this Agreement relating to non-discrimination;
- j. essential to the acquisition or distribution of products in general or local short supply; *Provided* that any such measures shall be consistent with the principle that all contracting parties are entitled to an equitable share of the international supply of such products, and that any such measures, which are inconsistent with the other provisions of the Agreement shall be discontinued as soon as the conditions giving rise to them have ceased to exist. The CONTRACTING PARTIES shall review the need for this sub-paragraph not later than 30 June 1960.

**Declaration of the United Nations Conference on the Human
Environment, 1972**

Chapter I
DECLARATION OF THE UNITED NATIONS CONFERENCE
ON THE HUMAN ENVIRONMENT

The United Nations Conference on the Human Environment,

Having met at Stockholm from 5 to 16 June 1972,

Having considered the need for a common outlook and for common principles to inspire and guide the peoples of the world in the preservation and enhancement of the human environment,

I

Proclaims that:

1. Man is both creature and moulder of his environment, which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth. In the long and tortuous evolution of the human race on this planet a stage has been reached when, through the rapid acceleration of science and technology, man has acquired the power to transform his environment in countless ways and on an unprecedented scale. Both aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights—even the right to life itself.

2. The protection and improvement of the human environment is a major issue which affects the well-being of peoples and economic development throughout the world; it is the urgent desire of the peoples of the whole world and the duty of all Governments.

3. Man has constantly to sum up experience and go on discovering, inventing, creating and advancing. In our time, man's capability to transform his surroundings, if used wisely, can bring to all peoples the benefits of development and the opportunity to enhance the quality of life. Wrongly or heedlessly applied, the same power can do incalculable harm to human beings and the human environment. We see around us growing evidence of man-made harm in many regions of the earth: dangerous levels of pollution in water, air, earth and living beings; major and undesirable disturbances to the ecological balance of the biosphere; destruction and depletion of irreplaceable resources; and gross deficiencies, harmful to the physical, mental and social health of man, in the man-made environment, particularly in the living and working environment.

4. In the developing countries most of the environmental problems are caused by under-development. Millions continue to live far below the minimum levels required for a decent human existence, deprived of adequate food and clothing, shelter and education, health and sanitation. Therefore, the developing coun-

tries must direct their efforts to development, bearing in mind their priorities and the need to safeguard and improve the environment. For the same purpose, the industrialized countries should make efforts to reduce the gap themselves and the developing countries. In the industrialized countries, environmental problems are generally related to industrialization and technological development.

5. The natural growth of population continuously presents problems for the preservation of the environment, and adequate policies and measures should be adopted, as appropriate, to face these problems. Of all things in the world, people are the most precious. It is the people that propel social progress, create social wealth, develop science and technology and, through their hard work, continuously transform the human environment. Along with social progress and the advance of production, science and technology, the capability of man to improve the environment increases with each passing day.

6. A point has been reached in history when we must shape our actions throughout the world with a more prudent care for their environmental consequences. Through ignorance or indifference we can do massive and irreversible harm to the earthly environment on which our life and well-being depend. Conversely, through fuller knowledge and wiser action, we can achieve for ourselves and our posterity a better life in an environment more in keeping with human needs and hopes. There are broad vistas for the enhancement of environmental quality and the creation of a good life. What is needed is an enthusiastic but calm state of mind and intense but orderly work. For the purpose of attaining freedom in the world of nature, man must use knowledge to build, in collaboration with nature, a better environment. To defend and improve the human environment for present and future generations has become an imperative goal for mankind—a goal to be pursued together with, and in harmony with, the established and fundamental goals of peace and of world-wide economic and social development.

7. To achieve this environmental goal will demand the acceptance of responsibility by citizens and communities and by enterprises and institutions at every level, all sharing equitably in common efforts. Individuals in all walks of life as well as organizations in many fields, by their values and the sum of their actions, will shape the world environment of the future. Local and national governments will bear the greatest burden for

large-scale environmental policy and action within their jurisdictions. International co-operation is also needed in order to raise resources to support the developing countries in carrying out their responsibilities in this field. A growing class of environmental problems, because they are regional or global in extent or because they affect the common international realm, will require extensive co-operation among nations and action by international organizations in the common interest. The Conference calls upon Governments and peoples to exert common efforts for the preservation and improvement of the human environment, for the benefit of all the people and for their posterity.

II

Principles

States the common conviction that:

Principle 1

Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations. In this respect, policies promoting or perpetuating *apartheid*, racial segregation, discrimination, colonial and other forms of oppression and foreign domination stand condemned and must be eliminated.

Principle 2

The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate.

Principle 3

The capacity of the earth to produce vital renewable resources must be maintained and, wherever practicable, restored or improved.

Principle 4

Man has a special responsibility to safeguard and wisely manage the heritage of wildlife and its habitat, which are now gravely imperilled by a combination of adverse factors. Nature conservation, including wildlife, must therefore receive importance in planning for economic development.

Principle 5

The non-renewable resources of the earth must be employed in such a way as to guard against the danger of their future exhaustion and to ensure that benefits from such employment are shared by all mankind.

Principle 6

The discharge of toxic substances or of other substances and the release of heat, in such quantities or concentrations as to exceed the capacity of the environment to render them harmless, must be halted in order

to ensure that serious or irreversible damage is not inflicted upon ecosystems. The just struggle of the peoples of all countries against pollution should be supported.

Principle 7

States shall take all possible steps to prevent pollution of the seas by substances that are liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea.

Principle 8

Economic and social development is essential for ensuring a favourable living and working environment for man and for creating conditions on earth that are necessary for the improvement of the quality of life.

Principle 9

Environmental deficiencies generated by the conditions of under-development and natural disasters pose grave problems and can best be remedied by accelerated development through the transfer of substantial quantities of financial and technological assistance as a supplement to the domestic effort of the developing countries and such timely assistance as may be required.

Principle 10

For the developing countries, stability of prices and adequate earnings for primary commodities and raw materials are essential to environmental management since economic factors as well as ecological processes must be taken into account.

Principle 11

The environmental policies of all States should enhance and not adversely affect the present or future development potential of developing countries, nor should they hamper the attainment of better living conditions for all, and appropriate steps should be taken by States and international organizations with a view to reaching agreement on meeting the possible national and international economic consequences resulting from the application of environmental measures.

Principle 12

Resources should be made available to preserve and improve the environment, taking into account the circumstances and particular requirements of developing countries and any costs which may emanate from their incorporating environmental safeguards into their development planning and the need for making available to them, upon their request, additional international technical and financial assistance for this purpose.

Principle 13

In order to achieve a more rational management of resources and thus to improve the environment, States should adopt an integrated and co-ordinated approach to their development planning so as to ensure that development is compatible with the need to protect and improve environment for the benefit of their population.

Principle 14

Rational planning constitutes an essential tool for reconciling any conflict between the needs of development and the need to protect and improve the environment.

Principle 15

Planning must be applied to human settlements and urbanization with a view to avoiding adverse effects on the environment and obtaining maximum social, economic and environmental benefits for all. In this respect, projects which are designed for colonialist and racist domination must be abandoned.

Principle 16

Demographic policies which are without prejudice to basic human rights and which are deemed appropriate by Governments concerned should be applied in those regions where the rate of population growth or excessive population concentrations are likely to have adverse effects on the environment of the human environment and impede development.

Principle 17

Appropriate national institutions must be entrusted with the task of planning, managing or controlling the environmental resources of States with a view to enhancing environmental quality.

Principle 18

Science and technology, as part of their contribution to economic and social development, must be applied to the identification, avoidance and control of environmental risks and the solution of environmental problems and for the common good of mankind.

Principle 19

Education in environmental matters, for the younger generation as well as adults, giving due consideration to the underprivileged, is essential in order to broaden the basis for an enlightened opinion and responsible conduct by individuals, enterprises and communities in protecting and improving the environment in its full human dimension. It is also essential that mass media of communications avoid contributing to the deterioration of the environment, but, on the contrary, disseminate information of an educational nature on the need to protect and improve the environment in order to enable man to develop in every respect.

Principle 20

Scientific research and development in the context of environmental problems, both national and multinational, must be promoted in all countries, especially the developing countries. In this connexion, the free flow of up-to-date scientific information and transfer of experience must be supported and assisted, to facilitate the solution of environmental problems; environmental

technologies should be made available to developing countries on terms which would encourage their wide dissemination without constituting an economic burden on the developing countries.

Principle 21

States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

Principle 22

States shall co-operate to develop further the international law regarding liability and compensation for the victims of pollution and other environmental damage caused by activities within the jurisdiction or control of such States to areas beyond their jurisdiction.

Principle 23

Without prejudice to such criteria as may be agreed upon by the international community, or to standards which will have to be determined nationally, it will be essential in all cases to consider the systems of values prevailing in each country, and the extent of the applicability of standards which are valid for the most advanced countries but which may be inappropriate and of unwarranted social cost for the developing countries.

Principle 24

International matters concerning the protection and improvement of the environment should be handled in a co-operative spirit by all countries, big and small, on an equal footing. Co-operation through multilateral or bilateral arrangements or other appropriate means is essential to effectively control, prevent, reduce and eliminate adverse environmental effects resulting from activities conducted in all spheres, in such a way that due account is taken of the sovereignty and interests of all States.

Principle 25

States shall ensure that international organizations play a co-ordinated, efficient and dynamic role for the protection and improvement of the environment.

Principle 26

Man and his environment must be spared the effects of nuclear weapons and all other means of mass destruction. States must strive to reach prompt agreement, in the relevant international organs, on the elimination and complete destruction of such weapons.

*21st plenary meeting
16 June 1972*

Rio Declaration on Environment and Development, 1992

Annex I

RIO DECLARATION ON ENVIRONMENT AND DEVELOPMENT

The United Nations Conference on Environment and Development,

Having met at Rio de Janeiro from 3 to 14 June 1992,

Reaffirming the Declaration of the United Nations Conference on the Human Environment, adopted at Stockholm on 16 June 1972, a/ and seeking to build upon it,

With the goal of establishing a new and equitable global partnership through the creation of new levels of cooperation among States, key sectors of societies and people,

Working towards international agreements which respect the interests of all and protect the integrity of the global environmental and developmental system,

Recognizing the integral and interdependent nature of the Earth, our home,

Proclaims that:

Principle 1

Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.

Principle 2

States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

Principle 3

The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.

a/ Report of the United Nations Conference on the Human Environment, Stockholm, 5-16 June 1972 (United Nations publication, Sales No. E.73.II.A.14 and corrigendum), chap. I.

Principle 4

In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.

Principle 5

All States and all people shall cooperate in the essential task of eradicating poverty as an indispensable requirement for sustainable development, in order to decrease the disparities in standards of living and better meet the needs of the majority of the people of the world.

Principle 6

The special situation and needs of developing countries, particularly the least developed and those most environmentally vulnerable, shall be given special priority. International actions in the field of environment and development should also address the interests and needs of all countries.

Principle 7

States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem. In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command.

Principle 8

To achieve sustainable development and a higher quality of life for all people, States should reduce and eliminate unsustainable patterns of production and consumption and promote appropriate demographic policies.

Principle 9

States should cooperate to strengthen endogenous capacity-building for sustainable development by improving scientific understanding through exchanges of scientific and technological knowledge, and by enhancing the development, adaptation, diffusion and transfer of technologies, including new and innovative technologies.

Principle 10

Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

Principle 11

States shall enact effective environmental legislation. Environmental standards, management objectives and priorities should reflect the environmental and developmental context to which they apply. Standards applied by some countries may be inappropriate and of unwarranted economic and social cost to other countries, in particular developing countries.

Principle 12

States should cooperate to promote a supportive and open international economic system that would lead to economic growth and sustainable development in all countries, to better address the problems of environmental degradation. Trade policy measures for environmental purposes should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade. Unilateral actions to deal with environmental challenges outside the jurisdiction of the importing country should be avoided. Environmental measures addressing transboundary or global environmental problems should, as far as possible, be based on an international consensus.

Principle 13

States shall develop national law regarding liability and compensation for the victims of pollution and other environmental damage. States shall also cooperate in an expeditious and more determined manner to develop further international law regarding liability and compensation for adverse effects of environmental damage caused by activities within their jurisdiction or control to areas beyond their jurisdiction.

Principle 14

States should effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health.

Principle 15

In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

Principle 16

National authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment.

Principle 17

Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority.

Principle 18

States shall immediately notify other States of any natural disasters or other emergencies that are likely to produce sudden harmful effects on the environment of those States. Every effort shall be made by the international community to help States so afflicted.

Principle 19

States shall provide prior and timely notification and relevant information to potentially affected States on activities that may have a significant adverse transboundary environmental effect and shall consult with those States at an early stage and in good faith.

Principle 20

Women have a vital role in environmental management and development. Their full participation is therefore essential to achieve sustainable development.

Principle 27

States and people shall cooperate in good faith and in a spirit of partnership in the fulfilment of the principles embodied in this Declaration and in the further development of international law in the field of sustainable development.

Principle 21

The creativity, ideals and courage of the youth of the world should be mobilized to forge a global partnership in order to achieve sustainable development and ensure a better future for all.

Principle 22

Indigenous people and their communities and other local communities have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.

Principle 23

The environment and natural resources of people under oppression, domination and occupation shall be protected.

Principle 24

Warfare is inherently destructive of sustainable development. States shall therefore respect international law providing protection for the environment in times of armed conflict and cooperate in its further development, as necessary.

Principle 25

Peace, development and environmental protection are interdependent and indivisible.

Principle 26

States shall resolve all their environmental disputes peacefully and by appropriate means in accordance with the Charter of the United Nations.

**United Nations Framework Convention
on Climate Change, 1992**

**UNITED NATIONS FRAMEWORK CONVENTION
ON CLIMATE CHANGE**

The Parties to this Convention,

Acknowledging that change in the Earth's climate and its adverse effects are a common concern of humankind,

Concerned that human activities have been substantially increasing the atmospheric concentrations of greenhouse gases, that these increases enhance the natural greenhouse effect, and that this will result on average in an additional warming of the Earth's surface and atmosphere and may adversely affect natural ecosystems and humankind,

Noting that the largest share of historical and current global emissions of greenhouse gases has originated in developed countries, that per capita emissions in developing countries are still relatively low and that the share of global emissions originating in developing countries will grow to meet their social and development needs,

Aware of the role and importance in terrestrial and marine ecosystems of sinks and reservoirs of greenhouse gases,

Noting that there are many uncertainties in predictions of climate change, particularly with regard to the timing, magnitude and regional patterns thereof,

Acknowledging that the global nature of climate change calls for the widest possible cooperation by all countries and their participation in an effective and appropriate international response, in accordance with their common but differentiated responsibilities and respective capabilities and their social and economic conditions,

Recalling the pertinent provisions of the Declaration of the United Nations Conference on the Human Environment, adopted at Stockholm on 16 June 1972,

Recalling also that States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction,

Reaffirming the principle of sovereignty of States in international cooperation to address climate change,

Recognizing that States should enact effective environmental legislation, that environmental standards, management objectives and priorities should reflect the environmental and developmental context to which they apply, and that standards applied by some countries may be inappropriate and of unwarranted economic and social cost to other countries, in particular developing countries,

**UNITED NATIONS FRAMEWORK CONVENTION
ON CLIMATE CHANGE**



UNITED NATIONS
1992

Recalling the provisions of General Assembly resolution 44/228 of 22 December 1989 on the United Nations Conference on Environment and Development, and resolutions 43/53 of 6 December 1988, 44/207 of 22 December 1989, 45/212 of 21 December 1990 and 46/169 of 19 December 1991 on protection of global climate for present and future generations of mankind,

Recalling also the provisions of General Assembly resolution 44/206 of 22 December 1989 on the possible adverse effects of sea-level rise on islands and coastal areas, particularly low-lying coastal areas and the pertinent provisions of General Assembly resolution 44/172 of 19 December 1989 on the implementation of the Plan of Action to Combat Desertification,

Recalling further the Vienna Convention for the Protection of the Ozone Layer, 1985, and the Montreal Protocol on Substances that Deplete the Ozone Layer, 1987, as adjusted and amended on 29 June 1990,

Noting the Ministerial Declaration of the Second World Climate Conference adopted on 7 November 1990,

Conscious of the valuable analytical work being conducted by many States on climate change and of the important contributions of the World Meteorological Organization, the United Nations Environment Programme and other organs, organizations and bodies of the United Nations system, as well as other international and intergovernmental bodies, to the exchange of results of scientific research and the coordination of research,

Recognizing that steps required to understand and address climate change will be environmentally, socially and economically most effective if they are based on relevant scientific, technical and economic considerations and continually re-evaluated in the light of new findings in these areas,

Recognizing that various actions to address climate change can be justified economically in their own right and can also help in solving other environmental problems,

Recognizing also the need for developed countries to take immediate action in a flexible manner on the basis of clear priorities, as a first step towards comprehensive response strategies at the global, national and, where agreed, regional levels that take into account all greenhouse gases, with due consideration of their relative contributions to the enhancement of the greenhouse effect,

Recognizing further that low-lying and other small island countries, countries with low-lying coastal, arid and semi-arid areas or areas liable to floods, drought and desertification, and developing countries with fragile mountainous ecosystems are particularly vulnerable to the adverse effects of climate change,

Recognizing the special difficulties of those countries, especially developing countries, whose economies are particularly dependent on fossil fuel production, use and exportation, as a consequence of action taken on limiting greenhouse gas emissions,

Affirming that responses to climate change should be coordinated with social and economic development in an integrated manner with a view to avoiding adverse impacts on the latter, taking into full account the legitimate priority needs of developing countries for the achievement of sustained economic growth and the eradication of poverty,

Recognizing that all countries, especially developing countries, need access to resources required to achieve sustainable social and economic development and that, in order for developing countries to progress towards that goal, their energy consumption will need to grow taking into account the possibilities for achieving greater energy efficiency and for controlling greenhouse gas emissions in general, including through the application of new technologies on terms which make such an application economically and socially beneficial,

Determined to protect the climate system for present and future generations,

Have agreed as follows:

Article 1

DEFINITIONS*

For the purposes of this Convention:

1. “Adverse effects of climate change” means changes in the physical environment or biota resulting from climate change which have significant deleterious effects on the composition, resilience or productivity of natural and managed ecosystems or on the operation of socio-economic systems or on human health and welfare.
2. “Climate change” means a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods.
3. “Climate system” means the totality of the atmosphere, hydrosphere, biosphere and geosphere and their interactions.
4. “Emissions” means the release of greenhouse gases and/or their precursors into the atmosphere over a specified area and period of time.
5. “Greenhouse gases” means those gaseous constituents of the atmosphere, both natural and anthropogenic, that absorb and re-emit infrared radiation.
6. “Regional economic integration organization” means an organization constituted by sovereign States of a given region which has competence in respect of matters governed by this Convention or its protocols and has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to the instruments concerned.

* Titles of articles are included solely to assist the reader.

7. "Reservoir" means a component or components of the climate system where a greenhouse gas or a precursor of a greenhouse gas is stored.
8. "Sink" means any process, activity or mechanism which removes a greenhouse gas, an aerosol or a precursor of a greenhouse gas from the atmosphere.
9. "Source" means any process or activity which releases a greenhouse gas, an aerosol or a precursor of a greenhouse gas into the atmosphere.

Article 2

OBJECTIVE

The ultimate objective of this Convention and any related legal instruments that the Conference of the Parties may adopt is to achieve, in accordance with the relevant provisions of the Convention, stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Such a level should be achieved within a time frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner.

Article 3

PRINCIPLES

In their actions to achieve the objective of the Convention and to implement its provisions, the Parties shall be guided, *inter alia*, by the following:

1. The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof.
2. The specific needs and special circumstances of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change, and of those Parties, especially developing country Parties, that would have to bear a disproportionate or abnormal burden under the Convention, should be given full consideration.
3. The Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures, taking into account that policies and measures to deal with climate change should be cost-effective so as to ensure global benefits at the lowest possible cost. To achieve this, such policies and measures should take into account different socio-economic contexts, be comprehensive, cover all relevant sources, sinks and reservoirs of greenhouse gases and adaptation, and comprise all economic sectors. Efforts to address climate change may be carried out cooperatively by interested Parties.

4. The Parties have a right to, and should, promote sustainable development. Policies and measures to protect the climate system against human-induced change should be appropriate for the specific conditions of each Party and should be integrated with national development programmes, taking into account that economic development is essential for adopting measures to address climate change.

5. The Parties should cooperate to promote a supportive and open international economic system that would lead to sustainable economic growth and development in all Parties, particularly developing country Parties, thus enabling them better to address the problems of climate change. Measures taken to combat climate change, including unilateral ones, should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade.

Article 4

COMMITMENTS

1. All Parties, taking into account their common but differentiated responsibilities and their specific national and regional development priorities, objectives and circumstances, shall:
 - (a) Develop, periodically update, publish and make available to the Conference of the Parties, in accordance with Article 12, national inventories of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, using comparable methodologies to be agreed upon by the Conference of the Parties;
 - (b) Formulate, implement, publish and regularly update national and, where appropriate, regional programmes containing measures to mitigate climate change by addressing anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, and measures to facilitate adequate adaptation to climate change;
 - (c) Promote and cooperate in the development, application and diffusion, including transfer, of technologies, practices and processes that control, reduce or prevent anthropogenic emissions of greenhouse gases not controlled by the Montreal Protocol in all relevant sectors, including the energy, transport, industry, agriculture, forestry and waste management sectors;
 - (d) Promote sustainable management, and promote and cooperate in the conservation and enhancement, as appropriate, of sinks and reservoirs of all greenhouse gases not controlled by the Montreal Protocol, including biomass, forests and oceans as well as other terrestrial, coastal and marine ecosystems;
 - (e) Cooperate in preparing for adaptation to the impacts of climate change; develop and elaborate appropriate and integrated plans for coastal zone management, water resources and agriculture, and for the protection and rehabilitation of areas, particularly in Africa, affected by drought and desertification, as well as floods;

(f) Take climate change considerations into account, to the extent feasible, in their relevant social, economic and environmental policies and actions, and employ appropriate methods, for example impact assessments, formulated and determined nationally, with a view to minimizing adverse effects on the economy, on public health and on the quality of the environment, of projects or measures undertaken by them to mitigate or adapt to climate change;

(g) Promote and cooperate in scientific, technological, technical, socio-economic and other research, systematic observation and development of data archives related to the climate system and intended to further the understanding and to reduce or eliminate the remaining uncertainties regarding the causes, effects, magnitude and timing of climate change and the economic and social consequences of various response strategies;

(h) Promote and cooperate in the full, open and prompt exchange of relevant scientific, technological, technical, socio-economic and legal information related to the climate system and climate change, and to the economic and social consequences of various response strategies;

(i) Promote and cooperate in education, training and public awareness related to climate change and encourage the widest participation in this process, including that of non-governmental organizations; and

(j) Communicate to the Conference of the Parties information related to implementation, in accordance with Article 12.

2. The developed country Parties and other Parties included in Annex I commit themselves specifically as provided for in the following:

(a) Each of these Parties shall adopt national¹ policies and take corresponding measures on the mitigation of climate change, by limiting its anthropogenic emissions of greenhouse gases and protecting and enhancing its greenhouse gas sinks and reservoirs. These policies and measures will demonstrate that developed countries are taking the lead in modifying longer-term trends in anthropogenic emissions consistent with the objective of the Convention, recognizing that the return by the end of the present decade to earlier levels of anthropogenic emissions of carbon dioxide and other greenhouse gases not controlled by the Montreal Protocol would contribute to such modification, and taking into account the differences in these Parties' starting points and approaches, economic structures and resource bases, the need to maintain strong and sustainable economic growth, available technologies and other individual circumstances, as well as the need for equitable and appropriate contributions by each of these Parties to the global effort regarding that objective. These Parties may implement such policies and measures jointly with other Parties and may assist other Parties in contributing to the achievement of the objective of the Convention and, in particular, that of this subparagraph;

¹ This includes policies and measures adopted by regional economic integration organizations.

(b) In order to promote progress to this end, each of these Parties shall communicate, within six months of the entry into force of the Convention for it and periodically thereafter, and in accordance with Article 12, detailed information on its policies and measures referred to in subparagraph (a) above, as well as on its resulting projected anthropogenic emissions by sources and removals by sinks of greenhouse gases not controlled by the Montreal Protocol for the period referred to in subparagraph (a), with the aim of returning individually or jointly to their 1990 levels these anthropogenic emissions of carbon dioxide and other greenhouse gases not controlled by the Montreal Protocol. This information will be reviewed by the Conference of the Parties, at its first session and periodically thereafter, in accordance with Article 7;

(c) Calculations of emissions by sources and removals by sinks of greenhouse gases for the purposes of subparagraph (b) above should take into account the best available scientific knowledge, including of the effective capacity of sinks and the respective contributions of such gases to climate change. The Conference of the Parties shall consider and agree on methodologies for these calculations at its first session and review them regularly thereafter;

(d) The Conference of the Parties shall, at its first session, review the adequacy of subparagraphs (a) and (b) above. Such review shall be carried out in the light of the best available scientific information and assessment on climate change and its impacts, as well as relevant technical, social and economic information. Based on this review, the Conference of the Parties shall take appropriate action, which may include the adoption of amendments to the commitments in subparagraphs (a) and (b) above. The Conference of the Parties, at its first session, shall also take decisions regarding criteria for joint implementation as indicated in subparagraph (a) above. A second review of subparagraphs (a) and (b) shall take place not later than 31 December 1998, and thereafter at regular intervals determined by the Conference of the Parties, until the objective of the Convention is met;

(e) Each of these Parties shall:

- (i) coordinate as appropriate with other such Parties, relevant economic and administrative instruments developed to achieve the objective of the Convention; and
- (ii) identify and periodically review its own policies and practices which encourage activities that lead to greater levels of anthropogenic emissions of greenhouse gases not controlled by the Montreal Protocol than would otherwise occur;

(f) The Conference of the Parties shall review, not later than 31 December 1998, available information with a view to taking decisions regarding such amendments to the lists in Annexes I and II as may be appropriate, with the approval of the Party concerned;

(g) Any Party not included in Annex I may, in its instrument of ratification, acceptance, approval or accession, or at any time thereafter, notify the Depository that it intends to be bound by subparagraphs (a) and (b) above. The Depository shall inform the other signatories and Parties of any such notification.

3. The developed country Parties and other developed Parties included in Annex II shall provide new and additional financial resources to meet the agreed full costs incurred by developing country Parties in complying with their obligations under Article 12, paragraph 1. They shall also provide such financial resources, including for the transfer of technology, needed by the developing country Parties to meet the agreed full incremental costs of implementing measures that are covered by paragraph 1 of this Article and that are agreed between a developing country Party and the international entity or entities referred to in Article 11, in accordance with that Article. The implementation of these commitments shall take into account the need for adequacy and predictability in the flow of funds and the importance of appropriate burden sharing among the developed country Parties.

4. The developed country Parties and other developed Parties included in Annex II shall also assist the developing country Parties that are particularly vulnerable to the adverse effects of climate change in meeting costs of adaptation to those adverse effects.

5. The developed country Parties and other developed Parties included in Annex II shall take all practicable steps to promote, facilitate and finance, as appropriate, the transfer of, or access to, environmentally sound technologies and know-how to other Parties, particularly developing country Parties, to enable them to implement the provisions of the Convention. In this process, the developed country Parties shall support the development and enhancement of endogenous capacities and technologies of developing country Parties. Other Parties and organizations in a position to do so may also assist in facilitating the transfer of such technologies.

6. In the implementation of their commitments under paragraph 2 above, a certain degree of flexibility shall be allowed by the Conference of the Parties to the Parties included in Annex I undergoing the process of transition to a market economy, in order to enhance the ability of these Parties to address climate change, including with regard to the historical level of anthropogenic emissions of greenhouse gases not controlled by the Montreal Protocol chosen as a reference.

7. The extent to which developing country Parties will effectively implement their commitments under the Convention will depend on the effective implementation by developed country Parties of their commitments under the Convention related to financial resources and transfer of technology and will take fully into account that economic and social development and poverty eradication are the first and overriding priorities of the developing country Parties.

8. In the implementation of the commitments in this Article, the Parties shall give full consideration to what actions are necessary under the Convention, including actions related to funding, insurance and the transfer of technology, to meet the specific needs and concerns of developing country Parties arising from the adverse effects of climate change and/or the impact of the implementation of response measures, especially on:

- (a) Small island countries;
- (b) Countries with low-lying coastal areas;
- (c) Countries with arid and semi-arid areas, forested areas and areas liable to forest decay;

- (d) Countries with areas prone to natural disasters;
- (e) Countries with areas liable to drought and desertification;
- (f) Countries with areas of high urban atmospheric pollution;
- (g) Countries with areas with fragile ecosystems, including mountainous ecosystems;
- (h) Countries whose economies are highly dependent on income generated from the production, processing and export, and/or on consumption of fossil fuels and associated energy-intensive products; and

(i) Landlocked and transit countries.

Further, the Conference of the Parties may take actions, as appropriate, with respect to this paragraph.

9. The Parties shall take full account of the specific needs and special situations of the least developed countries in their actions with regard to funding and transfer of technology.

10. The Parties shall, in accordance with Article 10, take into consideration in the implementation of the commitments of the Convention the situation of Parties, particularly developing country Parties, with economies that are vulnerable to the adverse effects of the implementation of measures to respond to climate change. This applies notably to Parties with economies that are highly dependent on income generated from the production, processing and export, and/or consumption of fossil fuels and associated energy-intensive products and/or the use of fossil fuels for which such Parties have serious difficulties in switching to alternatives.

Article 5

RESEARCH AND SYSTEMATIC OBSERVATION

In carrying out their commitments under Article 4, paragraph 1 (g), the Parties shall:

- (a) Support and further develop, as appropriate, international and intergovernmental programmes and networks or organizations aimed at defining, conducting, assessing and financing research, data collection and systematic observation, taking into account the need to minimize duplication of effort;
- (b) Support international and intergovernmental efforts to strengthen systematic observation and national scientific and technical research capacities and capabilities, particularly in developing countries, and to promote access to, and the exchange of, data and analyses thereof obtained from areas beyond national jurisdiction; and
- (c) Take into account the particular concerns and needs of developing countries and cooperate in improving their endogenous capacities and capabilities to participate in the efforts referred to in subparagraphs (a) and (b) above.

Article 6

EDUCATION, TRAINING AND PUBLIC AWARENESS

In carrying out their commitments under Article 4, paragraph 1 (i), the Parties shall:

- (a) Promote and facilitate at the national and, as appropriate, subregional and regional levels, and in accordance with national laws and regulations, and within their respective capacities:
 - (i) the development and implementation of educational and public awareness programmes on climate change and its effects;
 - (ii) public access to information on climate change and its effects;
 - (iii) public participation in addressing climate change and its effects and developing adequate responses; and
 - (iv) training of scientific, technical and managerial personnel;
- (b) Cooperate in and promote, at the international level, and, where appropriate, using existing bodies:
 - (i) the development and exchange of educational and public awareness material on climate change and its effects; and
 - (ii) the development and implementation of education and training programmes, including the strengthening of national institutions and the exchange or secondment of personnel to train experts in this field, in particular for developing countries.

Article 7

CONFERENCE OF THE PARTIES

1. A Conference of the Parties is hereby established.
2. The Conference of the Parties, as the supreme body of this Convention, shall keep under regular review the implementation of the Convention and any related legal instruments that the Conference of the Parties may adopt, and shall make, within its mandate, the decisions necessary to promote the effective implementation of the Convention. To this end, it shall:
 - (a) Periodically examine the obligations of the Parties and the institutional arrangements under the Convention, in the light of the objective of the Convention, the experience gained in its implementation and the evolution of scientific and technological knowledge;

- (b) Promote and facilitate the exchange of information on measures adopted by the Parties to address climate change and its effects, taking into account the differing circumstances, responsibilities and capabilities of the Parties and their respective commitments under the Convention;
- (c) Facilitate, at the request of two or more Parties, the coordination of measures adopted by them to address climate change and its effects, taking into account the differing circumstances, responsibilities and capabilities of the Parties and their respective commitments under the Convention;
- (d) Promote and guide, in accordance with the objective and provisions of the Convention, the development and periodic refinement of comparable methodologies, to be agreed on by the Conference of the Parties, inter alia, for preparing inventories of greenhouse gas emissions by sources and removals by sinks, and for evaluating the effectiveness of measures to limit the emissions and enhance the removals of these gases;
- (e) Assess, on the basis of all information made available to it in accordance with the provisions of the Convention, the implementation of the Convention by the Parties, the overall effects of the measures taken pursuant to the Convention, in particular environmental, economic and social effects as well as their cumulative impacts and the extent to which progress towards the objective of the Convention is being achieved;
- (f) Consider and adopt regular reports on the implementation of the Convention and ensure their publication;
- (g) Make recommendations on any matters necessary for the implementation of the Convention;
- (h) Seek to mobilize financial resources in accordance with Article 4, paragraphs 3, 4 and 5, and Article 11;
- (i) Establish such subsidiary bodies as are deemed necessary for the implementation of the Convention;
- (j) Review reports submitted by its subsidiary bodies and provide guidance to them;
- (k) Agree upon and adopt, by consensus, rules of procedure and financial rules for itself and for any subsidiary bodies;
- (l) Seek and utilize, where appropriate, the services and cooperation of, and information provided by, competent international organizations and intergovernmental and non-governmental bodies; and
- (m) Exercise such other functions as are required for the achievement of the objective of the Convention as well as all other functions assigned to it under the Convention.

3. The Conference of the Parties shall, at its first session, adopt its own rules of procedure as well as those of the subsidiary bodies established by the Convention, which shall include decision-making procedures for matters not already covered by decision-making procedures stipulated in the Convention. Such procedures may include specified majorities required for the adoption of particular decisions.

4. The first session of the Conference of the Parties shall be convened by the interim secretariat referred to in Article 21 and shall take place not later than one year after the date of entry into force of the Convention. Thereafter, ordinary sessions of the Conference of the Parties shall be held every year unless otherwise decided by the Conference of the Parties.

5. Extraordinary sessions of the Conference of the Parties shall be held at such other times as may be deemed necessary by the Conference, or at the written request of any Party, provided that, within six months of the request being communicated to the Parties by the secretariat, it is supported by at least one third of the Parties.

6. The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State member thereof or observers thereto not Party to the Convention, may be represented at sessions of the Conference of the Parties as observers. Any body or agency, whether national or international, governmental or non-governmental, which is qualified in matters covered by the Convention, and which has informed the secretariat of its wish to be represented at a session of the Conference of the Parties as an observer, may be so admitted unless at least one third of the Parties present object. The admission and participation of observers shall be subject to the rules of procedure adopted by the Conference of the Parties.

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Article 8

SECRETARIAT

1. A secretariat is hereby established.
2. The functions of the secretariat shall be:
 - (a) To make arrangements for sessions of the Conference of the Parties and its subsidiary bodies established under the Convention and to provide them with services as required;
 - (b) To compile and transmit reports submitted to it;
 - (c) To facilitate assistance to the Parties, particularly developing country Parties, on request, in the compilation and communication of information required in accordance with the provisions of the Convention;
 - (d) To prepare reports on its activities and present them to the Conference of the Parties;

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(e) To ensure the necessary coordination with the secretariats of other relevant international bodies;

(f) To enter, under the overall guidance of the Conference of the Parties, into such administrative and contractual arrangements as may be required for the effective discharge of its functions; and

(g) To perform the other secretariat functions specified in the Convention and in any of its protocols and such other functions as may be determined by the Conference of the Parties.

3. The Conference of the Parties, at its first session, shall designate a permanent secretariat and make arrangements for its functioning.

Article 9

SUBSIDIARY BODY FOR SCIENTIFIC AND TECHNOLOGICAL ADVICE

1. A subsidiary body for scientific and technological advice is hereby established to provide the Conference of the Parties and, as appropriate, its other subsidiary bodies with timely information and advice on scientific and technological matters relating to the Convention. This body shall be open to participation by all Parties and shall be multidisciplinary. It shall comprise government representatives competent in the relevant field of expertise. It shall report regularly to the Conference of the Parties on all aspects of its work.

2. Under the guidance of the Conference of the Parties, and drawing upon existing competent international bodies, this body shall:

- (a) Provide assessments of the state of scientific knowledge relating to climate change and its effects;
 - (b) Prepare scientific assessments on the effects of measures taken in the implementation of the Convention;
 - (c) Identify innovative, efficient and state-of-the-art technologies and know-how and advise on the ways and means of promoting development and/or transferring such technologies;
 - (d) Provide advice on scientific programmes, international cooperation in research and development related to climate change, as well as on ways and means of supporting endogenous capacity-building in developing countries; and
 - (e) Respond to scientific, technological and methodological questions that the Conference of the Parties and its subsidiary bodies may put to the body.
3. The functions and terms of reference of this body may be further elaborated by the Conference of the Parties.

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Article 10

SUBSIDIARY BODY FOR IMPLEMENTATION

1. A subsidiary body for implementation is hereby established to assist the Conference of the Parties in the assessment and review of the effective implementation of the Convention. This body shall be open to participation by all Parties and comprise government representatives who are experts on matters related to climate change. It shall report regularly to the Conference of the Parties on all aspects of its work.
2. Under the guidance of the Conference of the Parties, this body shall:
 - (a) Consider the information communicated in accordance with Article 12, paragraph 1, to assess the overall aggregated effect of the steps taken by the Parties in the light of the latest scientific assessments concerning climate change;
 - (b) Consider the information communicated in accordance with Article 12, paragraph 2, in order to assist the Conference of the Parties in carrying out the reviews required by Article 4, paragraph 2 (d); and
 - (c) Assist the Conference of the Parties, as appropriate, in the preparation and implementation of its decisions.

Article 11

FINANCIAL MECHANISM

1. A mechanism for the provision of financial resources on a grant or concessional basis, including for the transfer of technology, is hereby defined. It shall function under the guidance of and be accountable to the Conference of the Parties, which shall decide on its policies, programme priorities and eligibility criteria related to this Convention. Its operation shall be entrusted to one or more existing international entities.
2. The financial mechanism shall have an equitable and balanced representation of all Parties within a transparent system of governance.
3. The Conference of the Parties and the entity or entities entrusted with the operation of the financial mechanism shall agree upon arrangements to give effect to the above paragraphs, which shall include the following:
 - (a) Modalities to ensure that the funded projects to address climate change are in conformity with the policies, programme priorities and eligibility criteria established by the Conference of the Parties;
 - (b) Modalities by which a particular funding decision may be reconsidered in light of these policies, programme priorities and eligibility criteria;

(c) Provision by the entity or entities of regular reports to the Conference of the Parties on its funding operations, which is consistent with the requirement for accountability set out in paragraph 1 above; and

(d) Determination in a predictable and identifiable manner of the amount of funding necessary and available for the implementation of this Convention and the conditions under which that amount shall be periodically reviewed.

4. The Conference of the Parties shall make arrangements to implement the above-mentioned provisions at its first session, reviewing and taking into account the interim arrangements referred to in Article 21, paragraph 3, and shall decide whether these interim arrangements shall be maintained. Within four years thereafter, the Conference of the Parties shall review the financial mechanism and take appropriate measures.

5. The developed country Parties may also provide and developing country Parties avail themselves of, financial resources related to the implementation of the Convention through bilateral, regional and other multilateral channels.

Article 12

COMMUNICATION OF INFORMATION RELATED TO IMPLEMENTATION

1. In accordance with Article 4, paragraph 1, each Party shall communicate to the Conference of the Parties, through the secretariat, the following elements of information:
 - (a) A national inventory of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, to the extent its capacities permit, using comparable methodologies to be promoted and agreed upon by the Conference of the Parties;
 - (b) A general description of steps taken or envisaged by the Party to implement the Convention; and
 - (c) Any other information that the Party considers relevant to the achievement of the objective of the Convention and suitable for inclusion in its communication, including, if feasible, material relevant for calculations of global emission trends.
2. Each developed country Party and each other Party included in Annex I shall incorporate in its communication the following elements of information:
 - (a) A detailed description of the policies and measures that it has adopted to implement its commitment under Article 4, paragraphs 2 (a) and 2 (b); and
 - (b) A specific estimate of the effects that the policies and measures referred to in subparagraph (a) immediately above will have on anthropogenic emissions by its sources and removals by its sinks of greenhouse gases during the period referred to in Article 4, paragraph 2 (a).

3. In addition, each developed country Party and each other developed Party included in Annex II shall incorporate details of measures taken in accordance with Article 4, paragraphs 3, 4 and 5.
4. Developing country Parties may, on a voluntary basis, propose projects for financing, including specific technologies, materials, equipment, techniques or practices that would be needed to implement such projects, along with, if possible, an estimate of all incremental costs, of the reductions of emissions and increments of removals of greenhouse gases, as well as an estimate of the consequent benefits.

5. Each developed country Party and each other Party included in Annex I shall make its initial communication within six months of the entry into force of the Convention for that Party. Each Party not so listed shall make its initial communication within three years of the entry into force of the Convention for that Party, or of the availability of financial resources in accordance with Article 4, paragraph 3. Parties that are least developed countries may make their initial communication at their discretion. The frequency of subsequent communications by all Parties shall be determined by the Conference of the Parties, taking into account the differentiated timetable set by this paragraph.

6. Information communicated by Parties under this Article shall be transmitted by the secretariat as soon as possible to the Conference of the Parties and to any subsidiary bodies concerned. If necessary, the procedures for the communication of information may be further considered by the Conference of the Parties.

7. From its first session, the Conference of the Parties shall arrange for the provision to developing country Parties of technical and financial support, on request, in compiling and communicating information under this Article, as well as in identifying the technical and financial needs associated with proposed projects and response measures under Article 4. Such support may be provided by other Parties, by competent international organizations and by the secretariat, as appropriate.

8. Any group of Parties may, subject to guidelines adopted by the Conference of the Parties, and to prior notification to the Conference of the Parties, make a joint communication in fulfillment of their obligations under this Article, provided that such a communication includes information on the fulfilment by each of these Parties of its individual obligations under the Convention.

9. Information received by the secretariat that is designated by a Party as confidential, in accordance with criteria to be established by the Conference of the Parties, shall be aggregated by the secretariat to protect its confidentiality before being made available to any of the bodies involved in the communication and review of information.

10. Subject to paragraph 9 above, and without prejudice to the ability of any Party to make public its communication at any time, the secretariat shall make communications by Parties under this Article publicly available at the time they are submitted to the Conference of the Parties.

Article 13

RESOLUTION OF QUESTIONS REGARDING IMPLEMENTATION

The Conference of the Parties shall, at its first session, consider the establishment of a multilateral consultative process, available to Parties on their request, for the resolution of questions regarding the implementation of the Convention.

Article 14

SETTLEMENT OF DISPUTES

1. In the event of a dispute between any two or more Parties concerning the interpretation or application of the Convention, the Parties concerned shall seek a settlement of the dispute through negotiation or any other peaceful means of their own choice.

2. When ratifying, accepting, approving or acceding to the Convention, or at any time thereafter, a Party which is not a regional economic integration organization may declare in a written instrument submitted to the Depositary that, in respect of any dispute concerning the interpretation or application of the Convention, it recognizes as compulsory ipso facto and without special agreement, in relation to any Party accepting the same obligation:

- (a) Submission of the dispute to the International Court of Justice; and/or
- (b) Arbitration in accordance with procedures to be adopted by the Conference of the Parties as soon as practicable, in an annex on arbitration.

A Party which is a regional economic integration organization may make a declaration with like effect in relation to arbitration in accordance with the procedures referred to in subparagraph (b) above.

3. A declaration made under paragraph 2 above shall remain in force until it expires in accordance with its terms or until three months after written notice of its revocation has been deposited with the Depositary.

4. A new declaration, a notice of revocation or the expiry of a declaration shall not in any way affect proceedings pending before the International Court of Justice or the arbitral tribunal, unless the parties to the dispute otherwise agree.

5. Subject to the operation of paragraph 2 above, if after twelve months following notification by one Party to another that a dispute exists between them, the Parties concerned have not been able to settle their dispute through the means mentioned in paragraph 1 above, the dispute shall be submitted, at the request of any of the parties to the dispute, to conciliation.

6. A conciliation commission shall be created upon the request of one of the parties to the dispute. The commission shall be composed of an equal number of members appointed by each party concerned and a chairman chosen jointly by the members appointed by each party. The commission shall render a recommendatory award, which the parties shall consider in good faith

7. Additional procedures relating to conciliation shall be adopted by the Conference of the Parties, as soon as practicable, in an annex on conciliation.
8. The provisions of this Article shall apply to any related legal instrument which the Conference of the Parties may adopt, unless the instrument provides otherwise.

Article 15

AMENDMENTS TO THE CONVENTION

1. Any Party may propose amendments to the Convention.
2. Amendments to the Convention shall be adopted at an ordinary session of the Conference of the Parties. The text of any proposed amendment to the Convention shall be communicated to the Parties by the secretariat at least six months before the meeting at which it is proposed for adoption. The secretariat shall also communicate proposed amendments to the signatories to the Convention and, for information, to the Depositary.
3. The Parties shall make every effort to reach agreement on any proposed amendment to the Convention by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a three-fourths majority vote of the Parties present and voting at the meeting. The adopted amendment shall be communicated by the secretariat to the Depositary, who shall circulate it to all Parties for their acceptance.
4. Instruments of acceptance in respect of an amendment shall be deposited with the Depositary. An amendment adopted in accordance with paragraph 3 above shall enter into force for those Parties having accepted it on the ninetieth day after the date of receipt by the Depositary of an instrument of acceptance by at least three fourths of the Parties to the Convention.
5. The amendment shall enter into force for any other Party on the ninetieth day after the date on which that Party deposits with the Depositary its instrument of acceptance of the said amendment.
6. For the purposes of this Article, "Parties present and voting" means Parties present and casting an affirmative or negative vote.

Article 16

ADOPTION AND AMENDMENT OF ANNEXES TO THE CONVENTION

1. Annexes to the Convention shall form an integral part thereof and, unless otherwise expressly provided, a reference to the Convention constitutes at the same time a reference to any annexes thereto. Without prejudice to the provisions of Article 14, paragraphs 2 (b) and 7, such annexes shall be restricted to lists, forms and any other material of a descriptive nature that is of a scientific, technical, procedural or administrative character.

2. Annexes to the Convention shall be proposed and adopted in accordance with the procedure set forth in Article 15, paragraphs 2, 3 and 4.
3. An annex that has been adopted in accordance with paragraph 2 above shall enter into force for all Parties to the Convention six months after the date of the communication by the Depositary to such Parties of the adoption of the annex, except for those Parties that have notified the Depositary, in writing, within that period of their non-acceptance of the annex. The annex shall enter into force for Parties which withdraw their notification of non-acceptance on the ninetieth day after the date on which withdrawal of such notification has been received by the Depositary.
4. The proposal, adoption and entry into force of amendments to annexes to the Convention shall be subject to the same procedure as that for the proposal, adoption and entry into force of annexes to the Convention in accordance with paragraphs 2 and 3 above.
5. If the adoption of an annex or an amendment to an annex involves an amendment to the Convention, that annex or amendment to an annex shall not enter into force until such time as the amendment to the Convention enters into force.

Article 17

PROTOCOLS

1. The Conference of the Parties may, at any ordinary session, adopt protocols to the Convention.
2. The text of any proposed protocol shall be communicated to the Parties by the secretariat at least six months before such a session.
3. The requirements for the entry into force of any protocol shall be established by that instrument.
4. Only Parties to the Convention may be Parties to a protocol.
5. Decisions under any protocol shall be taken only by the Parties to the protocol concerned

Article 18

RIGHT TO VOTE

1. Each Party to the Convention shall have one vote, except as provided for in paragraph 2 below.
2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote with a number of votes equal to the number of their member States that are Parties to the Convention. Such an organization shall not exercise its right to vote if any of its member States exercises its right, and vice versa.

Article 19

DEPOSITARY

The Secretary-General of the United Nations shall be the Depositary of the Convention and of protocols adopted in accordance with Article 17.

Article 20

SIGNATURE

This Convention shall be open for signature by States Members of the United Nations or of any of its specialized agencies or that are Parties to the Statute of the International Court of Justice and by regional economic integration organizations at Rio de Janeiro, during the United Nations Conference on Environment and Development, and thereafter at United Nations Headquarters in New York from 20 June 1992 to 19 June 1993.

Article 21

INTERIM ARRANGEMENTS

1. The secretariat functions referred to in Article 8 will be carried out on an interim basis by the secretariat established by the General Assembly of the United Nations in its resolution 45/212 of 21 December 1990, until the completion of the first session of the Conference of the Parties.
2. The head of the interim secretariat referred to in paragraph 1 above will cooperate closely with the Intergovernmental Panel on Climate Change to ensure that the Panel can respond to the need for objective scientific and technical advice. Other relevant scientific bodies could also be consulted.
3. The Global Environment Facility of the United Nations Development Programme, the United Nations Environment Programme and the International Bank for Reconstruction and Development shall be the international entity entrusted with the operation of the financial mechanism referred to in Article 11 on an interim basis. In this connection, the Global Environment Facility should be appropriately restructured and its membership made universal to enable it to fulfil the requirements of Article 11.

Article 22

RATIFICATION, ACCEPTANCE, APPROVAL OR ACCESSION

1. The Convention shall be subject to ratification, acceptance, approval or accession by States and by regional economic integration organizations. It shall be open for accession from the day after the date on which the Convention is closed for signature. Instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary.

2. Any regional economic integration organization which becomes a Party to the Convention without any of its member States being a Party shall be bound by all the obligations under the Convention. In the case of such organizations, one or more of whose member States is a Party to the Convention, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under the Convention. In such cases, the organization and the member States shall not be entitled to exercise rights under the Convention concurrently.

3. In their instruments of ratification, acceptance, approval or accession, regional economic integration organizations shall declare the extent of their competence with respect to the matters governed by the Convention. These organizations shall also inform the Depositary, who shall in turn inform the Parties, of any substantial modification in the extent of their competence.

Article 23

ENTRY INTO FORCE

1. The Convention shall enter into force on the ninetieth day after the date of deposit of the fiftieth instrument of ratification, acceptance, approval or accession.
2. For each State or regional economic integration organization that ratifies, accepts or approves the Convention or accedes thereto after the deposit of the fiftieth instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the ninetieth day after the date of deposit by such State or regional economic integration organization of its instrument of ratification, acceptance, approval or accession.
3. For the purposes of paragraphs 1 and 2 above, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by States members of the organization.

Article 24

RESERVATIONS

No reservations may be made to the Convention.

Article 25

WITHDRAWAL

1. At any time after three years from the date on which the Convention has entered into force for a Party, that Party may withdraw from the Convention by giving written notification to the Depositary.
2. Any such withdrawal shall take effect upon expiry of one year from the date of receipt by the Depositary of the notification of withdrawal, or on such later date as may be specified in the notification of withdrawal.
3. Any Party that withdraws from the Convention shall be considered as also having withdrawn from any protocol to which it is a Party.

AUTHENTIC TEXTS

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, being duly authorized to that effect, have signed this Convention.

DONE at New York this ninth day of May one thousand nine hundred and ninety-two.

Australia
Austria
Belarus^a
Belgium
Bulgaria^a
Canada
Croatia^a *
Czech Republic^a *
Denmark
European Economic Community
Estonia^a
Finland
France
Germany
Greece
Hungary^a
Iceland
Ireland
Italy
Japan
Latvia^a
Liechtenstein*
Lithuania^a
Luxembourg
Monaco*
Netherlands
New Zealand
Norway
Poland^a
Portugal
Romania^a
Russian Federation^a
Slovakia^a *
Slovenia^a *
Spain
Sweden
Switzerland
Turkey
Ukraine^a
United Kingdom of Great Britain and Northern Ireland
United States of America

^a Countries that are undergoing the process of transition to a market economy.

* *Publisher's note*: Countries added to Annex I by an amendment that entered into force on 13 August 1998, pursuant to decision 4/CP.3 adopted at COP.3.

Annex II

Australia
Austria
Belgium
Canada
Denmark
European Economic Community
Finland
France
Germany
Greece
Iceland
Ireland
Italy
Japan
Luxembourg
Netherlands
New Zealand
Norway
Portugal
Spain
Sweden
Switzerland
United Kingdom of Great Britain and Northern Ireland
United States of America

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Publisher's note: Turkey was deleted from Annex II by an amendment that entered into force 28 June 2002, pursuant to decision 26/CP.7 adopted at COP.7.

**Kyoto Protocol to the United Nations Framework
Convention on Climate Change, 1998**

**KYOTO PROTOCOL TO THE UNITED NATIONS FRAMEWORK
CONVENTION ON CLIMATE CHANGE**

The Parties to this Protocol,

Being Parties to the United Nations Framework Convention on Climate Change, hereinafter referred to as “the Convention”,

In pursuit of the ultimate objective of the Convention as stated in its Article 2,

Recalling the provisions of the Convention,

Being guided by Article 3 of the Convention,

Pursuant to the Berlin Mandate adopted by decision 1/CP.1 of the Conference of the Parties to the Convention at its first session,

Have agreed as follows:

Article 1

For the purposes of this Protocol, the definitions contained in Article 1 of the Convention shall apply. In addition:

1. “Conference of the Parties” means the Conference of the Parties to the Convention.
2. “Convention” means the United Nations Framework Convention on Climate Change, adopted in New York on 9 May 1992.
3. “Intergovernmental Panel on Climate Change” means the Intergovernmental Panel on Climate Change established in 1988 jointly by the World Meteorological Organization and the United Nations Environment Programme.
4. “Montreal Protocol” means the Montreal Protocol on Substances that Deplete the Ozone Layer, adopted in Montreal on 16 September 1987 and as subsequently adjusted and amended.
5. “Parties present and voting” means Parties present and casting an affirmative or negative vote.
6. “Party” means, unless the context otherwise indicates, a Party to this Protocol.
7. “Party included in Annex I” means a Party included in Annex I to the Convention, as may be amended, or a Party which has made a notification under Article 4, paragraph 2 (g), of the Convention.

Article 2

1. Each Party included in Annex I, in achieving its quantified emission limitation and reduction commitments under Article 3, in order to promote sustainable development, shall:

**KYOTO PROTOCOL TO THE UNITED NATIONS FRAMEWORK
CONVENTION ON CLIMATE CHANGE**



UNITED NATIONS

1998

(a) Implement and/or further elaborate policies and measures in accordance with its national circumstances, such as:

- (i) Enhancement of energy efficiency in relevant sectors of the national economy;
- (ii) Protection and enhancement of sinks and reservoirs of greenhouse gases not controlled by the Montreal Protocol, taking into account its commitments under relevant international environmental agreements; promotion of sustainable forest management practices, afforestation and reforestation;
- (iii) Promotion of sustainable forms of agriculture in light of climate change considerations;
- (iv) Research on, and promotion, development and increased use of, new and renewable forms of energy, of carbon dioxide sequestration technologies and of advanced and innovative environmentally sound technologies;
- (v) Progressive reduction or phasing out of market imperfections, fiscal incentives, tax and duty exemptions and subsidies in all greenhouse gas emitting sectors that run counter to the objective of the Convention and application of market instruments;
- (vi) Encouragement of appropriate reforms in relevant sectors aimed at promoting policies and measures which limit or reduce emissions of greenhouse gases not controlled by the Montreal Protocol;
- (vii) Measures to limit and/or reduce emissions of greenhouse gases not controlled by the Montreal Protocol in the transport sector;
- (viii) Limitation and/or reduction of methane emissions through recovery and use in waste management, as well as in the production, transport and distribution of energy;
- (b) Cooperate with other such Parties to enhance the individual and combined effectiveness of their policies and measures adopted under this Article, pursuant to Article 4, paragraph 2 (e) (i), of the Convention. To this end, these Parties shall take steps to share their experience and exchange information on such policies and measures, including developing ways of improving their comparability, transparency and effectiveness. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first session or as soon as practicable thereafter, consider ways to facilitate such cooperation, taking into account all relevant information.

2. The Parties included in Annex I shall pursue limitation or reduction of emissions of greenhouse gases not controlled by the Montreal Protocol from aviation and marine bunker fuels, working through the International Civil Aviation Organization and the International Maritime Organization, respectively.

3. The Parties included in Annex I shall strive to implement policies and measures under this Article in such a way as to minimize adverse effects, including the adverse effects of climate change, effects on international trade, and social, environmental and economic impacts on other Parties, especially developing country Parties and in particular those identified in Article 4, paragraphs 8 and 9, of the Convention, taking into account Article 3 of the Convention. The Conference of the Parties serving as the meeting of the Parties to this Protocol may take further action, as appropriate, to promote the implementation of the provisions of this paragraph.

4. The Conference of the Parties serving as the meeting of the Parties to this Protocol, if it decides that it would be beneficial to coordinate any of the policies and measures in paragraph 1 (a) above, taking into account different national circumstances and potential effects, shall consider ways and means to elaborate the coordination of such policies and measures.

Article 3

1. The Parties included in Annex I shall, individually or jointly, ensure that their aggregate anthropogenic carbon dioxide equivalent emissions of the greenhouse gases listed in Annex A do not exceed their assigned amounts, calculated pursuant to their quantified emission limitation and reduction commitments inscribed in Annex B and in accordance with the provisions of this Article, with a view to reducing their overall emissions of such gases by at least 5 per cent below 1990 levels in the commitment period 2008 to 2012.

2. Each Party included in Annex I shall, by 2005, have made demonstrable progress in achieving its commitments under this Protocol.

3. The net changes in greenhouse gas emissions by sources and removals by sinks resulting from direct human-induced land-use change and forestry activities, limited to afforestation, reforestation and deforestation since 1990, measured as verifiable changes in carbon stocks in each commitment period, shall be used to meet the commitments under this Article of each Party included in Annex I. The greenhouse gas emissions by sources and removals by sinks associated with those activities shall be reported in a transparent and verifiable manner and reviewed in accordance with Articles 7 and 8.

4. Prior to the first session of the Conference of the Parties serving as the meeting of the Parties to this Protocol, each Party included in Annex I shall provide, for consideration by the Subsidiary Body for Scientific and Technological Advice, data to establish its level of carbon stocks in 1990 and to enable an estimate to be made of its changes in carbon stocks in subsequent years. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first session or as soon as practicable thereafter, decide upon modalities, rules and guidelines as to how, and which, additional human-induced activities related to changes in greenhouse gas emissions by sources and removals by sinks in the agricultural soils and the land-use change and forestry categories shall be added to, or subtracted from, the assigned amounts for Parties included in Annex I, taking into account uncertainties, transparency in reporting, verifiability, the methodological work of the Intergovernmental Panel on Climate Change, the advice provided by the Subsidiary Body for Scientific and Technological Advice in accordance with Article 5 and the decisions of the Conference of the Parties. Such a decision shall apply in the second and subsequent commitment periods. A Party may choose to apply such a decision on these additional human-induced activities for its first commitment period, provided that these activities have taken place since 1990.

13. If the emissions of a Party included in Annex I in a commitment period are less than its assigned amount under this Article, this difference shall, on request of that Party, be added to the assigned amount for that Party for subsequent commitment periods.
14. Each Party included in Annex I shall strive to implement the commitments mentioned in paragraph 1 above in such a way as to minimize adverse social, environmental and economic impacts on developing country Parties, particularly those identified in Article 4, paragraphs 8 and 9, of the Convention. In line with relevant decisions of the Conference of the Parties on the implementation of those paragraphs, the Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first session, consider what actions are necessary to minimize the adverse effects of climate change and/or the impacts of response measures on Parties referred to in those paragraphs. Among the issues to be considered shall be the establishment of funding, insurance and transfer of technology.

Article 4

1. Any Parties included in Annex I that have reached an agreement to fulfil their commitments under Article 3 jointly, shall be deemed to have met those commitments provided that their total combined aggregate anthropogenic carbon dioxide equivalent emissions of the greenhouse gases listed in Annex A do not exceed their assigned amounts calculated pursuant to their quantified emission limitation and reduction commitments inscribed in Annex B and in accordance with the provisions of Article 3. The respective emission level allocated to each of the Parties to the agreement shall be set out in that agreement.
2. The Parties to any such agreement shall notify the secretariat of the terms of the agreement on the date of deposit of their instruments of ratification, acceptance or approval of this Protocol, or accession thereto. The secretariat shall in turn inform the Parties and signatories to the Convention of the terms of the agreement.
3. Any such agreement shall remain in operation for the duration of the commitment period specified in Article 3, paragraph 7.
4. If Parties acting jointly do so in the framework of, and together with, a regional economic integration organization, any alteration in the composition of the organization after adoption of this Protocol shall not affect existing commitments under this Protocol. Any alteration in the composition of the organization shall only apply for the purposes of those commitments under Article 3 that are adopted subsequent to that alteration.
5. In the event of failure by the Parties to such an agreement to achieve their total combined level of emission reductions, each Party to that agreement shall be responsible for its own level of emissions set out in the agreement.
6. If Parties acting jointly do so in the framework of, and together with, a regional economic integration organization which is itself a Party to this Protocol, each member State of that regional economic integration organization individually, and together with the regional economic integration organization acting in accordance with Article 24, shall, in the event of failure to achieve the total combined level of emission reductions, be responsible for its level of emissions as notified in accordance with this Article.

5. The Parties included in Annex I undergoing the process of transition to a market economy whose base year or period was established pursuant to decision 9/CP.2 of the Conference of the Parties at its second session shall use that base year or period for the implementation of their commitments under this Article. Any other Party included in Annex I undergoing the process of transition to a market economy which has not yet submitted its first national communication under Article 12 of the Convention may also notify the Conference of the Parties serving as the meeting of the Parties to this Protocol that it intends to use an historical base year or period other than 1990 for the implementation of its commitments under this Article. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall decide on the acceptance of such notification.

6. Taking into account Article 4, paragraph 6, of the Convention, in the implementation of their commitments under this Protocol other than those under this Article, a certain degree of flexibility shall be allowed by the Conference of the Parties serving as the meeting of the Parties to this Protocol to the Parties included in Annex I undergoing the process of transition to a market economy.

7. In the first quantified emission limitation and reduction commitment period, from 2008 to 2012, the assigned amount for each Party included in Annex I shall be equal to the percentage inscribed for it in Annex B of its aggregate anthropogenic carbon dioxide equivalent emissions of the greenhouse gases listed in Annex A in 1990, or the base year or period determined in accordance with paragraph 5 above, multiplied by five. Those Parties included in Annex I for whom land-use change and forestry constituted a net source of greenhouse gas emissions in 1990 shall include in their 1990 emissions base year or period the aggregate anthropogenic carbon dioxide equivalent emissions by sources minus removals by sinks in 1990 from land-use change for the purposes of calculating their assigned amount.

8. Any Party included in Annex I may use 1995 as its base year for hydrofluorocarbons, perfluorocarbons and sulphur hexafluoride, for the purposes of the calculation referred to in paragraph 7 above.

9. Commitments for subsequent periods for Parties included in Annex I shall be established in amendments to Annex B to this Protocol, which shall be adopted in accordance with the provisions of Article 21, paragraph 7. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall initiate the consideration of such commitments at least seven years before the end of the first commitment period referred to in paragraph 1 above.

10. Any emission reduction units, or any part of an assigned amount, which a Party acquires from another Party in accordance with the provisions of Article 6 or of Article 17 shall be added to the assigned amount for the acquiring Party.

11. Any emission reduction units, or any part of an assigned amount, which a Party transfers to another Party in accordance with the provisions of Article 6 or of Article 17 shall be subtracted from the assigned amount for the transferring Party.

12. Any certified emission reductions which a Party acquires from another Party in accordance with the provisions of Article 12 shall be added to the assigned amount for the acquiring Party.

Article 5

1. Each Party included in Annex I shall have in place, no later than one year prior to the start of the first commitment period, a national system for the estimation of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol. Guidelines for such national systems, which shall incorporate the methodologies specified in paragraph 2 below, shall be decided upon by the Conference of the Parties serving as the meeting of the Parties to this Protocol at its first session.
2. Methodologies for estimating anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol shall be those accepted by the Intergovernmental Panel on Climate Change and agreed upon by the Conference of the Parties at its third session. Where such methodologies are not used, appropriate adjustments shall be applied according to methodologies agreed upon by the Conference of the Parties serving as the meeting of the Parties to this Protocol at its first session. Based on the work of, *inter alia*, the Intergovernmental Panel on Climate Change and advice provided by the Subsidiary Body for Scientific and Technological Advice, the Conference of the Parties serving as the meeting of the Parties to this Protocol shall regularly review and, as appropriate, revise such methodologies and adjustments, taking fully into account any relevant decisions by the Conference of the Parties. Any revision to methodologies or adjustments shall be used only for the purposes of ascertaining compliance with commitments under Article 3 in respect of any commitment period adopted subsequent to that revision.
3. The global warming potentials used to calculate the carbon dioxide equivalence of anthropogenic emissions by sources and removals by sinks of greenhouse gases listed in Annex A shall be those accepted by the Intergovernmental Panel on Climate Change and agreed upon by the Conference of the Parties at its third session. Based on the work of, *inter alia*, the Intergovernmental Panel on Climate Change and advice provided by the Subsidiary Body for Scientific and Technological Advice, the Conference of the Parties serving as the meeting of the Parties to this Protocol shall regularly review and, as appropriate, revise the global warming potential of each such greenhouse gas, taking fully into account any relevant decisions by the Conference of the Parties. Any revision to a global warming potential shall apply only to commitments under Article 3 in respect of any commitment period adopted subsequent to that revision.

Article 6

1. For the purpose of meeting its commitments under Article 3, any Party included in Annex I may transfer to, or acquire from, any other such Party emission reduction units resulting from projects aimed at reducing anthropogenic emissions by sources or enhancing anthropogenic removals by sinks of greenhouse gases in any sector of the economy, provided that:
 - (a) Any such project has the approval of the Parties involved;
 - (b) Any such project provides a reduction in emissions by sources, or an enhancement of removals by sinks, that is additional to any that would otherwise occur;

(c) It does not acquire any emission reduction units if it is not in compliance with its obligations under Articles 5 and 7; and

(d) The acquisition of emission reduction units shall be supplemental to domestic actions for the purposes of meeting commitments under Article 3.

2. The Conference of the Parties serving as the meeting of the Parties to this Protocol may, at its first session or as soon as practicable thereafter, further elaborate guidelines for the implementation of this Article, including for verification and reporting.
3. A Party included in Annex I may authorize legal entities to participate, under its responsibility, in actions leading to the generation, transfer or acquisition under this Article of emission reduction units.
4. If a question of implementation by a Party included in Annex I of the requirements referred to in this Article is identified in accordance with the relevant provisions of Article 8, transfers and acquisitions of emission reduction units may continue to be made after the question has been identified, provided that any such units may not be used by a Party to meet its commitments under Article 3 until any issue of compliance is resolved.

Article 7

1. Each Party included in Annex I shall incorporate in its annual inventory of anthropogenic emissions by sources and removals by sinks of greenhouse gases not controlled by the Montreal Protocol, submitted in accordance with the relevant decisions of the Conference of the Parties, the necessary supplementary information for the purposes of ensuring compliance with Article 3, to be determined in accordance with paragraph 4 below.
2. Each Party included in Annex I shall incorporate in its national communication, submitted under Article 12 of the Convention, the supplementary information necessary to demonstrate compliance with its commitments under this Protocol, to be determined in accordance with paragraph 4 below.
3. Each Party included in Annex I shall submit the information required under paragraph 1 above annually, beginning with the first inventory due under the Convention for the first year of the commitment period after this Protocol has entered into force for that Party. Each such Party shall submit the information required under paragraph 2 above as part of the first national communication due under the Convention after this Protocol has entered into force for it and after the adoption of guidelines as provided for in paragraph 4 below. The frequency of subsequent submission of information required under this Article shall be determined by the Conference of the Parties serving as the meeting of the Parties to this Protocol, taking into account any timetable for the submission of national communications decided upon by the Conference of the Parties.
4. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall adopt at its first session, and review periodically thereafter, guidelines for the preparation of the information required under this Article, taking into account guidelines for the preparation of

national communications by Parties included in Annex I adopted by the Conference of the Parties. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall also, prior to the first commitment period, decide upon modalities for the accounting of assigned amounts.

Article 8

1. The information submitted under Article 7 by each Party included in Annex I shall be reviewed by expert review teams pursuant to the relevant decisions of the Conference of the Parties and in accordance with guidelines adopted for this purpose by the Conference of the Parties serving as the meeting of the Parties to this Protocol under paragraph 4 below. The information submitted under Article 7, paragraph 1, by each Party included in Annex I shall be reviewed as part of the annual compilation and accounting of emissions inventories and assigned amounts. Additionally, the information submitted under Article 7, paragraph 2, by each Party included in Annex I shall be reviewed as part of the review of communications.

2. Expert review teams shall be coordinated by the secretariat and shall be composed of experts selected from those nominated by Parties to the Convention and, as appropriate, by intergovernmental organizations, in accordance with guidance provided for this purpose by the Conference of the Parties.

3. The review process shall provide a thorough and comprehensive technical assessment of all aspects of the implementation by a Party of this Protocol. The expert review teams shall prepare a report to the Conference of the Parties serving as the meeting of the Parties to this Protocol, assessing the implementation of the commitments of the Party and identifying any potential problems in, and factors influencing, the fulfilment of commitments. Such reports shall be circulated by the secretariat to all Parties to the Convention. The secretariat shall list those questions of implementation indicated in such reports for further consideration by the Conference of the Parties serving as the meeting of the Parties to this Protocol.

4. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall adopt at its first session, and review periodically thereafter, guidelines for the review of implementation of this Protocol by expert review teams taking into account the relevant decisions of the Conference of the Parties.

5. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, with the assistance of the Subsidiary Body for Implementation and, as appropriate, the Subsidiary Body for Scientific and Technological Advice, consider:

- (a) The information submitted by Parties under Article 7 and the reports of the expert reviews thereon conducted under this Article; and
 - (b) Those questions of implementation listed by the secretariat under paragraph 3 above, as well as any questions raised by Parties.
6. Pursuant to its consideration of the information referred to in paragraph 5 above, the Conference of the Parties serving as the meeting of the Parties to this Protocol shall take decisions on any matter required for the implementation of this Protocol.

Article 9

1. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall periodically review this Protocol in the light of the best available scientific information and assessments on climate change and its impacts, as well as relevant technical, social and economic information. Such reviews shall be coordinated with pertinent reviews under the Convention, in particular those required by Article 4, paragraph 2 (d), and Article 7, paragraph 2 (a), of the Convention. Based on these reviews, the Conference of the Parties serving as the meeting of the Parties to this Protocol shall take appropriate action.

2. The first review shall take place at the second session of the Conference of the Parties serving as the meeting of the Parties to this Protocol. Further reviews shall take place at regular intervals and in a timely manner.

Article 10

All Parties, taking into account their common but differentiated responsibilities and their specific national and regional development priorities, objectives and circumstances, without introducing any new commitments for Parties not included in Annex I, but reaffirming existing commitments under Article 4, paragraph 1, of the Convention, and continuing to advance the implementation of these commitments in order to achieve sustainable development, taking into account Article 4, paragraphs 3, 5 and 7, of the Convention, shall:

- (a) Formulate, where relevant and to the extent possible, cost-effective national and, where appropriate, regional programmes to improve the quality of local emission factors, activity data and/or models which reflect the socio-economic conditions of each Party for the preparation and periodic updating of national inventories of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, using comparable methodologies to be agreed upon by the Conference of the Parties, and consistent with the guidelines for the preparation of national communications adopted by the Conference of the Parties;
- (b) Formulate, implement, publish and regularly update national and, where appropriate, regional programmes containing measures to mitigate climate change and measures to facilitate adequate adaptation to climate change:
 - (i) Such programmes would, *inter alia*, concern the energy, transport and industry sectors as well as agriculture, forestry and waste management. Furthermore, adaptation technologies and methods for improving spatial planning would improve adaptation to climate change; and
 - (ii) Parties included in Annex I shall submit information on action under this Protocol, including national programmes, in accordance with Article 7; and other Parties shall seek to include in their national communications, as appropriate, information on programmes which contain measures that the Party believes contribute to addressing climate change and its adverse impacts, including the abatement of increases in greenhouse gas emissions, and enhancement of and removals by sinks, capacity building and adaptation measures;

(c) Cooperate in the promotion of effective modalities for the development, application and diffusion of, and take all practicable steps to promote, facilitate and finance, as appropriate, the transfer of, or access to, environmentally sound technologies, know-how, practices and processes pertinent to climate change, in particular to developing countries, including the formulation of policies and programmes for the effective transfer of environmentally sound technologies that are publicly owned or in the public domain and the creation of an enabling environment for the private sector, to promote and enhance the transfer of, and access to, environmentally sound technologies;

(d) Cooperate in scientific and technical research and promote the maintenance and the development of systematic observation systems and development of data archives to reduce uncertainties related to the climate system, the adverse impacts of climate change and the economic and social consequences of various response strategies, and promote the development and strengthening of endogenous capacities and capabilities to participate in international and intergovernmental efforts, programmes and networks on research and systematic observation, taking into account Article 5 of the Convention;

(e) Cooperate in and promote at the international level, and, where appropriate, using existing bodies, the development and implementation of education and training programmes, including the strengthening of national capacity building, in particular human and institutional capacities and the exchange or secondment of personnel to train experts in this field, in particular for developing countries, and facilitate at the national level public awareness of, and public access to information on, climate change. Suitable modalities should be developed to implement these activities through the relevant bodies of the Convention, taking into account Article 6 of the Convention;

(f) Include in their national communications information on programmes and activities undertaken pursuant to this Article in accordance with relevant decisions of the Conference of the Parties; and

(g) Give full consideration, in implementing the commitments under this Article, to Article 4, paragraph 8, of the Convention.

Article 11

1. In the implementation of Article 10, Parties shall take into account the provisions of Article 4, paragraphs 4, 5, 7, 8 and 9, of the Convention.
2. In the context of the implementation of Article 4, paragraph 1, of the Convention, in accordance with the provisions of Article 4, paragraph 3, and Article 11 of the Convention, and through the entity or entities entrusted with the operation of the financial mechanism of the Convention, the developed country Parties and other developed Parties included in Annex II to the Convention shall:

(a) Provide new and additional financial resources to meet the agreed full costs incurred by developing country Parties in advancing the implementation of existing commitments under Article 4, paragraph 1 (a), of the Convention that are covered in Article 10, subparagraph (a); and

(b) Also provide such financial resources, including for the transfer of technology, needed by the developing country Parties to meet the agreed full incremental costs of advancing the implementation of existing commitments under Article 4, paragraph 1, of the Convention that are covered by Article 10 and that are agreed between a developing country Party and the international entity or entities referred to in Article 11 of the Convention, in accordance with that Article.

The implementation of these existing commitments shall take into account the need for adequacy and predictability in the flow of funds and the importance of appropriate burden sharing among developed country Parties. The guidance to the entity or entities entrusted with the operation of the financial mechanism of the Convention in relevant decisions of the Conference of the Parties, including those agreed before the adoption of this Protocol, shall apply *mutatis mutandis* to the provisions of this paragraph.

3. The developed country Parties and other developed Parties in Annex II to the Convention may also provide, and developing country Parties avail themselves of, financial resources for the implementation of Article 10, through bilateral, regional and other multilateral channels.

Article 12

1. A clean development mechanism is hereby defined.
2. The purpose of the clean development mechanism shall be to assist Parties not included in Annex I in achieving sustainable development and in contributing to the ultimate objective of the Convention, and to assist Parties included in Annex I in achieving compliance with their quantified emission limitation and reduction commitments under Article 3.

3. Under the clean development mechanism:

(a) Parties not included in Annex I will benefit from project activities resulting in certified emission reductions; and

(b) Parties included in Annex I may use the certified emission reductions accruing from such project activities to contribute to compliance with part of their quantified emission limitation and reduction commitments under Article 3, as determined by the Conference of the Parties serving as the meeting of the Parties to this Protocol.

4. The clean development mechanism shall be subject to the authority and guidance of the Conference of the Parties serving as the meeting of the Parties to this Protocol and be supervised by an executive board of the clean development mechanism.

5. Emission reductions resulting from each project activity shall be certified by operational entities to be designated by the Conference of the Parties serving as the meeting of the Parties to this Protocol, on the basis of:

(a) Voluntary participation approved by each Party involved;

- (b) Real, measurable, and long-term benefits related to the mitigation of climate change; and
- (c) Reductions in emissions that are additional to any that would occur in the absence of the certified project activity.

6. The clean development mechanism shall assist in arranging funding of certified project activities as necessary.

7. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first session, elaborate modalities and procedures with the objective of ensuring transparency, efficiency and accountability through independent auditing and verification of project activities.

8. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall ensure that a share of the proceeds from certified project activities is used to cover administrative expenses as well as to assist developing country Parties that are particularly vulnerable to the adverse effects of climate change to meet the costs of adaptation.

9. Participation under the clean development mechanism, including in activities mentioned in paragraph 3 (a) above and in the acquisition of certified emission reductions, may involve private and/or public entities, and is to be subject to whatever guidance may be provided by the executive board of the clean development mechanism.

10. Certified emission reductions obtained during the period from the year 2000 up to the beginning of the first commitment period can be used to assist in achieving compliance in the first commitment period.

Article 13

1. The Conference of the Parties, the supreme body of the Convention, shall serve as the meeting of the Parties to this Protocol.
2. Parties to the Convention that are not Parties to this Protocol may participate as observers in the proceedings of any session of the Conference of the Parties serving as the meeting of the Parties to this Protocol. When the Conference of the Parties serves as the meeting of the Parties to this Protocol, decisions under this Protocol shall be taken only by those that are Parties to this Protocol.
3. When the Conference of the Parties serves as the meeting of the Parties to this Protocol, any member of the Bureau of the Conference of the Parties representing a Party to the Convention but, at that time, not a Party to this Protocol, shall be replaced by an additional member to be elected by and from amongst the Parties to this Protocol.
4. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall keep under regular review the implementation of this Protocol and shall make, within its mandate, the decisions necessary to promote its effective implementation. It shall perform the functions assigned to it by this Protocol and shall:
 - (a) Assess, on the basis of all information made available to it in accordance with the provisions of this Protocol, the implementation of this Protocol by the Parties, the overall effects of the measures taken pursuant to this Protocol, in particular environmental, economic and social effects as well as their cumulative impacts and the extent to which progress towards the objective of the Convention is being achieved;
 - (b) Periodically examine the obligations of the Parties under this Protocol, giving due consideration to any reviews required by Article 4, paragraph 2 (d), and Article 7, paragraph 2, of the Convention, in the light of the objective of the Convention, the experience gained in its implementation and the evolution of scientific and technological knowledge, and in this respect consider and adopt regular reports on the implementation of this Protocol;
 - (c) Promote and facilitate the exchange of information on measures adopted by the Parties to address climate change and its effects, taking into account the differing circumstances, responsibilities and capabilities of the Parties and their respective commitments under this Protocol;
 - (d) Facilitate, at the request of two or more Parties, the coordination of measures adopted by them to address climate change and its effects, taking into account the differing circumstances, responsibilities and capabilities of the Parties and their respective commitments under this Protocol;
 - (e) Promote and guide, in accordance with the objective of the Convention and the provisions of this Protocol, and taking fully into account the relevant decisions by the Conference of the Parties, the development and periodic refinement of comparable methodologies for the effective implementation of this Protocol, to be agreed on by the Conference of the Parties serving as the meeting of the Parties to this Protocol;
 - (f) Make recommendations on any matters necessary for the implementation of this Protocol;
 - (g) Seek to mobilize additional financial resources in accordance with Article 11, paragraph 2;
 - (h) Establish such subsidiary bodies as are deemed necessary for the implementation of this Protocol;
 - (i) Seek and utilize, where appropriate, the services and cooperation of, and information provided by, competent international organizations and intergovernmental and non-governmental bodies; and
 - (j) Exercise such other functions as may be required for the implementation of this Protocol, and consider any assignment resulting from a decision by the Conference of the Parties.

(a) Assess, on the basis of all information made available to it in accordance with the provisions of this Protocol, the implementation of this Protocol by the Parties, the overall effects of the measures taken pursuant to this Protocol, in particular environmental, economic and social effects as well as their cumulative impacts and the extent to which progress towards the objective of the Convention is being achieved;

(b) Periodically examine the obligations of the Parties under this Protocol, giving due consideration to any reviews required by Article 4, paragraph 2 (d), and Article 7, paragraph 2, of the Convention, in the light of the objective of the Convention, the experience gained in its implementation and the evolution of scientific and technological knowledge, and in this respect consider and adopt regular reports on the implementation of this Protocol;

(c) Promote and facilitate the exchange of information on measures adopted by the Parties to address climate change and its effects, taking into account the differing circumstances, responsibilities and capabilities of the Parties and their respective commitments under this Protocol;

(d) Facilitate, at the request of two or more Parties, the coordination of measures adopted by them to address climate change and its effects, taking into account the differing circumstances, responsibilities and capabilities of the Parties and their respective commitments under this Protocol;

(e) Promote and guide, in accordance with the objective of the Convention and the provisions of this Protocol, and taking fully into account the relevant decisions by the Conference of the Parties, the development and periodic refinement of comparable methodologies for the effective implementation of this Protocol, to be agreed on by the Conference of the Parties serving as the meeting of the Parties to this Protocol;

(f) Make recommendations on any matters necessary for the implementation of this Protocol;

(g) Seek to mobilize additional financial resources in accordance with Article 11, paragraph 2;

(h) Establish such subsidiary bodies as are deemed necessary for the implementation of this Protocol;

(i) Seek and utilize, where appropriate, the services and cooperation of, and information provided by, competent international organizations and intergovernmental and non-governmental bodies; and

(j) Exercise such other functions as may be required for the implementation of this Protocol, and consider any assignment resulting from a decision by the Conference of the Parties.

5. The rules of procedure of the Conference of the Parties and financial procedures applied under the Convention shall be applied *mutatis mutandis* under this Protocol, except as may be otherwise decided by consensus by the Conference of the Parties serving as the meeting of the Parties to this Protocol.

6. The first session of the Conference of the Parties serving as the meeting of the Parties to this Protocol shall be convened by the secretariat in conjunction with the first session of the Conference of the Parties that is scheduled after the date of the entry into force of this Protocol. Subsequent ordinary sessions of the Conference of the Parties serving as the meeting of the Parties to this Protocol shall be held every year and in conjunction with ordinary sessions of the Conference of the Parties, unless otherwise decided by the Conference of the Parties serving as the meeting of the Parties to this Protocol.

7. Extraordinary sessions of the Conference of the Parties serving as the meeting of the Parties to this Protocol shall be held at such other times as may be deemed necessary by the Conference of the Parties serving as the meeting of the Parties to this Protocol, or at the written request of any Party, provided that, within six months of the request being communicated to the Parties by the secretariat, it is supported by at least one third of the Parties.

8. The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State member thereof or observers thereto not party to the Convention, may be represented at sessions of the Conference of the Parties serving as the meeting of the Parties to this Protocol as observers. Any body or agency, whether national or international, governmental or non-governmental, which is qualified in matters covered by this Protocol and which has informed the secretariat of its wish to be represented at a session of the Conference of the Parties serving as the meeting of the Parties to this Protocol as an observer, may be so admitted unless at least one third of the Parties present object. The admission and participation of observers shall be subject to the rules of procedure, as referred to in paragraph 5 above.

Article 14

1. The secretariat established by Article 8 of the Convention shall serve as the secretariat of this Protocol.

2. Article 8, paragraph 2, of the Convention on the functions of the secretariat, and Article 8, paragraph 3, of the Convention on arrangements made for the functioning of the secretariat, shall apply *mutatis mutandis* to this Protocol. The secretariat shall, in addition, exercise the functions assigned to it under this Protocol.

Article 15

1. The Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation established by Articles 9 and 10 of the Convention shall serve as, respectively, the Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation of this Protocol. The provisions relating to the functioning of these two bodies under the Convention shall apply *mutatis mutandis* to this Protocol. Sessions of the meetings of the Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation of this Protocol shall be held in conjunction with the meetings of, respectively, the Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation of the Convention.

2. Parties to the Convention that are not Parties to this Protocol may participate as observers in the proceedings of any session of the subsidiary bodies. When the subsidiary bodies serve as the subsidiary bodies of this Protocol, decisions under this Protocol shall be taken only by those that are Parties to this Protocol.

3. When the subsidiary bodies established by Articles 9 and 10 of the Convention exercise their functions with regard to matters concerning this Protocol, any member of the Bureaux of those subsidiary bodies representing a Party to the Convention but, at that time, not a party to this Protocol, shall be replaced by an additional member to be elected by and from amongst the Parties to this Protocol.

Article 16

The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, as soon as practicable, consider the application to this Protocol of, and modify as appropriate, the multilateral consultative process referred to in Article 13 of the Convention, in the light of any relevant decisions that may be taken by the Conference of the Parties. Any multilateral consultative process that may be applied to this Protocol shall operate without prejudice to the procedures and mechanisms established in accordance with Article 18.

Article 17

The Conference of the Parties shall define the relevant principles, modalities, rules and guidelines, in particular for verification, reporting and accountability for emissions trading. The Parties included in Annex B may participate in emissions trading for the purposes of fulfilling their commitments under Article 3. Any such trading shall be supplemental to domestic actions for the purpose of meeting quantified emission limitation and reduction commitments under that Article.

Article 18

The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first session, approve appropriate and effective procedures and mechanisms to determine and to address cases of non-compliance with the provisions of this Protocol, including through the development of an indicative list of consequences, taking into account the cause, type, degree and frequency of non-compliance. Any procedures and mechanisms under this Article entailing binding consequences shall be adopted by means of an amendment to this Protocol.

Article 19

The provisions of Article 14 of the Convention on settlement of disputes shall apply *mutatis mutandis* to this Protocol.

Article 20

1. Any Party may propose amendments to this Protocol.
2. Amendments to this Protocol shall be adopted at an ordinary session of the Conference of the Parties serving as the meeting of the Parties to this Protocol. The text of any proposed amendment to this Protocol shall be communicated to the Parties by the secretariat at least

six months before the meeting at which it is proposed for adoption. The secretariat shall also communicate the text of any proposed amendments to the Parties and signatories to the Convention and, for information, to the Depositary.

3. The Parties shall make every effort to reach agreement on any proposed amendment to this Protocol by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a three-fourths majority vote of the Parties present and voting at the meeting. The adopted amendment shall be communicated by the secretariat to the Depositary, who shall circulate it to all Parties for their acceptance.
4. Instruments of acceptance in respect of an amendment shall be deposited with the Depositary. An amendment adopted in accordance with paragraph 3 above shall enter into force for those Parties having accepted it on the ninetieth day after the date of receipt by the Depositary of an instrument of acceptance by at least three fourths of the Parties to this Protocol.
5. The amendment shall enter into force for any other Party on the ninetieth day after the date on which that Party deposits with the Depositary its instrument of acceptance of the said amendment.

Article 21

1. Annexes to this Protocol shall form an integral part thereof and, unless otherwise expressly provided, a reference to this Protocol constitutes at the same time a reference to any annexes thereto. Any annexes adopted after the entry into force of this Protocol shall be restricted to lists, forms and any other material of a descriptive nature that is of a scientific, technical, procedural or administrative character.

2. Any Party may make proposals for an annex to this Protocol and may propose amendments to annexes to this Protocol.

3. Annexes to this Protocol and amendments to annexes to this Protocol shall be adopted at an ordinary session of the Conference of the Parties serving as the meeting of the Parties to this Protocol. The text of any proposed annex or amendment to an annex shall be communicated to the Parties by the secretariat at least six months before the meeting at which it is proposed for adoption. The secretariat shall also communicate the text of any proposed annex or amendment to an annex to the Parties and signatories to the Convention and, for information, to the Depositary.

4. The Parties shall make every effort to reach agreement on any proposed annex or amendment to an annex by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the annex or amendment to an annex shall as a last resort be adopted by a three-fourths majority vote of the Parties present and voting at the meeting. The adopted annex or amendment to an annex shall be communicated by the secretariat to the Depositary, who shall circulate it to all Parties for their acceptance.

5. An annex, or amendment to an annex other than Annex A or B, that has been adopted in accordance with paragraphs 3 and 4 above shall enter into force for all Parties to this Protocol six months after the date of the communication by the Depositary to such Parties of the adoption of the annex or adoption of the amendment to the annex, except for those Parties that have

notified the Depositary, in writing, within that period of their non-acceptance of the annex or amendment to the annex. The annex or amendment to an annex shall enter into force for Parties which withdraw their notification of non-acceptance on the ninetieth day after the date on which withdrawal of such notification has been received by the Depositary.

6. If the adoption of an annex or an amendment to an annex involves an amendment to this Protocol, that annex or amendment to an annex shall not enter into force until such time as the amendment to this Protocol enters into force.

7. Amendments to Annexes A and B to this Protocol shall be adopted and enter into force in accordance with the procedure set out in Article 20, provided that any amendment to Annex B shall be adopted only with the written consent of the Party concerned.

Article 22

1. Each Party shall have one vote, except as provided for in paragraph 2 below.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote with a number of votes equal to the number of their member States that are Parties to this Protocol. Such an organization shall not exercise its right to vote if any of its member States exercises its right, and vice versa.

Article 23

The Secretary-General of the United Nations shall be the Depositary of this Protocol.

Article 24

1. This Protocol shall be open for signature and subject to ratification, acceptance or approval by States and regional economic integration organizations which are Parties to the Convention. It shall be open for signature at United Nations Headquarters in New York from 16 March 1998 to 15 March 1999. This Protocol shall be open for accession from the day after the date on which it is closed for signature. Instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary.

2. Any regional economic integration organization which becomes a Party to this Protocol without any of its member States being a Party shall be bound by all the obligations under this Protocol. In the case of such organizations, one or more of whose member States is a Party to this Protocol, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under this Protocol. In such cases, the organization and the member States shall not be entitled to exercise rights under this Protocol concurrently.

3. In their instruments of ratification, acceptance, approval or accession, regional economic integration organizations shall declare the extent of their competence with respect to the matters governed by this Protocol. These organizations shall also inform the Depositary, who shall in turn inform the Parties, of any substantial modification in the extent of their competence.

Article 25

1. This Protocol shall enter into force on the ninetieth day after the date on which not less than 55 Parties to the Convention, incorporating Parties included in Annex I which accounted in total for at least 55 per cent of the total carbon dioxide emissions for 1990 of the Parties included in Annex I, have deposited their instruments of ratification, acceptance, approval or accession.
2. For the purposes of this Article, "the total carbon dioxide emissions for 1990 of the Parties included in Annex I" means the amount communicated on or before the date of adoption of this Protocol by the Parties included in Annex I in their first national communications submitted in accordance with Article 12 of the Convention.

3. For each State or regional economic integration organization that ratifies, accepts or approves this Protocol or accedes thereto after the conditions set out in paragraph 1 above for entry into force have been fulfilled, this Protocol shall enter into force on the ninetieth day following the date of deposit of its instrument of ratification, acceptance, approval or accession.

4. For the purposes of this Article, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by States members of the organization.

Article 26

No reservations may be made to this Protocol.

Article 27

1. At any time after three years from the date on which this Protocol has entered into force for a Party, that Party may withdraw from this Protocol by giving written notification to the Depositary.
2. Any such withdrawal shall take effect upon expiry of one year from the date of receipt by the Depositary of the notification of withdrawal, or on such later date as may be specified in the notification of withdrawal.
3. Any Party that withdraws from the Convention shall be considered as also having withdrawn from this Protocol.

Article 28

The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

DONE at Kyoto this eleventh day of December one thousand nine hundred and ninety-seven.

IN WITNESS WHEREOF the undersigned, being duly authorized to that effect, have affixed their signatures to this Protocol on the dates indicated.

Annex A

Greenhouse gases

Carbon dioxide (CO₂)
Methane (CH₄)
Nitrous oxide (N₂O)
Hydrofluorocarbons (HFCs)
Perfluorocarbons (PFCs)
Sulphur hexafluoride (SF₆)

Sectors/source categories

Energy
Fuel combustion
Energy industries
Manufacturing industries and construction
Transport
Other sectors
Other
Fugitive emissions from fuels
Solid fuels
Oil and natural gas
Other

Industrial processes

Mineral products
Chemical industry
Metal production
Other production
Production of halocarbons and sulphur hexafluoride
Consumption of halocarbons and sulphur hexafluoride
Other

Solvent and other product use

Agriculture
Enteric fermentation
Manure management
Rice cultivation
Agricultural soils
Prescribed burning of savannas
Field burning of agricultural residues
Other

Waste

Solid waste disposal on land
Wastewater handling
Waste incineration
Other

Annex B

Quantified emission limitation or reduction commitment
(percentage of base year or period)

Australia	108
Austria	92
Belgium	92
Bulgaria*	92
Canada	94
Croatia*	95
Czech Republic*	92
Denmark	92
Estonia*	92
European Community	92
Finland	92
France	92
Germany	92
Greece	92
Hungary*	94
Iceland	110
Ireland	92
Italy	92
Japan	94
Latvia*	92
Liechtenstein	92
Lithuania*	92
Luxembourg	92
Monaco	92
Netherlands	92
New Zealand	100
Norway	101
Poland*	94
Portugal	92
Romania*	92
Russian Federation*	100
Slovakia*	92
Slovenia*	92
Spain	92
Sweden	92
Switzerland	92
Ukraine*	100
United Kingdom of Great Britain and Northern Ireland	92
United States of America	93

* Countries that are undergoing the process of transition to a market economy.

**Copenhagen Accord (Decision 2/CP.15),
United Nations Framework Convention on Climate Change,
Report of the Conference of the Parties on its fifteenth
session, 2009 (FCCC/CP/2009/11/Add.1)**



**Framework Convention
on Climate Change**

Distr.
GENERAL

FCCC/CP/2009/11/Add.1
30 March 2010

Original: ENGLISH

FCCC/CP/2009/11/Add.1
Page 4

**Decision 2/CP.15
Copenhagen Accord**

The Conference of the Parties,

Takes note of the Copenhagen Accord of 18 December 2009.

CONFERENCE OF THE PARTIES

**Report of the Conference of the Parties
on its fifteenth session, held in Copenhagen
from 7 to 19 December 2009**

Addendum

**Part Two: Action taken by the Conference of the Parties
at its fifteenth session**

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Copenhagen Accord

The Heads of State, Heads of Government, Ministers, and other heads of the following delegations present at the United Nations Climate Change Conference 2009 in Copenhagen:¹ Albania, Algeria, Armenia, Australia, Austria, Bahamas, Bangladesh, Belarus, Belgium, Benin, Bhutan, Bosnia and Herzegovina, Botswana, Brazil, Bulgaria, Burkina Faso, Cambodia, Canada, Central African Republic, Chile, China, Colombia, Congo, Costa Rica, Côte d'Ivoire, Croatia, Cyprus, Czech Republic, Democratic Republic of the Congo, Denmark, Djibouti, Eritrea, Estonia, Ethiopia, European Union, Fiji, Finland, France, Gabon, Georgia, Germany, Ghana, Greece, Guatemala, Guinea, Guyana, Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Japan, Jordan, Kazakhstan, Kiribati, Lao People's Democratic Republic, Latvia, Lesotho, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malawi, Maldives, Mali, Malta, Marshall Islands, Mauritania, Mexico, Monaco, Mongolia, Montenegro, Morocco, Namibia, Nepal, Netherlands, New Zealand, Norway, Palau, Panama, Papua New Guinea, Peru, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Rwanda, Samoa, San Marino, Senegal, Serbia, Sierra Leone, Singapore, Slovakia, Slovenia, South Africa, Spain, Swaziland, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Tonga, Trinidad and Tobago, Tunisia, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay and Zambia,

In pursuit of the ultimate objective of the Convention as stated in its Article 2,

Being guided by the principles and provisions of the Convention,

Noting the results of work done by the two Ad hoc Working Groups,

Endorsing decision 1/CP.15 on the Ad hoc Working Group on Long-term Cooperative Action and decision 1/CMP.5 that requests the Ad hoc Working Group on Further Commitments of Annex I Parties under the Kyoto Protocol to continue its work,

Have agreed on this Copenhagen Accord which is operational immediately.

1. We underline that climate change is one of the greatest challenges of our time. We emphasise our strong political will to urgently combat climate change in accordance with the principle of common but differentiated responsibilities and respective capabilities. To achieve the ultimate objective of the Convention to stabilize greenhouse gas concentration in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system, we shall, recognizing the scientific view that the increase in global temperature should be below 2 degrees Celsius, on the basis of equity and in the context of sustainable development, enhance our long-term cooperative action to combat climate change. We recognize the critical impacts of climate change and the potential impacts of response measures on countries particularly vulnerable to its adverse effects and stress the need to establish a comprehensive adaptation programme including international support.

2. We agree that deep cuts in global emissions are required according to science, and as documented by the IPCC Fourth Assessment Report with a view to reduce global emissions so as to hold the increase in global temperature below 2 degrees Celsius, and take action to meet this objective consistent with science and on the basis of equity. We should cooperate in achieving the peaking of global and national emissions as soon as possible, recognizing that the time frame for peaking will be longer in developing countries and bearing in mind that social and economic development and poverty

¹ Some Parties listed above stated in their communications to the secretariat specific understandings on the nature of the Accord and related matters, based on which they have agreed to be listed here. The full text of the letters received from Parties in relation to the Copenhagen Accord, including the specific understandings, can be found at <http://unfccc.int/meetings/items/5276.php>.

eradication are the first and overriding priorities of developing countries and that a low-emission development strategy is indispensable to sustainable development.

3. Adaptation to the adverse effects of climate change and the potential impacts of response measures is a challenge faced by all countries. Enhanced action and international cooperation on adaptation is urgently required to ensure the implementation of the Convention by enabling and supporting the implementation of adaptation actions aimed at reducing vulnerability and building resilience in developing countries, especially in those that are particularly vulnerable, especially least developed countries, small island developing States and Africa. We agree that developed countries shall provide adequate, predictable and sustainable financial resources, technology and capacity-building to support the implementation of adaptation action in developing countries.

4. Annex I Parties commit to implement individually or jointly the quantified economy-wide emissions targets for 2020, to be submitted in the format given in Appendix I by Annex I Parties to the secretariat by 31 January 2010 for compilation in an INF document. Annex I Parties that are Party to the Kyoto Protocol will thereby further strengthen the emissions reductions initiated by the Kyoto Protocol. Delivery of reductions and financing by developed countries will be measured, reported and verified in accordance with existing and any further guidelines adopted by the Conference of the Parties, and will ensure that accounting of such targets and finance is rigorous, robust and transparent.

5. Non-Annex I Parties to the Convention will implement mitigation actions, including those to be submitted to the secretariat by non-Annex I Parties in the format given in Appendix II by 31 January 2010, for compilation in an INF document, consistent with Article 4.1 and Article 4.7 and in the context of sustainable development. Least developed countries and small island developing States may undertake actions voluntarily and on the basis of support. Mitigation actions subsequently taken and envisaged by Non-Annex I Parties, including national inventory reports, shall be communicated through national communications consistent with Article 12.1(b) every two years on the basis of guidelines to be adopted by the Conference of the Parties. Those mitigation actions in national communications or otherwise communicated to the Secretariat will be added to the list in appendix II. Mitigation actions taken by Non-Annex I Parties will be subject to their domestic measurement, reporting and verification the result of which will be reported through their national communications every two years. Non-Annex I Parties will communicate information on the implementation of their actions through National Communications, with provisions for international consultations and analysis under clearly defined guidelines that will ensure that national sovereignty is respected. Nationally appropriate mitigation actions seeking international support will be recorded in a registry along with relevant technology, finance and capacity building support. Those actions supported will be added to the list in appendix II. These supported nationally appropriate mitigation actions will be subject to international measurement, reporting and verification in accordance with guidelines adopted by the Conference of the Parties.

6. We recognize the crucial role of reducing emission from deforestation and forest degradation and the need to enhance removals of greenhouse gas emission by forests and agree on the need to provide positive incentives to such actions through the immediate establishment of a mechanism including REDD-plus, to enable the mobilization of financial resources from developed countries.

7. We decide to pursue various approaches, including opportunities to use markets, to enhance the cost-effectiveness of, and to promote mitigation actions. Developing countries, especially those with low emitting economies should be provided incentives to continue to develop on a low emission pathway.

8. Scaled up, new and additional, predictable and adequate funding as well as improved access shall be provided to developing countries, in accordance with the relevant provisions of the Convention, to enable and support enhanced action on mitigation, including substantial finance to reduce emissions from deforestation and forest degradation (REDD-plus), adaptation, technology development

and transfer and capacity-building, for enhanced implementation of the Convention. The collective commitment by developed countries is to provide new and additional resources, including forestry and investments through international institutions, approaching USD 30 billion for the period 2010–2012 with balanced allocation between adaptation and mitigation. Funding for adaptation will be prioritized for the most vulnerable developing countries, such as the least developed countries, small island developing States and Africa. In the context of meaningful mitigation actions and transparency on implementation, developed countries commit to a goal of mobilizing jointly USD 100 billion dollars a year by 2020 to address the needs of developing countries. This funding will come from a wide variety of sources, public and private, bilateral and multilateral, including alternative sources of finance. New multilateral funding for adaptation will be delivered through effective and efficient fund arrangements, with a governance structure providing for equal representation of developed and developing countries. A significant portion of such funding should flow through the Copenhagen Green Climate Fund.

9. To this end, a High Level Panel will be established under the guidance of and accountable to the Conference of the Parties to study the contribution of the potential sources of revenue, including alternative sources of finance, towards meeting this goal.

10. We decide that the Copenhagen Green Climate Fund shall be established as an operating entity of the financial mechanism of the Convention to support projects, programme, policies and other activities in developing countries related to mitigation including REDD-plus, adaptation, capacity-building, technology development and transfer.

11. In order to enhance action on development and transfer of technology we decide to establish a Technology Mechanism to accelerate technology development and transfer in support of action on adaptation and mitigation that will be guided by a country-driven approach and be based on national circumstances and priorities.

12. We call for an assessment of the implementation of this Accord to be completed by 2015, including in light of the Convention's ultimate objective. This would include consideration of strengthening the long-term goal referencing various matters presented by the science, including in relation to temperature rises of 1.5 degrees Celsius.

**The Cancun Agreements: Outcome of the work of the Ad
Hoc Working Group on Long-term Cooperative Action
under the Convention (Decision 1/CP.16),
United Nations Framework Convention on Climate Change,
Report of the Conference of the Parties on its sixteenth
session, 2010 (FCCC/CP/2010/7/Add.1)**



Decision 1/CP.16

The Cancun Agreements: Outcome of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention

The Conference of the Parties,

Recalling, its decision 1/CP.13 (the Bali Action Plan) and decision 1/CP.15,

Seeking to secure progress in a balanced manner, with the understanding that, through this decision, not all aspects of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention are concluded, and that nothing in this decision shall prejudice prospects for, or the content of, a legally binding outcome in the future,

Reaffirming the commitment to enable the full, effective and sustained implementation of the Convention through long-term cooperative action, now, up to and beyond 2012, in order to achieve the ultimate objective of the Convention,

Recalling the principles, provisions and commitments set forth in the Convention, in particular its Articles 3 and 4,

Recognizing that climate change represents an urgent and potentially irreversible threat to human societies and the planet, and thus requires to be urgently addressed by all Parties,

Affirming the legitimate needs of developing country Parties for the achievement of sustained economic growth and the eradication of poverty, so as to be able to deal with climate change,

Noting resolution 10/4 of the United Nations Human Rights Council on human rights and climate change, which recognizes that the adverse effects of climate change have a range of direct and indirect implications for the effective enjoyment of human rights and that the effects of climate change will be felt most acutely by those segments of the population that are already vulnerable owing to geography, gender, age, indigenous or minority status, or disability,

I. A shared vision for long-term cooperative action

1. *Affirms* that climate change is one of the greatest challenges of our time and that all Parties share a vision for long-term cooperative action in order to achieve the objective of the Convention under its Article 2, including through the achievement of a global goal, on the basis of equity and in accordance with common but differentiated responsibilities and respective capabilities; this vision is to guide the policies and actions of all Parties, while taking into full consideration the different circumstances of Parties in accordance with the principles and provisions of the Convention; the vision addresses mitigation, adaptation, finance, technology development and transfer, and capacity-building in a balanced, integrated and comprehensive manner to enhance and achieve the full, effective and sustained implementation of the Convention, now, up to and beyond 2012;

Conference of the Parties

Report of the Conference of the Parties on its sixteenth session, held in Cancun from 29 November to 10 December 2010

Addendum

Part Two: Action taken by the Conference of the Parties at its sixteenth session

Decisions adopted by the Conference of the Parties

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2. *Further affirms* that:

- (a) Scaled-up overall mitigation efforts that allow for the achievement of desired stabilization levels are necessary, with developed country Parties showing leadership by undertaking ambitious emission reductions and providing technology, capacity-building and financial resources to developing country Parties, in accordance with the relevant provisions of the Convention;
- (b) Adaptation must be addressed with the same priority as mitigation and requires appropriate institutional arrangements to enhance adaptation action and support;
- (c) All Parties should cooperate, consistent with the principles of the Convention, through effective mechanisms, enhanced means and appropriate enabling environments, and enhance technology development and the transfer of technologies to developing country Parties to enable action on mitigation and adaptation;
- (d) Mobilization and provision of scaled-up, new, additional, adequate and predictable financial resources is necessary to address the adaptation and mitigation needs of developing countries;
- (e) Capacity-building is essential to enable developing country Parties to participate fully in, and to implement effectively, their commitments under the Convention; and that the goal is to enhance the capacity of developing country Parties in all areas;

3. *Recognizes* that warming of the climate system is unequivocal and that most of the observed increase in global average temperatures since the mid-twentieth century is very likely due to the observed increase in anthropogenic greenhouse gas concentrations, as assessed by the Intergovernmental Panel on Climate Change in its Fourth Assessment Report;

4. *Further recognizes* that deep cuts in global greenhouse gas emissions are required according to science, and as documented in the Fourth Assessment Report of the Intergovernmental Panel on Climate Change, with a view to reducing global greenhouse gas emissions so as to hold the increase in global average temperature below 2 °C above pre-industrial levels, and that Parties should take urgent action to meet this long-term goal, consistent with science and on the basis of equity; *also recognizes* the need to consider, in the context of the first review, as referred to in paragraph 138 below, strengthening the long-term global goal on the basis of the best available scientific knowledge, including in relation to a global average temperature rise of 1.5 °C;

5. *Agrees*, in the context of the long-term goal and the ultimate objective of the Convention and the Bali Action Plan, to work towards identifying a global goal for substantially reducing global emissions by 2050, and to consider it at the seventeenth session of the Conference of the Parties;

6. *Also agrees* that Parties should cooperate in achieving the peaking of global and national greenhouse gas emissions as soon as possible, recognizing that the time frame for peaking will be longer in developing countries, and bearing in mind that social and economic development and poverty eradication are the first and overriding priorities of developing countries and that a low-carbon development strategy is indispensable to sustainable development; in this context, *further agrees* to work towards identifying a time frame for global peaking of greenhouse gas emissions based on the best available scientific knowledge and equitable access to sustainable development, and to consider it at the seventeenth session of the Conference of the Parties;

7. *Recognizes* the need to engage a broad range of stakeholders at the global, regional, national and local levels, be they government, including subnational and local government, private business or civil society, including youth and persons with disability, and that

gender equality and the effective participation of women and indigenous peoples are important for effective action on all aspects of climate change;

8. *Emphasizes* that Parties should, in all climate change related actions, fully respect human rights;

9. *Confirms* that Parties, especially developing country Parties that would have to bear a disproportionate or abnormal burden under the long-term cooperative action under the Convention, should be given full consideration;

10. *Realizes* that addressing climate change requires a paradigm shift towards building a low-carbon society that offers substantial opportunities and ensures continued high growth and sustainable development, based on innovative technologies and more sustainable production and consumption and lifestyles, while ensuring a just transition of the workforce that creates decent work and quality jobs;

II. Enhanced action on adaptation

11. *Agrees* that adaptation is a challenge faced by all Parties, and that enhanced action and international cooperation on adaptation is urgently required to enable and support the implementation of adaptation actions aimed at reducing vulnerability and building resilience in developing country Parties, taking into account the urgent and immediate needs of those developing countries that are particularly vulnerable;

12. *Affirms* that enhanced action on adaptation should be undertaken in accordance with the Convention, should follow a country-driven, gender-sensitive, participatory and fully transparent approach, taking into consideration vulnerable groups, communities and ecosystems, and should be based on and guided by the best available science and, as appropriate, traditional and indigenous knowledge, with a view to integrating adaptation into relevant social, economic and environmental policies and actions, where appropriate;

13. *Decides* to hereby establish the Cancun Adaptation Framework encompassing the provisions laid out below, with the objective of enhancing action on adaptation, including through international cooperation and coherent consideration of matters relating to adaptation under the Convention;

14. *Invites* all Parties to enhance action on adaptation under the Cancun Adaptation Framework, taking into account their common but differentiated responsibilities and respective capabilities, and specific national and regional development priorities, objectives and circumstances, by undertaking, inter alia, the following:

(a) Planning, prioritizing and implementing adaptation actions, including projects and programmes,¹ and actions identified in national and subnational adaptation plans and strategies, national adaptation programmes of action of the least developed countries, national communications, technology needs assessments and other relevant national planning documents;

(b) Impact, vulnerability and adaptation assessments, including assessments of financial needs as well as economic, social and environmental evaluation of adaptation options;

(c) Strengthening institutional capacities and enabling environments for adaptation, including for climate-resilient development and vulnerability reduction;

¹ Including in the areas of water resources; health; agriculture and food security; infrastructure; socio-economic activities; terrestrial, freshwater and marine ecosystems; and coastal zones.

(d) Building resilience of socio-economic and ecological systems, including through economic diversification and sustainable management of natural resources;

(e) Enhancing climate change related disaster risk reduction strategies, taking into consideration the Hyogo Framework for Action,² where appropriate, early warning systems, risk assessment and management, and sharing and transfer mechanisms such as insurance, at the local, national, subregional and regional levels, as appropriate;

(f) Measures to enhance understanding, coordination and cooperation with regard to climate change induced displacement, migration and planned relocation, where appropriate, at the national, regional and international levels;

(g) Research, development, demonstration, diffusion, deployment and transfer of technologies, practices and processes, and capacity-building for adaptation, with a view to promoting access to technologies, in particular in developing country Parties;

(h) Strengthening data, information and knowledge systems, education and public awareness;

(i) Improving climate-related research and systematic observation for climate data collection, archiving, analysis and modelling in order to provide decision makers at the national and regional levels with improved climate-related data and information;

15. *Decides* to hereby establish a process to enable least developed country Parties to formulate and implement national adaptation plans, building upon their experience in preparing and implementing national adaptation programmes of action, as a means of identifying medium- and long-term adaptation needs and developing and implementing strategies and programmes to address those needs;

16. *Invites* other developing country Parties to employ the modalities formulated to support the above-mentioned national adaptation plans in the elaboration of their planning effort referred to in paragraph 14 (a) above;

17. *Requests* the Subsidiary Body for Implementation to elaborate modalities and guidelines for the provisions of paragraphs 15 and 16 above, for adoption by the Conference of the Parties at its seventeenth session;

18. *Requests* developed country Parties to provide developing country Parties, taking into account the needs of those that are particularly vulnerable, with long-term, scaled-up, predictable, new and additional finance, technology and capacity-building, consistent with relevant provisions, to implement urgent, short-, medium- and long-term adaptation actions, plans, programmes and projects at the local, national, subregional and regional levels, in and across different economic and social sectors and ecosystems, as well as to undertake the activities referred to in paragraphs 14–16 above and paragraphs 30, 32 and 33 below;

19. *Acknowledges* the need to strengthen, enhance and better utilize existing institutional arrangements and expertise under the Convention;

20. *Decides* to hereby establish an Adaptation Committee to promote the implementation of enhanced action on adaptation in a coherent manner under the Convention, inter alia, through the following functions:

(a) Providing technical support and guidance to the Parties, respecting the country-driven approach, with a view to facilitating the implementation of adaptation activities, including those listed in paragraphs 14 and 15 above, where appropriate;

(b) Strengthening, consolidating and enhancing the sharing of relevant information, knowledge, experience and good practices, at the local, national, regional and

² <<http://www.unisdr.org/eng/hfa/hfa.htm>>.

international levels, taking into account, as appropriate, traditional knowledge and practices;

(c) Promoting synergy and strengthening engagement with national, regional and international organizations, centres and networks, in order to enhance the implementation of adaptation actions, in particular in developing country Parties;

(d) Providing information and recommendations, drawing on adaptation good practices, for consideration by the Conference of the Parties when providing guidance on means to incentivize the implementation of adaptation actions, including finance, technology and capacity-building and other ways to enable climate-resilient development and reduce vulnerability, including to the operating entities of the financial mechanism of the Convention, as appropriate;

(e) Considering information communicated by Parties on their monitoring and review of adaptation actions, support provided and received, possible needs and gaps and other relevant information, including information communicated under the Convention, with a view to recommending what further actions may be required, as appropriate;

21. *Invites* Parties to submit to the secretariat, by 21 February 2011, views on the composition of, and modalities and procedures for, the Adaptation Committee, including on proposed linkages with other relevant institutional arrangements;

22. *Requests* the secretariat to compile these submissions into a miscellaneous document, to be made available by the fourteenth session of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention, and to prepare a synthesis report based on those submissions by the fourteenth session of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention;

23. *Requests* the Ad Hoc Working Group on Long-term Cooperative Action under the Convention, taking into account the above-mentioned submissions and synthesis report, to elaborate the composition of, and modalities and procedures for, the Adaptation Committee, for adoption by the Conference of the Parties at its seventeenth session;

24. *Also requests* the Ad Hoc Working Group on Long-term Cooperative Action under the Convention, in elaborating the above-mentioned modalities and procedures, to define, as appropriate, linkages with other relevant institutional arrangements under and outside the Convention, including at the national and regional levels;

25. *Recognizes* the need to strengthen international cooperation and expertise in order to understand and reduce loss and damage associated with the adverse effects of climate change, including impacts related to extreme weather events and slow onset events;³

26. *Decides* to hereby establish a work programme in order to consider, including through workshops and expert meetings, as appropriate, approaches to address loss and damage associated with climate change impacts in developing countries that are particularly vulnerable to the adverse effects of climate change;

27. *Requests* the Subsidiary Body for Implementation to agree on activities to be undertaken under the above-mentioned work programme;

28. *Invites* Parties and relevant organizations to submit to the secretariat, by 21 February 2011, views and information on what elements should be included in the work programme, including the following:

³ Including sea level rise, increasing temperatures, ocean acidification, glacial retreat and related impacts, salinization, land and forest degradation, loss of biodiversity and desertification.

- (a) Possible development of a climate risk insurance facility to address impacts associated with severe weather events;
- (b) Options for risk management and reduction, risk sharing and transfer mechanisms such as insurance, including options for micro-insurance, and resilience-building, including through economic diversification;
- (c) Approaches for addressing rehabilitation measures associated with slow onset events;
- (d) Engagement of stakeholders with relevant specialized expertise;

29. *Requests* the secretariat to compile these submissions into a miscellaneous document and to prepare a synthesis report based on those submissions, to be made available for consideration by the Subsidiary Body for Implementation at its thirty-fourth session, and with a view to making recommendations on loss and damage to the Conference of the Parties for its consideration at its eighteenth session;

30. *Invites* Parties to strengthen and, where necessary, establish regional centres and networks, in particular in developing countries, with support from developed country Parties and relevant organizations, as appropriate, and to facilitate and enhance national and regional adaptation actions, in a manner that is country-driven, encourages cooperation and coordination between regional stakeholders and improves the flow of information between the Convention process and national and regional activities;

31. *Notes* that an international centre to enhance adaptation research and coordination could also be established in a developing country;

32. *Invites* all Parties to strengthen and, where necessary, establish and/or designate national-level institutional arrangements, with a view to enhancing work on the full range of adaptation actions, from planning to implementation;

33. *Decides* that all Parties should use existing channels to provide information, as appropriate, on support provided and received for adaptation actions in developing countries and on activities undertaken, including, inter alia, progress made, experiences, lessons learned, and challenges and gaps in the delivery of support, with a view to ensuring transparency and accountability and encouraging best practices;

34. *Invites* relevant multilateral, international, regional and national organizations, the public and private sectors, civil society and other relevant stakeholders to undertake and support enhanced action on adaptation at all levels, including under the Cancun Adaptation Framework, as appropriate, in a coherent and integrated manner, building on synergies among activities and processes, and to make information available on the progress made;

35. *Requests* the secretariat to support the implementation of the Cancun Adaptation Framework, including related institutional arrangements under the Convention, in accordance with its mandate and subject to the availability of resources;

III. Enhanced action on mitigation

A. Nationally appropriate mitigation commitments or actions by developed country Parties

Emphasizing the need for deep cuts in global greenhouse gas emissions and early and urgent undertakings to accelerate and enhance the implementation of the Convention by all Parties, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities,

Acknowledging that the largest share of historical global emissions of greenhouse gases originated in developed countries and that, owing to this historical responsibility, developed country Parties must take the lead in combating climate change and the adverse effects thereof,

36. *Takes note* of quantified economy-wide emission reduction targets to be implemented by Parties included in Annex I to the Convention as communicated by them and contained in document FCCC/SB/2011/INF.1⁴ (to be issued);

37. *Urges* developed country Parties to increase the ambition of their economy-wide emission reduction targets, with a view to reducing their aggregate anthropogenic emissions of carbon dioxide and other greenhouse gases not controlled by the Montreal Protocol to a level consistent with the Fourth Assessment Report of the Intergovernmental Panel on Climate Change;

38. *Requests* the secretariat to organize workshops to clarify the assumptions and the conditions related to the attainment of these targets, including the use of carbon credits from the market-based mechanisms and land use, land-use change and forestry activities, and options and ways to increase their level of ambition;

39. *Also requests* the secretariat to prepare a technical paper based on Parties' submissions with the aim of facilitating understanding of the assumptions and conditions related to the attainment of their emission reduction targets and a comparison of the level of emission reduction efforts;

40. *Decides*, building on existing reporting and review guidelines, processes and experiences, to enhance reporting in the national communications of Parties included in Annex I to the Convention on mitigation targets and on the provision of financial, technological and capacity-building support to developing country Parties as follows:

(a) Developed countries should submit annual greenhouse gas inventories and inventory reports and biennial reports on their progress in achieving emission reductions, including information on mitigation actions to achieve their quantified economy-wide emission targets and emission reductions achieved, projected emissions and the provision of financial, technology and capacity-building support to developing country Parties;

(b) Developed countries shall submit supplementary information on the achievement of quantified economy-wide emission reductions;

(c) Developed countries shall improve the reporting of information on the provision of financial, technology and capacity-building support to developing country Parties;

41. *Also decides* to enhance the guidelines for the reporting of information in national communications by Parties included in Annex I to the Convention, including the development of common reporting formats and methodology for finance, in order to ensure that information provided is complete, comparable, transparent and accurate;

42. *Further decides* to enhance guidelines for the review of information in national communications with respect to the following:

(a) Progress made in achieving emission reductions;

(b) Provision of financial, technology and capacity-building support to developing country Parties;

⁴ Parties' communications to the secretariat that are included in the information document are considered communications under the Convention.

43. *Decides* that developed countries should establish national arrangements for the estimation of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol;
44. *Also decides* to establish a process for international assessment of emissions and removals related to quantified economy-wide emission reduction targets under the Subsidiary Body for Implementation, taking into account national circumstances, in a rigorous, robust and transparent manner, with a view to promoting comparability and building confidence;
45. *Further decides* that developed countries should develop low-carbon development strategies or plans;
46. *Decides* on the following work programme for the development of modalities and guidelines described above, building on existing reporting and review guidelines, processes and experiences:
- (a) The revision of guidelines, as necessary, on the reporting of national communications, including the biennial report;
 - (i) The provision of financing, through enhanced common reporting formats, methodologies for finance and tracking of climate-related support;
 - (ii) Supplementary information on achievement of quantified economy-wide emission reduction targets;
 - (iii) Information on national inventory arrangements;
 - (b) The revision of guidelines for the review of national communications, including the biennial report, annual greenhouse gas inventories and national inventory systems;
 - (c) The establishment of guidelines for national inventory arrangements;
 - (d) Modalities and procedures for international assessment and review of emissions and removals related to quantified economy-wide emission reduction targets in accordance with paragraph 44 above, including the role of land use, land-use change and forestry, and carbon credits from market-based mechanisms, taking into account international experience;
47. *Invites* Parties to submit views on the items mentioned in paragraph 46 above, including with respect to the initial scheduling of the processes described in this section, by 28 March 2011;

B. Nationally appropriate mitigation actions by developing country Parties

- Recognizing* that developing country Parties are already contributing and will continue to contribute to a global mitigation effort in accordance with the principles and provisions of the Convention, and could enhance their mitigation actions, depending on provision of finance, technology and capacity-building support by developed country Parties,
- Reaffirming* that social and economic development and poverty eradication are the first and overriding priorities of developing country Parties, and that the share of global emissions originating in developing countries will grow to meet their social and development needs,
48. *Agrees* that developing country Parties will take nationally appropriate mitigation actions in the context of sustainable development, supported and enabled by technology,

- financing and capacity-building, aimed at achieving a deviation in emissions relative to 'business as usual' emissions in 2020;
49. *Takes note* of nationally appropriate mitigation actions to be implemented by Parties not included in Annex I to the Convention as communicated by them and contained in document FCCC/AWG/LCA/2011/INF.1⁵ (to be issued);
50. *Invites* developing countries that wish to voluntarily inform the Conference of the Parties of their intention to implement nationally appropriate mitigation actions in association with this decision to submit information on those actions to the secretariat;
51. *Requests* the secretariat to organize workshops to understand the diversity of mitigation actions submitted, underlying assumptions and any support needed for the implementation of these actions, noting different national circumstances and the respective capabilities of developing country Parties;
52. *Decides* that, in accordance with Article 4, paragraph 4, paragraph 3, of the Convention, developed country Parties shall provide enhanced financial, technological and capacity-building support for the preparation and implementation of nationally appropriate mitigation actions of developing country Parties and for enhanced reporting by these Parties;
53. *Also decides* to set up a registry to record nationally appropriate mitigation actions seeking international support and to facilitate matching of finance, technology and capacity-building support for these actions;
54. *Invites* developing country Parties to submit to the secretariat information on nationally appropriate mitigation actions for which they are seeking support, along with estimated costs and emission reductions, and the anticipated time frame for implementation;
55. *Also invites* developed country Parties to submit to the secretariat information on support available and provided for nationally appropriate mitigation actions;
56. *Requests* the secretariat to record and regularly update in the registry the information provided by Parties on:
- (a) Nationally appropriate mitigation actions seeking international support;
 - (b) Support available from developed country Parties for these actions;
 - (c) Support provided for nationally appropriate mitigation actions;
57. *Agrees* to develop modalities for the facilitation of support through the registry referred to in paragraph 53 above, including any functional relationship with the financial mechanism;
58. *Decides* to recognize nationally appropriate mitigation actions of developing countries in a separate section of the registry;
59. *Requests* the secretariat to record, and regularly update, in a separate section of the registry, information submitted by Parties on the following:
- (a) Mitigation actions contained in document FCCC/AWG/LCA/2011/INF.1;
 - (b) Additional mitigation actions submitted in association with paragraph 50 above;

⁵ Parties' communications to the secretariat that are included in the information document are considered communications under the Convention.

(c) Once support has been provided, internationally supported mitigation actions and associated support;

60. *Decides* to enhance reporting in national communications, including inventories, from Parties not included in Annex I to the Convention on mitigation actions and their effects, and support received, with additional flexibility to be given to the least developed country Parties and small island developing States;

(a) The content and frequency of national communications from Parties not included in Annex I to the Convention will not be more onerous than that for Parties included in Annex I to the Convention;

(b) Parties not included in Annex I to the Convention should submit their national communications to the Conference of the Parties, in accordance with Article 12, paragraph 1, of the Convention, every four years or in accordance with any further decisions on frequency by the Conference of the Parties, taking into account a differentiated timetable and the prompt provision of financial resources to cover the agreed full costs incurred by Parties not included in Annex I to the Convention in preparing their national communications;

(c) Developing countries, consistent with their capabilities and the level of support provided for reporting, should also submit biennial update reports containing updates of national greenhouse gas inventories, including a national inventory report and information on mitigation actions, needs and support received;

61. *Also decides* that internationally supported mitigation actions will be measured, reported and verified domestically and will be subject to international measurement, reporting and verification in accordance with guidelines to be developed under the Convention;

62. *Further decides* that domestically supported mitigation actions will be measured, reported and verified domestically in accordance with general guidelines to be developed under the Convention;

63. *Decides* to conduct international consultations and analysis of biennial reports under the Subsidiary Body for Implementation, in a manner that is non-intrusive, non-punitive and respectful of national sovereignty; the international consultations and analysis will aim to increase transparency of mitigation actions and their effects, through analysis by technical experts in consultation with the Party concerned and through a facilitative sharing of views, and will result in a summary report;

64. *Also decides* that information considered should include the national greenhouse gas inventory report, information on mitigation actions, including a description, analysis of the impacts and associated methodologies and assumptions, progress in implementation and information on domestic measurement, reporting and verification, and support received; discussion about the appropriateness of such domestic policies and measures is not part of the process; discussions should be intended to provide transparency of information related to unsupported actions;

65. *Encourages* developing countries to develop low-carbon development strategies or plans in the context of sustainable development;

66. *Agrees* on a work programme for the development of modalities and guidelines for: facilitation of support to nationally appropriate mitigation actions through a registry; measurement, reporting and verification of supported actions and corresponding support; biennial reports as part of national communications from Parties not included in Annex I to the Convention; domestic verification of mitigation actions undertaken with domestic resources; and international consultations and analysis;

67. *Invites* Parties to submit views on the items mentioned in paragraph 66 above, including with respect to the initial scheduling of the processes described in this section, by 28 March 2011;

C. Policy approaches and positive incentives on issues relating to reducing emissions from deforestation and forest degradation in developing countries; and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries

Affirming that, in the context of the provision of adequate and predictable support to developing country Parties, Parties should collectively aim to slow, halt and reverse forest cover and carbon loss, in accordance with national circumstances, consistent with the ultimate objective of the Convention, as stated in Article 2,

Also affirming the need to promote broad country participation in all phases described in paragraph 73 below, including through the provision of support that takes into account existing capacities,

68. *Encourages* all Parties to find effective ways to reduce the human pressure on forests that results in greenhouse gas emissions, including actions to address drivers of deforestation;

69. *Affirms* that the implementation of the activities referred to in paragraph 70 below should be carried out in accordance with appendix I to this decision, and that the safeguards referred to in paragraph 2 of appendix I to this decision should be promoted and supported;

70. *Encourages* developing country Parties to contribute to mitigation actions in the forest sector by undertaking the following activities, as deemed appropriate by each Party and in accordance with their respective capabilities and national circumstances:

- (a) Reducing emissions from deforestation;
- (b) Reducing emissions from forest degradation;
- (c) Conservation of forest carbon stocks;
- (d) Sustainable management of forests;
- (e) Enhancement of forest carbon stocks;

71. *Requests* developing country Parties aiming to undertake the activities referred to in paragraph 70 above, in the context of the provision of adequate and predictable support, including financial resources and technical and technological support to developing country Parties, in accordance with national circumstances and respective capabilities, to develop the following elements:

- (a) A national strategy or action plan;
- (b) A national forest reference emission level and/or forest reference level⁶ or, if appropriate, as an interim measure, subnational forest reference emission levels and/or forest reference levels, in accordance with national circumstances, and with provisions contained in decision 4/CP.15, and with any further elaboration of those provisions adopted by the Conference of the Parties;

⁶ In accordance with national circumstances, national forest reference emission levels and/or forest reference levels could be a combination of subnational forest reference emissions levels and/or forest reference levels.

(c) A robust and transparent national forest monitoring system for the monitoring and reporting of the activities referred to in paragraph 70 above, with, if appropriate, subnational monitoring and reporting as an interim measure,⁷ in accordance with national circumstances, and with the provisions contained in decision 4/CP.15, and with any further elaboration of those provisions agreed by the Conference of the Parties;

(d) A system for providing information on how the safeguards referred to in appendix I to this decision are being addressed and respected throughout the implementation of the activities referred to in paragraph 70 above, while respecting sovereignty;

72. *Also requests* developing country Parties, when developing and implementing their national strategies or action plans, to address, inter alia, the drivers of deforestation and forest degradation, land tenure issues, forest governance issues, gender considerations and the safeguards identified in paragraph 2 of appendix I to this decision, ensuring the full and effective participation of relevant stakeholders, inter alia indigenous peoples and local communities;

73. *Decides* that the activities undertaken by Parties referred to in paragraph 70 above should be implemented in phases, beginning with the development of national strategies or action plans, policies and measures, and capacity-building, followed by the implementation of national policies and measures and national strategies or action plans that could involve further capacity-building, technology development and transfer and results-based demonstration activities, and evolving into results-based actions that should be fully measured, reported and verified;

74. *Recognizes* that the implementation of the activities referred to in paragraph 70 above, including the choice of a starting phase as referred to in paragraph 73 above, depends on the specific national circumstances, capacities and capabilities of each developing country Party and the level of support received;

75. *Requests* the Subsidiary Body for Scientific and Technological Advice to develop a work programme on the matters referred to in appendix II to this decision;

76. *Urges* Parties, in particular developed country Parties, to support, through multilateral and bilateral channels, the development of national strategies or action plans, policies and measures and capacity-building, followed by the implementation of national policies and measures and national strategies or action plans that could involve further capacity-building, technology development and transfer and results-based demonstration activities, including consideration of the safeguards referred to in paragraph 2 of appendix I to this decision, taking into account the relevant provisions on finance including those relating to reporting on support;

77. *Requests* the Ad Hoc Working Group on Long-term Cooperative Action under the Convention to explore financing options for the full implementation of the results-based actions⁸ referred to in paragraph 73 above and to report on progress made, including any recommendations for draft decisions on this matter, to the Conference of the Parties at its seventeenth session;

78. *Also requests* Parties to ensure coordination of the activities referred to in paragraph 70 above, including of the related support, particularly at the national level;

⁷ Including monitoring and reporting of emissions displacement at the national level, if appropriate, and reporting on how displacement of emissions is being addressed, and on the means to integrate subnational monitoring systems into a national monitoring system.

⁸ These actions require national monitoring systems.

79. *Invites* relevant international organizations and stakeholders to contribute to the activities referred to in paragraphs 70 and 78 above;

D. Various approaches, including opportunities for using markets, to enhance the cost-effectiveness of, and to promote, mitigation actions, bearing in mind different circumstances of developed and developing countries

Acknowledging the need to maintain consistency with the principles of the Convention,

Emphasizing the importance of contributing to sustainable development, including through technology transfer and other co-benefits,

Recognizing the importance of enhancing sustainable lifestyles and patterns of production and consumption,

Aware of the need to provide incentives in support of low-emission development strategies,

80. *Decides* to consider the establishment, at the seventeenth session of the Conference of the Parties, of one or more market-based mechanisms to enhance the cost-effectiveness of, and to promote, mitigation actions, taking into account the following:

(a) Ensuring voluntary participation of Parties, supported by the promotion of fair and equitable access for all Parties;

(b) Complementing other means of support for nationally appropriate mitigation actions by developing country Parties;

(c) Stimulating mitigation across broad segments of the economy;

(d) Safeguarding environmental integrity;

(e) Ensuring a net decrease and/or avoidance of global greenhouse gas emissions;

(f) Assisting developed country Parties to meet part of their mitigation targets, while ensuring that the use of such a mechanism or mechanisms is supplemental to domestic mitigation efforts;

(g) Ensuring good governance and robust market functioning and regulation;

81. *Requests* the Ad Hoc Working Group on Long-term Cooperative Action under the Convention to elaborate the mechanism or mechanisms referred to in paragraph 80 above, with a view to recommending a draft decision or decisions to the Conference of the Parties for consideration at its seventeenth session;

82. *Invites* Parties and accredited observer organizations to submit to the secretariat, by 21 February 2011, their views on the matters referred to in paragraph 81 above;

83. *Undertakes*, in developing and implementing the mechanism or mechanisms referred to in paragraph 80 above, to maintain and build upon existing mechanisms, including those established under the Kyoto Protocol;

84. *Decides* to consider the establishment, at the seventeenth session of the Conference of the Parties, of one or more non-market-based mechanisms to enhance the cost-effectiveness of, and to promote, mitigation actions;

85. Requests the Ad Hoc Working Group on Long-term Cooperative Action under the Convention to elaborate the mechanism or mechanisms referred to in paragraph 84 above, with a view to recommending a draft decision or decisions to the Conference of the Parties for consideration at its seventeenth session;

86. Invites Parties and accredited observer organizations to submit to the secretariat, by 21 February 2011, their views on the matters referred to in paragraph 85 above;

87. Also invites Parties and accredited observer organizations to submit to the secretariat, by 21 February 2011, information on the evaluation of various approaches in enhancing the cost-effectiveness of, and promoting, mitigation actions, including activities implemented jointly under Article 4, paragraph 2(a), of the Convention and any other relevant activities, for synthesis by the secretariat;

E. Economic and social consequences of response measures

Reaffirming the importance of the objective of the Convention, and the relevant principles and provisions of the Convention related to economic and social consequences of response measures, in particular its Articles 2, 3 and 4,

Recognizing that the implementation of response measures to mitigate climate change taken by a Party may result in negative economic and social consequences for other Parties, and the need to take into consideration in the implementation of the commitments of the Convention the situation of Parties, particularly developing country Parties, with economies that are vulnerable to the adverse impact of the implementation of measures to respond to climate change, referred to in Article 4, paragraphs 8, 9 and 10, of the Convention,

Affirming that responses to climate change should be coordinated with social and economic development in an integrated manner, with a view to avoiding adverse impacts on the latter, taking fully into account the legitimate priority needs of developing country Parties for the achievement of sustained economic growth and the eradication of poverty, and the consequences for vulnerable groups, in particular women and children,

Recognizing the importance of avoiding or minimizing negative impacts of response measures on social and economic sectors, promoting a just transition of the workforce, the creation of decent work and quality jobs in accordance with nationally defined development priorities and strategies, and contributing to building new capacity for both production and service-related jobs in all sectors, promoting economic growth and sustainable development,

Taking note of relevant provisions of the United Nations Declaration on the Rights of Indigenous Peoples,

88. Urges Parties, in the implementation of measures to mitigate climate change, to take into consideration the economic and social impacts of response measures and the needs of Parties, in particular developing country Parties, impacted by response measures, consistent with relevant provisions of the Convention;

89. Also urges developed country Parties to strive to implement policies and measures to respond to climate change in such a way as to avoid negative social and economic consequences for developing country Parties, taking into account Article 3 of the Convention, and to assist these Parties to address such consequences by providing support, including financial resources, transfer of technology and capacity-building, in accordance with Article 4 of the Convention, to build up the resilience of societies and economies negatively affected by response measures;

90. *Reaffirms* that the Parties should cooperate to promote a supportive and open international economic system that would lead to sustainable economic growth and development in all Parties, particularly developing country Parties, thus enabling them better to address the problems of climate change; measures taken to combat climate change, including unilateral ones, should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade;

91. *Agrees* that information relating to response measures should be considered in a structured manner in order to enhance the implementation of Article 4, paragraph 1(g) and (h), of the Convention, recognizing the needs of developing country Parties identified in Article 4, paragraphs 8, 9 and 10;

92. *Decides* that Parties should cooperate fully to enhance understanding of the economic and social consequences of response measures, taking into account the need for information from those affected, and evidence of actual impacts, and of both positive and negative effects; and *further decides* to consider how existing channels, such as national communications, including the possible submission of supplementary information, as considered by the Subsidiary Body for Implementation, could be improved and built upon;

93. *Further decides* to provide a forum on the impact of the implementation of response measures, and to that end requests the Chairs of the Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation to convene such a forum at the thirty-fourth and thirty-fifth sessions of these bodies, with the objective of developing a work programme under the subsidiary bodies to address these impacts, with a view to adopting, at the seventeenth session of the Conference of the Parties, modalities for the operationalization of the work programme and a possible forum on response measures;

94. *Invites* Parties and relevant intergovernmental organizations to submit to the secretariat, by 28 March 2011, their views on the issues referred to in paragraph 93 above for consideration by the Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation at their thirty-fourth sessions;

IV. Finance, technology and capacity-building

A. Finance

95. *Takes note* of the collective commitment by developed countries to provide new and additional resources, including forestry and investments through international institutions, approaching USD 30 billion for the period 2010–2012, with a balanced allocation between adaptation and mitigation; funding for adaptation will be prioritized for the most vulnerable developing countries, such as the least developed countries, small island developing States and Africa;

96. *Invites*, in order to enhance transparency, developed country Parties to submit to the secretariat for compilation into an information document, by May 2011, 2012 and 2013, information on the resources provided to fulfil the commitment referred to in paragraph 95 above, including ways in which developing country Parties access these resources;

97. *Decides* that, in accordance with the relevant provisions of the Convention, scaled-up, new and additional, predictable and adequate funding shall be provided to developing country Parties, taking into account the urgent and immediate needs of developing countries that are particularly vulnerable to the adverse effects of climate change;

98. *Recognizes* that developed country Parties commit, in the context of meaningful mitigation actions and transparency on implementation, to a goal of mobilizing jointly USD 100 billion per year by 2020 to address the needs of developing countries;
99. *Agrees* that, in accordance with paragraph 1(e) of the Bali Action Plan, funds provided to developing country Parties may come from a wide variety of sources, public and private, bilateral and multilateral, including alternative sources;
100. *Decides* that a significant share of new multilateral funding for adaptation should flow through the Green Climate Fund, referred to in paragraph 102 below;
101. *Takes note* of the relevant reports on the financing needs and options for the mobilization of resources to address the needs of developing country Parties with regard to climate change adaptation and mitigation, including the report of the High-level Advisory Group on Climate Change Financing;
102. *Decides* to establish a Green Climate Fund, to be designated as an operating entity of the financial mechanism of the Convention under Article 11, with arrangements to be concluded between the Conference of the Parties and the Green Climate Fund to ensure that it is accountable to and functions under the guidance of the Conference of the Parties, to support projects, programmes, policies and other activities in developing country Parties using thematic funding windows;
103. *Also decides* that the Fund shall be governed by a Board of 24 members, comprising an equal number of members from developing and developed country Parties; representation from developing country Parties shall include representatives of relevant United Nations regional groupings and representatives of small island developing States and the least developed countries; each Board member shall have an alternate member; with alternate members entitled to participate in the meetings of the board only through the principal member, without the right to vote, unless they are serving as the member; during the absence of the member from all or part of a meeting of the Board, his or her alternate shall serve as the member;
104. *Further decides* that the Green Climate Fund shall have a trustee; the trustee for the Green Climate Fund shall have the administrative competence to manage the financial assets of the Green Climate Fund, maintain appropriate financial records and prepare financial statements and other reports required by the Board of the Green Climate Fund, in accordance with internationally accepted fiduciary standards;
105. *Decides* that the trustee shall administer the assets of the Green Climate Fund only for the purpose of, and in accordance with, the relevant decisions of the Green Climate Fund Board; the trustee shall hold the assets of the Green Climate Fund separate and apart from the assets of the trustee, but may commingle them for administrative and investment purposes with other assets maintained by the trustee; and the trustee shall establish and maintain separate records and accounts to identify the assets of the Green Climate Fund;
106. *Decides* that the trustee shall be accountable to the Green Climate Fund Board for the performance of its fiduciary responsibilities;
107. *Invites* the World Bank to serve as the interim trustee for the Green Climate Fund, subject to a review three years after operationalization of the Fund;
108. *Decides* that the operation of the Fund shall be supported by an independent secretariat;
109. *Also decides* that the Green Climate Fund shall be designed by a Transitional Committee in accordance with the terms of reference contained in appendix III to this decision; the Transitional Committee shall have 40 members, with 15 members from developed country Parties and 25 members from developing country Parties as follows:

- (a) Seven members from Africa;
 - (b) Seven members from Asia;
 - (c) Seven members from Group of Latin America and the Caribbean;
 - (d) Two members from small island developing States;
 - (e) Two members from the least developed countries;
110. *Invites* the Executive Secretary of the secretariat, in consultation with the President of the Conference of the Parties, to convene the initial meeting of the Transitional Committee, with members having the necessary experience and skills, notably in the area of finance and climate change; the meetings of the Transitional Committee will be open to observers;
111. *Requests* the secretariat, in consultation with the President of the Conference of the Parties, to make arrangements enabling relevant United Nations agencies, international financial institutions and multilateral development banks, along with the secretariat and the Global Environment Facility, to second staff to support the work of the Transitional Committee for the design phase of the Green Climate Fund;
112. *Decides* to establish a Standing Committee under the Conference of the Parties to assist the Conference of the Parties in exercising its functions with respect to the financial mechanism of the Convention in terms of improving coherence and coordination in the delivery of climate change financing, rationalization of the financial mechanism, mobilization of financial resources and measurement, reporting and verification of support provided to developing country Parties; Parties agree to further define the roles and functions of this Standing Committee;

B. Technology development and transfer

- Recalling* the commitments under the Convention, in particular Article 4, paragraphs 1, 3, 5, 7, 8 and 9,
- Confirming* the importance of promoting and enhancing national and international cooperative action on the development and transfer of environmentally sound technologies to developing country Parties to support action on mitigation and adaptation now, up to and beyond 2012, in order to achieve the ultimate objective of the Convention,
- Recognizing* that an early and rapid reduction in emissions and the urgent need to adapt to the adverse impacts of climate change require large-scale diffusion and transfer of, or access to, environmentally sound technologies,
- Stressing* the need for effective mechanisms, enhanced means, appropriate enabling environments and the removal of obstacles to the scaling up of the development and transfer of technology to developing country Parties,
113. *Decides* that the objective of enhanced action on technology development and transfer is to support action on mitigation and adaptation in order to achieve the full implementation of the Convention;
114. *Also decides* that, in pursuit of this objective, technology needs must be nationally determined, based on national circumstances and priorities;
115. *Further decides* to accelerate action consistent with international obligations, at different stages of the technology cycle, including research and development, demonstration, deployment, diffusion and transfer of technology (hereinafter referred to

this decision as technology development and transfer) in support of action on mitigation and adaptation;

116. *Encourages* Parties, in the context of Article 4, paragraphs 1(c) and 5, of the Convention and consistent with their respective capabilities and national circumstances and priorities, to undertake domestic actions identified through country-driven approaches, to engage in bilateral and multilateral cooperative activities on technology development and transfer and to increase private and public research, development and demonstration in relation to technologies for mitigation and adaptation;

117. *Decides* to establish a Technology Mechanism to facilitate the implementation of actions for achieving the objective referred to in paragraphs 113–115 above, under the guidance of and accountable to the Conference of the Parties, which will consist of the following components:

- (a) A Technology Executive Committee, to undertake the functions contained in paragraph 121 below;
- (b) A Climate Technology Centre and Network, to undertake the functions contained in paragraph 123 below;

118. *Also decides* that the Technology Executive Committee and the Climate Technology Centre and Network, consistent with their respective functions, should facilitate the effective implementation of the Technology Mechanism, under the guidance of the Conference of the Parties;

119. *Further decides* that the Technology Executive Committee shall further implement the framework for meaningful and effective actions to enhance the implementation of Article 4, paragraph 5, of the Convention adopted by decision 4/CP.7 and enhanced by decision 3/CP.13;

120. *Decides* that priority areas that could be considered under the Convention may include:

- (a) Development and enhancement of the endogenous capacities and technologies of developing country Parties, including cooperative research, development and demonstration programmes;
- (b) Deployment and diffusion of environmentally sound technologies and know-how in developing country Parties;
- (c) Increased public and private investment in technology development, deployment, diffusion and transfer;
- (d) Deployment of soft and hard technologies for the implementation of adaptation and mitigation actions;
- (e) Improved climate change observation systems and related information management;
- (f) Strengthening of national systems of innovation and technology innovation centres;
- (g) Development and implementation of national technology plans for mitigation and adaptation;

121. *Also decides* that the functions of the Technology Executive Committee shall be to:

- (a) Provide an overview of technological needs and analysis of policy and technical issues related to the development and transfer of technologies for mitigation and adaptation;

- (b) Consider and recommend actions to promote technology development and transfer, in order to accelerate action on mitigation and adaptation;

(c) Recommend guidance on policies and programme priorities related to technology development and transfer with special consideration given to the least developed country Parties;

(d) Promote and facilitate collaboration on the development and transfer of technologies for mitigation and adaptation between governments, the private sector, non-profit organizations and academic and research communities;

(e) Recommend actions to address the barriers to technology development and transfer in order to enable enhanced action on mitigation and adaptation;

(f) Seek cooperation with relevant international technology initiatives, stakeholders and organizations, and promote coherence and cooperation across technology activities, including activities under and outside of the Convention;

(g) Catalyse the development and use of technology road maps or action plans at the international, regional and national levels through cooperation between relevant stakeholders, particularly governments and relevant organizations or bodies, including the development of best practice guidelines as facilitative tools for action on mitigation and adaptation;

122. *Further decides* that the Technology Executive Committee shall have the mandate and composition as contained in appendix IV to this decision;

123. *Decides* that the Climate Technology Centre shall facilitate a network of national, regional, sectoral and international technology networks, organizations and initiatives with a view to engaging the participants of the Network effectively in the following functions:

- (a) At the request of a developing country Party:
 - (i) Providing advice and support related to the identification of technology needs and the implementation of environmentally sound technologies, practices and processes;
 - (ii) Facilitating the provision of information, training and support for programmes to build or strengthen capacity of developing countries to identify technology options, make technology choices and operate, maintain and adapt technology;
 - (iii) Facilitating prompt action on the deployment of existing technology in developing country Parties based on identified needs;
- (b) Stimulating and encouraging, through collaboration with the private sector, public institutions, academia and research institutions, the development and transfer of existing and emerging environmentally sound technologies, as well as opportunities for North–South, South–South and triangular technology cooperation;
- (c) Facilitating a network of national, regional, sectoral and international technology centres, networks, organization and initiatives with a view to:
 - (i) Enhancing cooperation with national, regional and international technology centres and relevant national institutions;
 - (ii) Facilitating international partnerships among public and private stakeholders to accelerate the innovation and diffusion of environmentally sound technologies to developing country Parties;

- (iii) Providing, at the request of a developing country Party, in-country technical assistance and training to support identified technology actions in developing country Parties;
- (iv) Stimulating the establishment of twinning centre arrangements to promote North-South, South-South and triangular partnerships, with a view to encouraging cooperative research and development;

(v) Identifying, disseminating and assisting with developing analytical tools, policies and best practices for country-driven planning to support the dissemination of environmentally sound technologies;

(d) Performing other such activities as may be necessary to carry out its functions;

124. *Also decides* to terminate the mandate of the Expert Group on Technology Transfer at the conclusion of the sixteenth session of the Conference of the Parties;

125. *Further decides* that the Technology Executive Committee shall convene its first meeting as soon as practicable following the election of its members and shall elaborate its modalities and procedures taking into account the need to achieve coherence and maintain interactions with other relevant institutional arrangements under and outside of the Convention, for consideration by the Conference of the Parties at its seventeenth session;

126. *Decides* that the Technology Executive Committee and the Climate Technology Centre and Network shall report, on an interim basis⁹ and without prejudice to the relationship between the Technology Executive Committee and the Climate Technology Centre and Network as referred to in paragraph 128 (a) below to the Conference of the Parties, through the subsidiary bodies, on their respective activities and the performance of their respective functions;

127. *Also decides* that the Climate Technology Centre and Network and the Technology Executive Committee shall relate so as to promote coherence and synergy;

Work programme for the Ad Hoc Working Group on Long-term Cooperative Action under the Convention in 2011 on technology development and transfer

128. *Underlines* the importance of continued dialogue among Parties in 2011 through the Ad Hoc Working Group on Long-term Cooperative Action under the Convention, including on the following matters, with a view to the Conference of the Parties taking a decision at its seventeenth session, in order to make the Technology Mechanism fully operational in 2012:

- (a) The relationship between the Technology Executive Committee and the Climate Technology Centre and Network, and their reporting lines;
- (b) The governance structure of and terms of reference for the Climate Technology Centre and Network and how the Climate Technology Centre will relate to the Network, drawing upon the results of the workshop referred to in paragraph 129 below;
- (c) The procedure for calls for proposals and the criteria to be used to evaluate and select the host of the Climate Technology Centre and Network;
- (d) The potential links between the Technology Mechanism and the financial mechanism;
- (e) Consideration of additional functions for the Technology Executive Committee and the Climate Technology Centre and Network;

⁹ Until there is a decision on the issues contained in paragraph 128 (a) below.

129. *Requests* the Ad Hoc Working Group on Long-term Cooperative Action under the Convention to convene an expert workshop, in conjunction with one of its sessions in 2011, on the matters contained in paragraph 128 above, drawing upon the preliminary work undertaken by the Expert Group on Technology Transfer, and to report on the results of this workshop at that session;

C. Capacity-building

Reaffirming that capacity-building is essential to enable developing country Parties to participate fully in addressing the challenges of climate change, and to implement effectively their commitments under the Convention,

Recalling the provisions related to capacity-building for developing country Parties contained in relevant decisions adopted by the Conference of the Parties, especially decision 2/CP.7,

Taking into account that the scope of capacity-building and related needs as contained in the annex to decision 2/CP.7 and the key factors identified in decision 2/CP.10 remain valid,

Acknowledging that capacity-building is cross-cutting in nature and an integral part of enhanced action on mitigation, adaptation, technology development and transfer, and access to financial resources,

Also acknowledging that, in addition, there may be specific capacity-building activities that require support to enable developing countries to undertake the enhanced implementation of the Convention,

Reaffirming that capacity-building should be a continuous, progressive and iterative process that is participatory, country-driven and consistent with national priorities and circumstances,

130. *Decides* that capacity-building support to developing country Parties should be enhanced with a view to strengthening endogenous capacities at the subnational, national or regional levels, as appropriate, taking into account gender aspects, to contribute to the achievement of the full, effective and sustained implementation of the Convention, by, inter alia:

- (a) Strengthening relevant institutions at various levels, including focal points and national coordinating bodies and organizations;
- (b) Strengthening networks for the generation, sharing and management of information and knowledge, including through North-South, South-South and triangular cooperation;
- (c) Strengthening climate change communication, education, training and public awareness at all levels;
- (d) Strengthening integrated approaches and the participation of various stakeholders in relevant social, economic and environmental policies and actions;
- (e) Supporting existing and emerging capacity-building needs identified in the areas of mitigation, adaptation, technology development and transfer, and access to financial resources;

131. *Also decides* that financial resources for enhanced action on capacity-building in developing country Parties should be provided by Parties included in Annex II to the Convention and other Parties in a position to do so through the current and any future

operating entities of the financial mechanism, as well as through various bilateral, regional and other multilateral channels, as appropriate;

132. *Encourages* developed country Parties to continue to report through their national communications, in accordance with the “Guidelines for the preparation of national communications by Parties included in Annex I to the Convention, Part II: UNFCCC reporting guidelines on national communications”, on the support they have provided for capacity-building in developing country Parties;

133. *Invites* developed country Parties in a position to do so to provide information, through annual submissions to the secretariat and other appropriate channels, on the support they have provided for capacity-building in developing country Parties;

134. *Encourages* developing country Parties to continue to report through their national communications, in accordance with the “Guidelines for the preparation of national communications from Parties not included in Annex I to the Convention”, on progress made in enhancing their capacity to address climate change, including on the use of the support received;

135. *Invites* developing country Parties in a position to do so to provide information, through annual submissions to the secretariat and other appropriate channels, on progress made in enhancing their capacity to address climate change, including on the use of the support received;

136. *Requests* the Ad Hoc Working Group on Long-term Cooperative Action under the Convention to consider ways to further enhance the monitoring and review of the effectiveness of capacity-building, for consideration by the Conference of the Parties at its seventeenth session;

137. *Also requests* the Ad Hoc Working Group on Long-term Cooperative Action under the Convention to further elaborate the modalities regarding institutional arrangements for capacity-building, for consideration by the Conference of the Parties at its seventeenth session;

V. Review

138. *Decides* to periodically review the adequacy of the long-term global goal referred to in paragraph 4 above, in the light of the ultimate objective of the Convention, and overall progress towards achieving it, in accordance with the relevant principles and provisions of the Convention;

139. Also decides that:

- (a) This review should be guided by the principles of equity, and common but differentiated responsibilities and respective capabilities and take into account, inter alia:
 - (i) The best available scientific knowledge, including the assessment reports of the Intergovernmental Panel on Climate Change;
 - (ii) Observed impacts of climate change;
 - (iii) An assessment of the overall aggregated effect of the steps taken by Parties in order to achieve the ultimate objective of the Convention;
 - (iv) Consideration of strengthening the long-term global goal, referencing various matters presented by the science, including in relation to temperature rises of 1.5 °C;
- (b) The first review should start in 2013 and should be concluded by 2015;

(c) The Conference of the Parties shall take appropriate action based on the review;

140. *Requests* the Ad Hoc Working Group on Long-term Cooperative Action under the Convention to further define the scope of this review and develop its modalities, including the required inputs, with a view to their adoption by the Conference of the Parties at its seventeenth session;

VI. Other matters

Parties included in Annex I to the Convention undergoing the process of transition to a market economy

Recalling Article 4, paragraph 6, of the Convention and relevant decisions of the Conference of the Parties, especially decisions 3/CP.7 and 3/CP.13 relating to Parties included in Annex I to the Convention undergoing the process of transition to a market economy,

Noting that Parties included in Annex I to the Convention undergoing the process of transition to a market economy are not included in Annex II to the Convention and as such are not subject to the provisions of Article 4, paragraphs 3 and 4, of the Convention,

Recalling that Article 4, paragraph 6, of the Convention provides that a certain degree of flexibility shall be allowed by the Conference of the Parties to Parties included in Annex I to the Convention undergoing the process of transition to a market economy,

Taking note of the submissions from Parties contained in document FCCC/AWG/LCA/2010/MISC.6/Add.2,

141. *Requests* the Ad Hoc Working Group on Long-term Cooperative Action under the Convention to continue consideration of these issues with a view to promoting access by Parties included in Annex I to the Convention undergoing the process of transition to a market economy to technology, capacity-building and finance in order to enhance their ability to develop low-emission economies;

Parties included in Annex I to the Convention whose special circumstances are recognized by the Conference of the Parties

Recalling decision 26/CP.7 that amended the list in Annex II to the Convention by deleting the name of Turkey,

Recalling decision 26/CP.7 that invited Parties to recognize the special circumstances of Turkey, which place Turkey in a situation different from that of other Parties included in Annex I to the Convention,

Recognizing that Turkey is in a situation different from that of other Parties included in Annex I to the Convention,

Noting that Turkey is not included in Annex II to the Convention and as such is not subject to the commitments of Article 4, paragraphs 3–5, of the Convention and that Turkey is eligible for support under Article 4, paragraph 5, of the Convention,

Taking note of the submission from Turkey contained in document FCCC/AWG/LCA/2010/MISC.8,

142. *Requests* the Ad Hoc Working Group on Long-term Cooperative Action under the Convention to continue consideration of these issues with a view to promoting access by Turkey to finance, technology and capacity-building in order to enhance its ability to better implement the Convention;

VII. Extension of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention

143. *Decides* to extend the Ad Hoc Working Group on Long-term Cooperative Action under the Convention for one year, in order for it to continue its work with a view to carrying out the undertakings contained in this decision and present the results to the Conference of the Parties for consideration at its seventeenth session;

144. *Requests* the Ad Hoc Working Group on Long-term Cooperative Action under the Convention to continue its work drawing on the documents under its consideration;

145. *Also requests* the Ad Hoc Working Group on Long-term Cooperative Action under the Convention to continue discussing legal options with the aim of completing an agreed outcome based on decision 1/CP.13 (Bali Action Plan), the work done at the sixteenth session of the Conference of the Parties and proposals made by Parties under Article 17 of the Convention;

146. *Further requests* the secretariat to make the necessary arrangements in accordance with any guidance from the Bureau of the Conference of the Parties;

147. *Mandates* the host country of the next session of the Conference of the Parties to undertake inclusive and transparent consultations in order to facilitate the work towards the success of that session.

Appendix I

Guidance and safeguards for policy approaches and positive incentives on issues relating to reducing emissions from deforestation and forest degradation in developing countries; and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries

1. The activities referred to in paragraph 70 of this decision should:
 - (a) Contribute to the achievement of the objective set out in Article 2 of the Convention;
 - (b) Contribute to the fulfilment of the commitments set out in Article 4, paragraph 3, of the Convention;
 - (c) Be country-driven and be considered options available to Parties;
 - (d) Be consistent with the objective of environmental integrity and take into account the multiple functions of forests and other ecosystems;
 - (e) Be undertaken in accordance with national development priorities, objectives and circumstances and capabilities and should respect sovereignty;
 - (f) Be consistent with Parties' national sustainable development needs and goals;
 - (g) Be implemented in the context of sustainable development and reducing poverty, while responding to climate change;
 - (h) Be consistent with the adaptation needs of the country;
 - (i) Be supported by adequate and predictable financial and technology support, including support for capacity-building;
 - (j) Be results-based;
 - (k) Promote sustainable management of forests;
2. When undertaking the activities referred to in paragraph 70 of this decision, the following safeguards should be promoted and supported:
 - (a) That actions complement or are consistent with the objectives of national forest programmes and relevant international conventions and agreements;
 - (b) Transparent and effective national forest governance structures, taking into account national legislation and sovereignty;
 - (c) Respect for the knowledge and rights of indigenous peoples and members of local communities, by taking into account relevant international obligations, national circumstances and laws, and noting that the United Nations General Assembly has adopted the United Nations Declaration on the Rights of Indigenous Peoples;
 - (d) The full and effective participation of relevant stakeholders, in particular indigenous peoples and local communities, in the actions referred to in paragraphs 70 and 72 of this decision;
 - (e) That actions are consistent with the conservation of natural forests and biological diversity, ensuring that the actions referred to in paragraph 70 of this decision are not used for the conversion of natural forests, but are instead used to incentivize the

protection and conservation of natural forests and their ecosystem services, and to enhance other social and environmental benefits;¹

- (f) Actions to address the risks of reversals;
- (g) Actions to reduce displacement of emissions.

Appendix II

Work programme of the Subsidiary Body for Scientific and Technological Advice on policy approaches and positive incentives on issues relating to reducing emissions from deforestation and forest degradation in developing countries; and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries

In the development of its work programme, the Subsidiary Body for Scientific and Technological Advice is requested to:

- (a) Identify land use, land-use change and forestry activities in developing countries, in particular those that are linked to the drivers of deforestation and forest degradation, identify the associated methodological issues to estimate emissions and removals resulting from these activities, and assess the potential contribution of these activities to the mitigation of climate change, and report on the findings and outcomes of this work to the Conference of the Parties (COP) at its eighteenth session on the outcomes of the work referred to in this paragraph;
- (b) Develop modalities relating to paragraphs 71 (b) and (c) and guidance relating to paragraph 71 (d) of this decision, for consideration by the COP at its seventeenth session;
- (c) Develop, as necessary, modalities for measuring, reporting and verifying anthropogenic forest-related emissions by sources and removals by sinks, forest carbon stocks, and forest carbon stock and forest-area changes resulting from the implementation of the activities referred to in paragraph 70 of this decision, consistent with any guidance on measuring, reporting and verifying nationally appropriate mitigation actions by developing country Parties agreed by the COP, taking into account methodological guidance in accordance with decision 4/CP.15, for consideration by the COP at its seventeenth session.

¹ Taking into account the need for sustainable livelihoods of indigenous peoples and local communities and their interdependence on forests in most countries, reflected in the United Nations Declaration on the Rights of Indigenous Peoples, as well as the International Mother Earth Day.

Appendix III

Terms of reference for the design of the Green Climate Fund

1. The Transitional Committee shall develop and recommend to the Conference of the Parties for its approval at its seventeenth session operational documents that address, inter alia:
 - (a) The legal and institutional arrangements for the establishment and operationalization of the Green Climate Fund;
 - (b) The rules of procedure of the Green Climate Fund Board and other governance issues related to the Board;
 - (c) Methods to manage the large scale of financial resources from a number of sources and deliver through a variety of financial instruments, funding windows and access modalities, including direct access, with the objective of achieving a balanced allocation between adaptation and mitigation;
 - (d) The financial instruments that the Fund can use to achieve its priorities;
 - (e) Methods to enhance complementarity between the Fund's activities and those of other bilateral, regional and multilateral funding mechanisms and institutions;
 - (f) The role of the Fund's secretariat and the procedure for selecting and/or establishing the secretariat;
 - (g) A mechanism to ensure periodic independent evaluation of the Fund's performance;
 - (h) Mechanisms to ensure financial accountability and to evaluate the performance of activities supported by the Fund, in order to ensure the application of environmental and social safeguards as well as internationally accepted fiduciary standards and sound financial management to the Fund's activities;
 - (i) Mechanisms to ensure the provision of appropriate expert and technical advice, including from relevant thematic bodies established under the Convention;
 - (j) Mechanisms to ensure stakeholder input and participation.
2. In the conduct of its work, the Transitional Committee shall:
 - (a) Convene its first meeting by March 2011;
 - (b) Encourage input from all Parties and from relevant international organizations and observers;
 - (c) Take into account the findings contained in relevant reports.

Appendix IV

Composition and mandate of the Technology Executive Committee

1. The Technology Executive Committee shall comprise 20 expert members, elected by the Conference of the Parties (COP), serving in their personal capacity and nominated by Parties with the aim of achieving a fair and balanced representation, as follows:
 - (a) Nine members from Parties included in Annex I to the Convention (Annex I Parties);
 - (b) Three members from each of the three regions of the Parties not included in Annex I to the Convention (non-Annex I Parties), namely Africa, Asia and the Pacific, and Latin America and the Caribbean, one member from a small island developing State and one member from a least developed country Party.
 2. Decisions will be taken according to the rule of consensus.
 3. Parties are encouraged to nominate senior experts to the Technology Executive Committee, with a view to achieving, within the membership, an appropriate balance of technical, legal, policy, social development and financial expertise relevant to the development and transfer of technology for adaptation and mitigation, taking into account the need to achieve gender balance in accordance with decision 36/CP.7.
 4. Members shall serve for a term of two years and shall be eligible to serve a maximum of two consecutive terms of office. The following rules shall apply:
 - (a) Half of the members shall be elected initially for a term of three years and half of the members shall be elected for a term of two years;
 - (b) Thereafter, the COP shall elect every year a member for a term of two years;
 - (c) The members shall remain in office until their successors are elected.
 5. The Technology Executive Committee shall elect annually a chair and a vice-chair from among its members for a term of one year each, with one being a member from an Annex I Party and the other being a member from a non-Annex I Party. The positions of chair and vice-chair shall alternate annually between a member from an Annex I Party and a member from a non-Annex I Party.
 6. If the chair is temporarily unable to fulfil the obligations of the office, the vice-chair shall serve as chair. In the absence of the chair and vice-chair at a particular meeting, any other member designated by the Technology Executive Committee shall temporarily serve as the chair of that meeting.
 7. If the chair or vice-chair is unable to complete the term of office, the Technology Executive Committee shall elect a replacement to complete the term of office, taking into account paragraph 5 above.
 8. If a member of the Technology Executive Committee resigns or is otherwise unable to complete the assigned term of office or to perform the functions of that office, the Technology Executive Committee may decide, bearing in mind the proximity of the next session of the COP, to appoint another member from the same constituency to replace said member for the remainder of that member's mandate, in which case the appointment shall count as one term.
 9. The Technology Executive Committee, in performing its functions, should draw upon outside expertise, including the UNFCCC roster of experts and the Climate

Technology Centre and Network, to provide advice, including as expert advisers at its meetings.

10. The Technology Executive Committee should seek input from intergovernmental and international organizations and the private sector and may seek input from civil society in undertaking its work. It may invite advisers drawn from relevant intergovernmental and international organizations as well as the private sector and civil society to participate in its meetings as expert advisers on specific issues as they arise.

11. The meetings of the Technology Executive Committee shall be open to attendance by accredited observer organizations, except where otherwise decided by the Technology Executive Committee.

12. The secretariat shall support and facilitate the work of the Technology Executive Committee.

*9th plenary meeting
10–11 December 2010*

**Establishment of an Ad Hoc Working Group on the Durban
Platform for Enhanced Action (Decision 1/CP.17),
United Nations Framework Convention on Climate Change,
Report of the Conference of the Parties on its seventeenth
session, 2011 (FCCC/CP/2011/9/Add.1)**

Decision 1/CP.17

Establishment of an Ad Hoc Working Group on the Durban Platform for Enhanced Action

The Conference of the Parties,

Recognizing that climate change represents an urgent and potentially irreversible threat to human societies and the planet and thus requires to be urgently addressed by all Parties, and acknowledging that the global nature of climate change calls for the widest possible cooperation by all countries and their participation in an effective and appropriate international response, with a view to accelerating the reduction of global greenhouse gas emissions,

Noting with grave concern the significant gap between the aggregate effect of Parties' mitigation pledges in terms of global annual emissions of greenhouse gases by 2020 and aggregate emission pathways consistent with having a likely chance of holding the increase in global average temperature below 2 °C or 1.5 °C above pre-industrial levels,

Recognizing that fulfilling the ultimate objective of the Convention will require strengthening of the multilateral, rules-based regime under the Convention,

Noting decision 1/CMP.7,

Also noting decision 2/CP.17,

1. *Decides* to extend the Ad Hoc Working Group on Long-term Cooperative Action under the Convention for one year in order for it to continue its work and reach the agreed outcome pursuant to decision 1/CP.13 (Bali Action Plan) through decisions adopted by the sixteenth, seventeenth and eighteenth sessions of the Conference of the Parties, at which time the Ad Hoc Working Group on Long-term Cooperative Action under the Convention shall be terminated;
2. *Also decides* to launch a process to develop a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties, through a subsidiary body under the Convention hereby established and to be known as the Ad Hoc Working Group on the Durban Platform for Enhanced Action;
3. *Further decides* that the Ad Hoc Working Group on the Durban Platform for Enhanced Action shall start its work as a matter of urgency in the first half of 2012 and shall report to future sessions of the Conference of the Parties on the progress of its work;
4. *Decides* that the Ad Hoc Working Group on the Durban Platform for Enhanced Action shall complete its work as early as possible but no later than 2015 in order to adopt this protocol, another legal instrument or an agreed outcome with legal force at the twenty-first session of the Conference of the Parties and for it to come into effect and be implemented from 2020;
5. *Also decides* that the Ad Hoc Working Group on the Durban Platform for Enhanced Action shall plan its work in the first half of 2012, including, inter alia, on mitigation, adaptation, finance, technology development and transfer, transparency of action and support, and capacity-building, drawing upon submissions from Parties and relevant technical, social and economic information and expertise;

6. *Further decides* that the process shall raise the level of ambition and shall be informed, inter alia, by the Fifth Assessment Report of the Intergovernmental Panel on Climate Change, the outcomes of the 2013–2015 review and the work of the subsidiary bodies;

7. *Decides* to launch a workplan on enhancing mitigation ambition to identify and to explore options for a range of actions that can close the ambition gap with a view to ensuring the highest possible mitigation efforts by all Parties;

8. *Requests* Parties and observer organizations to submit by 28 February 2012 their views on options and ways for further increasing the level of ambition and decides to hold an in-session workshop at the first negotiating session in 2012 to consider options and ways for increasing ambition and possible further actions.

10th plenary meeting
11 December 2011

**Advancing the Durban Platform (Decision 2/CP.18),
United Nations Framework Convention on Climate Change,
Report of the Conference of the Parties on its
eighteenth session, 2012 (FCCC/CP/2012/8/Add.1)**

Decision 2/CP.18

Advancing the Durban Platform

The Conference of the Parties,

Recalling decision 1/CP.17,

Recognizing that climate change represents an urgent and potentially irreversible threat to human societies and the planet and thus requires to be urgently addressed by all Parties, and acknowledging that the global nature of climate change calls for the widest possible cooperation by all countries and their participation in an effective and appropriate international response, with a view to accelerating the reduction of global greenhouse gas emissions,

Noting with grave concern the significant gap between the aggregate effect of Parties' mitigation pledges in terms of global annual emissions of greenhouse gases by 2020 and aggregate emission pathways consistent with having a likely chance of holding the increase in global average temperature below 2 °C or 1.5 °C above pre-industrial levels,

Recognizing that fulfilling the ultimate objective of the Convention will require strengthening of the multilateral, rules-based regime under the Convention,

Noting decision 1/CMP.8,

Also noting decision 1/CP.18,

Acknowledging that the work of the Ad Hoc Working Group on the Durban Platform for Enhanced Action shall be guided by the principles of the Convention,

1. *Welcomes with high appreciation* the successful start, as a matter of urgency, of the work of the Ad Hoc Working Group on the Durban Platform for Enhanced Action, including the workplan on enhancing mitigation ambition, and the progress that has been made in 2012;
2. *Endorses* the arrangement for the Bureau of the Ad Hoc Working Group on the Durban Platform for Enhanced Action, as set out in document FCCC/ADP/2012/2, paragraph 7, recognizing that this is an exception to rule 27, paragraphs 5 and 6, of the draft rules of procedure being applied;
3. *Notes* the agenda adopted by the Ad Hoc Working Group on the Durban Platform for Enhanced Action, as set out in document FCCC/ADP/2012/2, paragraph 13, including the initiation of two workstreams: one on matters related to paragraphs 2 to 6 of decision 1/CP.17 (agenda item 3(a)) and one on matters related to paragraphs 7 and 8 of the same decision (agenda item 3(b));
4. *Determined* to adopt a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties at its twenty-first session, due to be held from Wednesday, 2 December to Sunday, 13 December 2015, and for it to come into effect and be implemented from 2020;
5. *Decides* to identify and to explore in 2013 options for a range of actions that can close the pre-2020 ambition gap with a view to identifying further activities for its plan of work in 2014 ensuring the highest possible mitigation efforts under the Convention;
6. *Welcomes* the planning of work of the Ad Hoc Working Group on the Durban Platform for Enhanced Action, as set out in document FCCC/ADP/2012/L.4, including,

inter alia, on mitigation, adaptation, finance, technology development and transfer, capacity-building, and transparency of action and support;

7. *Underlines* the importance of high-level engagement on matters related to decision 1/CP.17;

8. *Welcomes* the announcement of the Secretary-General of the United Nations at the eighteenth session of the Conference of the Parties and the eighth session of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol to convene world leaders in 2014;

9. *Decides* that the Ad Hoc Working Group on the Durban Platform for Enhanced Action will consider elements for a draft negotiating text no later than at its session to be held in conjunction with the twentieth session of the Conference of the Parties, due to be held from Wednesday, 3 December to Sunday, 14 December 2014, with a view to making available a negotiating text before May 2015.

9th plenary meeting
8 December 2012

Convention on biological diversity, 1992



No. 30619

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MULTILATERAL

**Convention on biological diversity (with annexes). Concluded
at Rio de Janeiro on 5 June 1992**

*Authentic texts: Arabic, Chinese, English, French, Russian and Spanish.
Registered ex officio on 29 December 1993.*

MULTILATÉRAL

**Convention sur la diversité biologique (avec annexes). Con-
clue à Rio de Janeiro le 5 juin 1992**

*Textes authentiques : arabe, chinois, anglais, français, russe et espagnol.
Enregistrée d'office le 29 décembre 1993.*

CONVENTION¹ ON BIOLOGICAL DIVERSITY

Preamble

The Contracting Parties.

Conscious of the intrinsic value of biological diversity and of the ecological, genetic, social, economic, scientific, educational, cultural, recreational and aesthetic values of biological diversity and its components.

Conscious also of the importance of biological diversity for evolution and for maintaining life sustaining systems of the biosphere.

Affirming that the conservation of biological diversity is a common concern of humankind.

Reaffirming that States have sovereign rights over their own biological resources.

¹ Came into force on 29 December 1993, i.e., the ninetieth day after the date of deposit with the Secretary-General of the United Nations of the thirtieth instrument of ratification, acceptance, approval or accession, in accordance with article 36 (1):

Participant	Date of deposit of the instrument of ratification, acceptance (A) or accession (B)
Antigua and Barbuda	9 March 1993
Armenia	14 May 1993 A
Australia	18 June 1993
Bahamas	2 September 1993
Belarus	8 September 1993
Burkina Faso	2 September 1993
Canada	4 December 1992
China	5 January 1993
Cook Islands	20 April 1993
Ecuador	23 February 1993
Fiji	25 February 1993
Guinea	7 May 1993
Japan	28 May 1993 A
Maldives	9 November 1992
Marshall Islands	8 October 1992
Mauritius	4 September 1992
Mexico	11 March 1993
Monaco	20 November 1992
Mongolia	30 September 1993
New Zealand	16 September 1993
Norway	9 July 1993
Papua New Guinea*	16 March 1993
Peru	7 June 1993
Saint Kitts and Nevis	7 January 1993
Saint Lucia	28 July 1993 a
Seychelles	22 September 1992
Tunisia	15 July 1993
Uganda	8 September 1993
Vanuatu	25 March 1993
Zambia	28 May 1993

(Continued on page 144)

Reaffirming also that States are responsible for conserving their biological diversity and for using their biological resources in a sustainable manner.

Concerned that biological diversity is being significantly reduced by certain human activities.

Aware of the general lack of information and knowledge regarding biological diversity and of the urgent need to develop scientific, technical and institutional capacities to provide the basic understanding upon which to plan and implement appropriate measures.

Noting that it is vital to anticipate, prevent and attack the causes of significant reduction or loss of biological diversity at source.

Noting also that where there is a threat of significant reduction or loss of biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat.

Noting further that the fundamental requirement for the conservation of biological diversity is the *in-situ* conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings.

(Footnote 1 continued from page 143)

Subsequently, the Convention came into force for the following Contracting Parties on the ninetieth day after the date of deposit with the Secretary-General of the United Nations of their instrument of ratification, acceptance, approval or accession, in accordance with article 36 (3):

Participant	Date of deposit of the instrument of ratification or approval (AA)
Philippines	8 October 1993
Uruguay	5 November 1993
Nauru	11 November 1993
Jordan	12 November 1993
Nepal	23 November 1993
Czech Republic	3 December 1993 AA
Barbados	10 December 1993
Sweden	16 December 1993
Denmark	21 December 1993
European Community*	21 December 1993 AA
Germany	21 December 1993
Portugal	21 December 1993
Spain	21 December 1993

* See p. 306 for the texts of the declarations made upon ratification or approval.

Noting further that *ex-situ* measures, preferably in the country of origin, also have an important role to play,

Recognizing the close and traditional dependence of many indigenous and local communities embodying traditional lifestyles on biological resources, and the desirability of sharing equitably benefits arising from the use of traditional knowledge, innovations and practices relevant to the conservation of biological diversity and the sustainable use of its components,

Recognizing also the vital role that women play in the conservation and sustainable use of biological diversity and affirming the need for the full participation of women at all levels of policy-making and implementation for biological diversity conservation,

Stressing the importance of, and the need to promote, international, regional and global cooperation among States and intergovernmental organizations and the non-governmental sector for the conservation of biological diversity and the sustainable use of its components,

Acknowledging that the provision of new and additional financial resources and appropriate access to relevant technologies can be expected to make a substantial difference in the world's ability to address the loss of biological diversity,

Acknowledging further that special provision is required to meet the needs of developing countries, including the provision of new and additional financial resources and appropriate access to relevant technologies,

Noting in this regard the special conditions of the least developed countries and small island States,

Acknowledging that substantial investments are required to conserve biological diversity and that there is the expectation of a broad range of environmental, economic and social benefits from those investments,

Recognizing that economic and social development and poverty eradication are the first and overriding priorities of developing countries,

Aware that conservation and sustainable use of biological diversity is of critical importance for meeting the food, health and other needs of the growing world population, for which purpose access to and sharing of both genetic resources and technologies are essential,

Noting that, ultimately, the conservation and sustainable use of biological diversity will strengthen friendly relations among States and contribute to peace for humankind,

Desiring to enhance and complement existing international arrangements for the conservation of biological diversity and sustainable use of its components, and

Determined to conserve and sustainably use biological diversity for the benefit of present and future generations,

Have agreed as follows:

Article 1. Objectives

The objectives of this Convention, to be pursued in accordance with its relevant provisions, are the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding.

Article 2. Use of Terms

For the purposes of this Convention:

"*Biological diversity*" means the variability among living organisms from all sources including, *inter alia*, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems.

"*Biological resources*" includes genetic resources, organisms or parts thereof, populations, or any other biotic component of ecosystems with actual or potential use or value for humanity.

"*Biotechnology*" means any technological application that uses biological systems, living organisms, or derivatives thereof, to make or modify products or processes for specific use.

"*Country of origin of genetic resources*" means the country which possesses those genetic resources in *in-situ* conditions.

"*Country providing genetic resources*" means the country supplying genetic resources collected from *in-situ* sources, including populations of both wild and domesticated species, or taken from *ex-situ* sources, which may or may not have originated in that country.

"*Domesticated or cultivated species*" means species in which the evolutionary process has been influenced by humans to meet their needs.

"*Ecosystem*" means a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit.

"*Ex-situ conservation*" means the conservation of components of biological diversity outside their natural habitats.

"*Genetic material*" means any material of plant, animal, microbial or other origin containing functional units of heredity.

"*Genetic resources*" means genetic material of actual or potential value.

"*Habitat*" means the place or type of site where an organism or population naturally occurs.

"*In-situ conditions*" means conditions where genetic resources exist within ecosystems and natural habitats, and, in the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties.

"*In-situ conservation*" means the conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings and, in the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties.

"*Protected area*" means a geographically defined area which is designated or regulated and managed to achieve specific conservation objectives.

"*Regional economic integration organization*" means an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by this Convention and which has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to it.

"*Sustainable use*" means the use of components of biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations.

"*Technology*" includes biotechnology.

Article 3. Principle

States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

Article 4. Jurisdictional Scope

Subject to the rights of other States, and except as otherwise expressly provided in this Convention, the provisions of this Convention apply, in relation to each Contracting Party:

- (a) In the case of components of biological diversity, in areas within the limits of its national jurisdiction; and
- (b) In the case of processes and activities, regardless of where their effects occur, carried out under its jurisdiction or control, within the area of its national jurisdiction or beyond the limits of national jurisdiction.

Article 5. Cooperation

Each Contracting Party shall, as far as possible and as appropriate, cooperate with other Contracting Parties, directly or, where appropriate, through competent international organizations, in respect of areas beyond

national jurisdiction and on other matters of mutual interest, for the conservation and sustainable use of biological diversity.

Article 6. General Measures for Conservation and Sustainable Use

Each Contracting Party shall, in accordance with its particular conditions and capabilities:

(a) Develop national strategies, plans or programmes for the conservation and sustainable use of biological diversity or adapt for this purpose existing strategies, plans or programmes which shall reflect, *inter alia*, the measures set out in this Convention relevant to the Contracting Party concerned; and

(b) Integrate, as far as possible and as appropriate, the conservation and sustainable use of biological diversity into relevant sectoral or cross-sectoral plans, programmes and policies.

Article 7. Identification and Monitoring

Each Contracting Party shall, as far as possible and as appropriate, in particular for the purposes of Articles 8 to 10:

(a) Identify components of biological diversity important for its conservation and sustainable use having regard to the indicative list of categories set down in Annex I;

(b) Monitor, through sampling and other techniques, the components of biological diversity identified pursuant to subparagraph (a) above, paying particular attention to those requiring urgent conservation measures and those which offer the greatest potential for sustainable use;

(c) Identify processes and categories of activities which have or are likely to have significant adverse impacts on the conservation and sustainable use of biological diversity, and monitor their effects through sampling and other techniques; and

(d) Maintain and organize, by any mechanism data, derived from identification and monitoring activities pursuant to subparagraphs (a), (b) and (c) above.

Article 8. In-situ Conservation

Each Contracting Party shall, as far as possible and as appropriate:

(a) Establish a system of protected areas or areas where special measures need to be taken to conserve biological diversity;

(b) Develop, where necessary, guidelines for the selection, establishment and management of protected areas or areas where special measures need to be taken to conserve biological diversity;

(c) Regulate or manage biological resources important for the conservation of biological diversity whether within or outside protected areas, with a view to ensuring their conservation and sustainable use;

(d) Promote the protection of ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings;

(e) Promote environmentally sound and sustainable development in areas adjacent to protected areas with a view to furthering protection of these areas;

(f) Rehabilitate and restore degraded ecosystems and promote the recovery of threatened species, *inter alia*, through the development and implementation of plans or other management strategies;

(g) Establish or maintain means to regulate, manage or control the risks associated with the use and release of living modified organisms resulting from biotechnology which are likely to have adverse environmental impacts that could affect the conservation and sustainable use of biological diversity, taking also into account the risks to human health;

(h) Prevent the introduction of, control or eradicate those alien species which threaten ecosystems, habitats or species;

(i) Endeavour to provide the conditions needed for compatibility between present uses and the conservation of biological diversity and the sustainable use of its components;

(j) Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices;

(k) Develop or maintain necessary legislation and/or other regulatory provisions for the protection of threatened species and populations;

(l) Where a significant adverse effect on biological diversity has been determined pursuant to Article 7, regulate or manage the relevant processes and categories of activities; and

(m) Cooperate in providing financial and other support for *in-situ* conservation outlined in subparagraphs (a) to (l) above, particularly to developing countries.

Article 9. *Ex-situ Conservation*

Each Contracting Party shall, as far as possible and as appropriate, and predominantly for the purpose of complementing *in-situ* measures:

(a) Adopt measures for the *ex-situ* conservation of components of biological diversity, preferably in the country of origin of such components;

(b) Establish and maintain facilities for *ex-situ* conservation of and research on plants, animals and micro-organisms, preferably in the country of origin of genetic resources;

(c) Adopt measures for the recovery and rehabilitation of threatened species and for their reintroduction into their natural habitats under appropriate conditions;

(d) Regulate and manage collection of biological resources from natural habitats for *ex-situ* conservation purposes so as not to threaten ecosystems and *in-situ* populations of species, except where special temporary *ex-situ* measures are required under subparagraph (c) above; and

(e) Cooperate in providing financial and other support for *ex-situ* conservation outlined in subparagraphs (a) to (d) above and in the establishment and maintenance of *ex-situ* conservation facilities in developing countries.

Article 10. *Sustainable Use of Components of Biological Diversity*

Each Contracting Party shall, as far as possible and as appropriate:

(a) Integrate consideration of the conservation and sustainable use of biological resources into national decision-making;

(b) Adopt measures relating to the use of biological resources to avoid or minimize adverse impacts on biological diversity;

(c) Protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements;

(d) Support local populations to develop and implement remedial action in degraded areas where biological diversity has been reduced; and

(e) Encourage cooperation between its governmental authorities and its private sector in developing methods for sustainable use of biological resources.

Article 11. *Incentive Measures*

Each Contracting Party shall, as far as possible and as appropriate, adopt economically and socially sound measures that act as incentives for the conservation and sustainable use of components of biological diversity.

Article 12. *Research and Training*

The Contracting Parties, taking into account the special needs of developing countries, shall:

(a) Establish and maintain programmes for scientific and technical education and training in measures for the identification, conservation and sustainable use of biological diversity and its components and

provide support for such education and training for the specific needs of developing countries:

(b) Promote and encourage research which contributes to the conservation and sustainable use of biological diversity, particularly in developing countries, *inter alia*, in accordance with decisions of the Conference of the Parties taken in consequence of recommendations of the Subsidiary Body on Scientific, Technical and Technological Advice; and

(c) In keeping with the provisions of Articles 16, 18 and 20, promote and cooperate in the use of scientific advances in biological diversity research in developing methods for conservation and sustainable use of biological resources.

Article 13. Public Education and Awareness

The Contracting Parties shall:

(a) Promote and encourage understanding of the importance of, and the measures required for, the conservation of biological diversity, as well as its propagation through media, and the inclusion of these topics in educational programmes; and

(b) Cooperate, as appropriate, with other States and international organizations in developing educational and public awareness programmes, with respect to conservation and sustainable use of biological diversity.

Article 14. Impact Assessment and Minimizing Adverse Impacts

1. Each Contracting Party, as far as possible and as appropriate, shall:

(a) Introduce appropriate procedures requiring environmental impact assessment of its proposed projects that are likely to have significant adverse effects on biological diversity with a view to avoiding or minimizing such effects and, where appropriate, allow for public participation in such procedures;

(b) Introduce appropriate arrangements to ensure that the environmental consequences of its programmes and policies that are likely to have significant adverse impacts on biological diversity are duly taken into account;

(c) Promote, on the basis of reciprocity, notification, exchange of information and consultation on activities under their jurisdiction or control which are likely to significantly affect adversely the biological diversity of other States or areas beyond the limits of national jurisdiction, by encouraging the conclusion of bilateral, regional or multilateral arrangements, as appropriate;

(d) In the case of imminent or grave danger or damage, originating under its jurisdiction or control, to biological diversity within the area under jurisdiction of other States or in areas beyond the limits of national jurisdiction, notify immediately the potentially affected States of such danger or damage, as well as initiate action to prevent or minimize such danger or damage; and

(e) Promote national arrangements for emergency responses to activities or events, whether caused naturally or otherwise, which present a grave and imminent danger to biological diversity and encourage international cooperation to supplement such national efforts and, where appropriate and agreed by the States or regional economic integration organizations concerned, to establish joint contingency plans.

2. The Conference of the Parties shall examine, on the basis of studies to be carried out, the issue of liability and redress, including restoration and compensation, for damage to biological diversity, except where such liability is a purely internal matter.

Article 15. Access to Genetic Resources

1. Recognizing the sovereign rights of States over their natural resources, the authority to determine access to genetic resources rests with the national governments and is subject to national legislation.

2. Each Contracting Party shall endeavour to create conditions to facilitate access to genetic resources for environmentally sound uses by other Contracting Parties and not to impose restrictions that run counter to the objectives of this Convention.

3. For the purpose of this Convention, the genetic resources being provided by a Contracting Party, as referred to in this Article and Articles 16 and 19, are only those that are provided by Contracting Parties that are countries of origin of such resources or by the Parties that have acquired the genetic resources in accordance with this Convention.

4. Access, where granted, shall be on mutually agreed terms and subject to the provisions of this Article.

5. Access to genetic resources shall be subject to prior informed consent of the Contracting Party providing such resources, unless otherwise determined by that Party.

6. Each Contracting Party shall endeavour to develop and carry out scientific research based on genetic resources provided by other Contracting Parties with the full participation of, and where possible in, such Contracting Parties.

7. Each Contracting Party shall take legislative, administrative or policy measures, as appropriate, and in accordance with Articles 16 and 19 and, where necessary, through the financial mechanism established by Articles 20 and 21 with the aim of sharing in a fair and equitable way the results of research and development and the benefits arising from the commercial and other utilization of genetic resources with the Contracting Party providing such resources. Such sharing shall be upon mutually agreed terms.

Article 16. Access to and Transfer of Technology

1. Each Contracting Party, recognizing that technology includes biotechnology, and that both access to and transfer of technology among Contracting Parties are essential elements for the attainment of the

objectives of this Convention, undertakes subject to the provisions of this Article to provide and/or facilitate access for and transfer to other Contracting Parties of technologies that are relevant to the conservation and sustainable use of biological diversity or make use of genetic resources and do not cause significant damage to the environment.

2. Access to and transfer of technology referred to in paragraph 1 above to developing countries shall be provided and/or facilitated under fair and most favourable terms, including on concessional and preferential terms where mutually agreed, and, where necessary, in accordance with the financial mechanism established by Articles 20 and 21. In the case of technology subject to patents and other intellectual property rights, such access and transfer shall be provided on terms which recognize and are consistent with the adequate and effective protection of intellectual property rights. The application of this paragraph shall be consistent with paragraphs 3, 4 and 5 below.

3. Each Contracting Party shall take legislative, administrative or policy measures, as appropriate, with the aim that Contracting Parties, in particular those that are developing countries, which provide genetic resources are provided access to and transfer of technology which makes use of those resources, on mutually agreed terms, including technology protected by patents and other intellectual property rights, where necessary, through the provisions of Articles 20 and 21 and in accordance with international law and consistent with paragraphs 4 and 5 below.

4. Each Contracting Party shall take legislative, administrative or policy measures, as appropriate, with the aim that the private sector facilitates access to, joint development and transfer of technology referred to in paragraph 1 above for the benefit of both governmental institutions and the private sector of developing countries and in this regard shall abide by the obligations included in paragraphs 1, 2 and 3 above.

5. The Contracting Parties, recognizing that patents and other intellectual property rights may have an influence on the implementation of this Convention, shall cooperate in this regard subject to national legislation and international law in order to ensure that such rights are supportive of and do not run counter to its objectives.

Article 17. Exchange of Information

1. The Contracting Parties shall facilitate the exchange of information, from all publicly available sources, relevant to the conservation and sustainable use of biological diversity, taking into account the special needs of developing countries.

2. Such exchange of information shall include exchange of results of technical, scientific and socio-economic research, as well as information on training and surveying programmes, specialized knowledge, indigenous and traditional knowledge as such and in combination with the technologies referred to in Article 16, paragraph 1. It shall also, where feasible, include repatriation of information.

Article 18. Technical and Scientific Cooperation

1. The Contracting Parties shall promote international technical and scientific cooperation in the field of conservation and sustainable use of biological diversity, where necessary, through the appropriate international and national institutions.

2. Each Contracting Party shall promote technical and scientific cooperation with other Contracting Parties, in particular developing countries, in implementing this Convention, *inter alia*, through the development and implementation of national policies. In promoting such cooperation, special attention should be given to the development and strengthening of national capabilities, by means of human resources development and institution building.

3. The Conference of the Parties, at its first meeting, shall determine how to establish a clearing-house mechanism to promote and facilitate technical and scientific cooperation.

4. The Contracting Parties shall, in accordance with national legislation and policies, encourage and develop methods of cooperation for the development and use of technologies, including indigenous and traditional technologies, in pursuance of the objectives of this Convention. For this purpose, the Contracting Parties shall also promote cooperation in the training of personnel and exchange of experts.

5. The Contracting Parties shall, subject to mutual agreement, promote the establishment of joint research programmes and joint ventures for the development of technologies relevant to the objectives of this Convention.

Article 19. Handling of Biotechnology and Distribution of its Benefits

1. Each Contracting Party shall take legislative, administrative or policy measures, as appropriate, to provide for the effective participation in biotechnological research activities by those Contracting Parties, especially developing countries, which provide the genetic resources for such research, and where feasible in such Contracting Parties.

2. Each Contracting Party shall take all practicable measures to promote and advance priority access on a fair and equitable basis by Contracting Parties, especially developing countries, to the results and benefits arising from biotechnologies based upon genetic resources provided by those Contracting Parties. Such access shall be on mutually agreed terms.

3. The Parties shall consider the need for and modalities of a protocol setting out appropriate procedures, including, in particular, advance informed agreement, in the field of the safe transfer, handling and use of any living modified organism resulting from biotechnology that may have adverse effect on the conservation and sustainable use of biological diversity.

4. Each Contracting Party shall, directly or by requiring any natural or legal person under its jurisdiction providing the organisms referred

7. Consideration shall also be given to the special situation of developing countries, including those that are most environmentally vulnerable, such as those with arid and semi-arid zones, coastal and mountainous areas.

Article 21. Financial Mechanism

1. There shall be a mechanism for the provision of financial resources to developing country Parties for purposes of this Convention on a grant or concessional basis the essential elements of which are described in this Article. The mechanism shall function under the authority and guidance of, and be accountable to, the Conference of the Parties for purposes of this Convention. The operations of the mechanism shall be carried out by such institutional structure as may be decided upon by the Conference of the Parties at its first meeting. For purposes of this Convention, the Conference of the Parties shall determine the policy, strategy, programme priorities and eligibility criteria relating to the access to and utilization of such resources. The contributions shall be such as to take into account the need for predictability, adequacy and timely flow of funds referred to in Article 20 in accordance with the amount of resources needed to be decided periodically by the Conference of the Parties and the importance of burden-sharing among the contributing Parties included in the list referred to in Article 20, paragraph 2. Voluntary contributions may also be made by the developed country Parties and by other countries and sources. The mechanism shall operate within a democratic and transparent system of governance.

2. Pursuant to the objectives of this Convention, the Conference of the Parties shall at its first meeting determine the policy, strategy and programme priorities, as well as detailed criteria and guidelines for eligibility for access to and utilization of the financial resources including monitoring and evaluation on a regular basis of such utilization. The Conference of the Parties shall decide on the arrangements to give effect to paragraph 1 above after consultation with the institutional structure entrusted with the operation of the financial mechanism.

3. The Conference of the Parties shall review the effectiveness of the mechanism established under this Article, including the criteria and guidelines referred to in paragraph 2 above, not less than two years after the entry into force of this Convention and thereafter on a regular basis. Based on such review, it shall take appropriate action to improve the effectiveness of the mechanism if necessary.

4. The Contracting Parties shall consider strengthening existing financial institutions to provide financial resources for the conservation and sustainable use of biological diversity.

Article 22. Relationship with Other International Conventions

1. The provisions of this Convention shall not affect the rights and obligations of any Contracting Party deriving from any existing international agreement, except where the exercise of those rights and obligations would cause a serious damage or threat to biological diversity.

to in paragraph 3 above, provide any available information about the use and safety regulations required by that Contracting Party in handling such organisms, as well as any available information on the potential adverse impact of the specific organisms concerned to the Contracting Party into which those organisms are to be introduced.

Article 20. Financial Resources

1. Each Contracting Party undertakes to provide, in accordance with its capabilities, financial support and incentives in respect of those national activities which are intended to achieve the objectives of this Convention, in accordance with its national plans, priorities and programmes.

2. The developed country Parties shall provide new and additional financial resources to enable developing country Parties to meet the agreed full incremental costs to them of implementing measures which fulfil the obligations of this Convention and to benefit from its provisions and which costs are agreed between a developing country Party and the institutional structure referred to in Article 21, in accordance with policy, strategy, programme priorities and eligibility criteria and an indicative list of incremental costs established by the Conference of the Parties. Other Parties, including countries undergoing the process of transition to a market economy, may voluntarily assume the obligations of the developed country Parties. For the purpose of this Article, the Conference of the Parties, shall at its first meeting establish a list of developed country Parties and other Parties which voluntarily assume the obligations of the developed country Parties. The Conference of the Parties shall periodically review and if necessary amend the list. Contributions from other countries and sources on a voluntary basis would also be encouraged. The implementation of these commitments shall take into account the need for adequacy, predictability and timely flow of funds and the importance of burden-sharing among the contributing Parties included in the list.

3. The developed country Parties may also provide, and developing country Parties avail themselves of, financial resources related to the implementation of this Convention through bilateral, regional and other multilateral channels.

4. The extent to which developing country Parties will effectively implement their commitments under this Convention will depend on the effective implementation by developed country Parties of their commitments under this Convention related to financial resources and transfer of technology and will take fully into account the fact that economic and social development and eradication of poverty are the first and overriding priorities of the developing country Parties.

5. The Parties shall take full account of the specific needs and special situation of least developed countries in their actions with regard to funding and transfer of technology.

6. The Contracting Parties shall also take into consideration the special conditions resulting from the dependence on, distribution and location of, biological diversity within developing country Parties, in particular small island States.

2. Contracting Parties shall implement this Convention with respect to the marine environment consistently with the rights and obligations of States under the law of the sea.

Article 23. Conference of the Parties

1. A Conference of the Parties is hereby established. The first meeting of the Conference of the Parties shall be convened by the Executive Director of the United Nations Environment Programme not later than one year after the entry into force of this Convention. Thereafter, ordinary meetings of the Conference of the Parties shall be held at regular intervals to be determined by the Conference at its first meeting.
2. Extraordinary meetings of the Conference of the Parties shall be held at such other times as may be deemed necessary by the Conference, or at the written request of any Party, provided that, within six months of the request being communicated to them by the Secretariat, it is supported by at least one third of the Parties.
3. The Conference of the Parties shall by consensus agree upon and adopt rules of procedure for itself and for any subsidiary body it may establish, as well as financial rules governing the funding of the Secretariat. At each ordinary meeting, it shall adopt a budget for the financial period until the next ordinary meeting.
4. The Conference of the Parties shall keep under review the implementation of this Convention, and, for this purpose, shall:
 - (a) Establish the form and the intervals for transmitting the information to be submitted in accordance with Article 26 and consider such information as well as reports submitted by any subsidiary body;
 - (b) Review scientific, technical and technological advice on biological diversity provided in accordance with Article 25;
 - (c) Consider and adopt, as required, protocols in accordance with Article 28;
 - (d) Consider and adopt, as required, in accordance with Articles 29 and 30, amendments to this Convention and its annexes;
 - (e) Consider amendments to any protocol, as well as to any annexes thereto, and, if so decided, recommend their adoption to the parties to the protocol concerned;
 - (f) Consider and adopt, as required, in accordance with Article 30, additional annexes to this Convention;
 - (g) Establish such subsidiary bodies, particularly, to provide scientific and technical advice, as are deemed necessary for the implementation of this Convention;
 - (h) Contact, through the Secretariat, the executive bodies of conventions dealing with matters covered by this Convention with a view to establishing appropriate forms of cooperation with them; and

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(1) Consider and undertake any additional action that may be required for the achievement of the purposes of this Convention in the light of experience gained in its operation.

5. The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State not Party to this Convention, may be represented as observers at meetings of the Conference of the Parties. Any other body or agency, whether governmental or non-governmental, qualified in fields relating to conservation and sustainable use of biological diversity, which has informed the Secretariat of its wish to be represented as an observer at a meeting of the Conference of the Parties, may be admitted unless at least one third of the Parties present object. The admission and participation of observers shall be subject to the rules of procedure adopted by the Conference of the Parties.

Article 24. Secretariat

1. A secretariat is hereby established. Its functions shall be:
 - (a) To arrange for and service meetings of the Conference of the Parties provided for in Article 23;
 - (b) To perform the functions assigned to it by any protocol;
 - (c) To prepare reports on the execution of its functions under this Convention and present them to the Conference of the Parties;
 - (d) To coordinate with other relevant international bodies and, in particular to enter into such administrative and contractual arrangements as may be required for the effective discharge of its functions; and
 - (e) To perform such other functions as may be determined by the Conference of the Parties.
2. At its first ordinary meeting, the Conference of the Parties shall designate the secretariat from amongst those existing competent international organizations which have signified their willingness to carry out the secretariat functions under this Convention.

Article 25. Subsidiary Body on Scientific, Technical and Technological Advice

1. A subsidiary body for the provision of scientific, technical and technological advice is hereby established to provide the Conference of the Parties and, as appropriate, its other subsidiary bodies with timely advice relating to the implementation of this Convention. This body shall be open to participation by all Parties and shall be multidisciplinary. It shall comprise government representatives competent in the relevant field of expertise. It shall report regularly to the Conference of the Parties on all aspects of its work.
2. Under the authority of and in accordance with guidelines laid down by the Conference of the Parties, and upon its request, this body shall:

(a) Provide scientific and technical assessments of the status of biological diversity;

(b) Prepare scientific and technical assessments of the effects of types of measures taken in accordance with the provisions of this Convention;

(c) Identify innovative, efficient and state-of-the-art technologies and know-how relating to the conservation and sustainable use of biological diversity and advise on the ways and means of promoting development and/or transferring such technologies;

(d) Provide advice on scientific programmes and international cooperation in research and development related to conservation and sustainable use of biological diversity; and

(e) Respond to scientific, technical, technological and methodological questions that the Conference of the Parties and its subsidiary bodies may put to the body.

3. The functions, terms of reference, organization and operation of this body may be further elaborated by the Conference of the Parties.

Article 26. Reports

Each Contracting Party shall, at intervals to be determined by the Conference of the Parties, present to the Conference of the Parties, reports on measures which it has taken for the implementation of the provisions of this Convention and their effectiveness in meeting the objectives of this Convention.

Article 27. Settlement of Disputes

1. In the event of a dispute between Contracting Parties concerning the interpretation or application of this Convention, the parties concerned shall seek solution by negotiation.

2. If the parties concerned cannot reach agreement by negotiation, they may jointly seek the good offices of, or request mediation by, a third party.

3. When ratifying, accepting, approving or acceding to this Convention, or at any time thereafter, a State or regional economic integration organization may declare in writing to the Depository that for a dispute not resolved in accordance with paragraph 1 or paragraph 2 above, it accepts one or both of the following means of dispute settlement as compulsory:

(a) Arbitration in accordance with the procedure laid down in Part I of Annex II;

(b) Submission of the dispute to the International Court of Justice.

4. If the parties to the dispute have not, in accordance with paragraph 3 above, accepted the same or any procedure, the dispute shall be submitted to conciliation in accordance with Part 2 of Annex II unless the parties otherwise agree.

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

Article 28. Adoption of Protocols

1. The Contracting Parties shall cooperate in the formulation and adoption of protocols to this Convention.

2. Protocols shall be adopted at a meeting of the Conference of the Parties.

3. The text of any proposed protocol shall be communicated to the Contracting Parties by the Secretariat at least six months before such a meeting.

Article 29. Amendment of the Convention or Protocols

1. Amendments to this Convention may be proposed by any Contracting Party. Amendments to any protocol may be proposed by any Party to that protocol.

2. Amendments to this Convention shall be adopted at a meeting of the Conference of the Parties. Amendments to any protocol shall be adopted at a meeting of the Parties to the Protocol in question. The text of any proposed amendment to this Convention or to any protocol, except as may otherwise be provided in such protocol, shall be communicated to the Parties to the instrument in question by the secretariat at least six months before the meeting at which it is proposed for adoption. The secretariat shall also communicate proposed amendments to the signatories to this Convention for information.

3. The Parties shall make every effort to reach agreement on any proposed amendment to this Convention or to any protocol by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a two-third majority vote of the Parties to the instrument in question present and voting at the meeting, and shall be submitted by the Depository to all Parties for ratification, acceptance or approval.

1. Ratification, acceptance or approval of amendments shall be notified to the Depository in writing. Amendments adopted in accordance with paragraph 3 above shall enter into force among Parties having accepted them on the ninetieth day after the deposit of instruments of ratification, acceptance or approval by at least two thirds of the Contracting Parties to this Convention or of the Parties to the protocol concerned. Except as may otherwise be provided in such protocol, thereafter the amendments shall enter into force for any other Party on the ninetieth day after that Party deposits its instrument of ratification, acceptance or approval of the amendments.

5. For the purposes of this Article, "Parties present and voting" means Parties present and casting an affirmative or negative vote.

Article 30. Adoption and Amendment of Annexes

1. The annexes to this Convention or to any protocol shall form an integral part of the Convention or of such protocol, as the case may be, and, unless expressly provided otherwise, a reference to this Convention or its protocols constitutes at the same time a reference to any annexes thereto. Such annexes shall be restricted to procedural, scientific, technical and administrative matters.

2. Except as may be otherwise provided in any protocol with respect to its annexes, the following procedure shall apply to the proposal, adoption and entry into force of additional annexes to this Convention or of annexes to any protocol:

(a) Annexes to this Convention or to any protocol shall be proposed and adopted according to the procedure laid down in Article 29;

(b) Any Party that is unable to approve an additional annex to this Convention or an annex to any protocol to which it is Party shall so notify the Depositary, in writing, within one year from the date of the communication of the adoption by the Depositary. The Depositary shall without delay notify all Parties of any such notification received. A Party may at any time withdraw a previous declaration of objection and the annexes shall thereupon enter into force for that Party subject to subparagraph (c) below;

(c) On the expiry of one year from the date of the communication of the adoption by the Depositary, the annex shall enter into force for all Parties to this Convention or to any protocol concerned which have not submitted a notification in accordance with the provisions of subparagraph (b) above.

3. The proposal, adoption and entry into force of amendments to annexes to this Convention or to any protocol shall be subject to the same procedure as for the proposal, adoption and entry into force of annexes to the Convention or annexes to any protocol.

4. If an additional annex or an amendment to an annex is related to an amendment to this Convention or to any protocol, the additional annex or amendment shall not enter into force until such time as the amendment to the Convention or to the protocol concerned enters into force.

Article 31. Right to Vote

1. Except as provided for in paragraph 2 below, each Contracting Party to this Convention or to any protocol shall have one vote.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote with a number of votes equal to the number of their member States which are Contracting Parties to this Convention or the relevant protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs, and vice versa.

Article 32. Relationship between this Convention and Its Protocols

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

2. Decisions under any protocol shall be taken only by the Parties to the protocol concerned. Any Contracting Party that has not ratified, accepted or approved a protocol may participate as an observer in any meeting of the parties to that protocol.

Article 33. Signature

This Convention shall be open for signature at Rio de Janeiro by all States and any regional economic integration organization from 5 June 1992 until 14 June 1992, and at the United Nations Headquarters in New York from 15 June 1992 to 4 June 1993.

Article 34. Ratification, Acceptance or Approval

1. This Convention and any protocol shall be subject to ratification, acceptance or approval by States and by regional economic integration organizations. Instruments of ratification, acceptance or approval shall be deposited with the Depositary.

2. Any organization referred to in paragraph 1 above which becomes a Contracting Party to this Convention or any protocol without any of its member States being a Contracting Party shall be bound by all the obligations under the Convention or the protocol, as the case may be. In the case of such organizations, one or more of whose member States is a Contracting Party to this Convention or relevant protocol, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under the Convention or protocol, as the case may be. In such cases, the organization and the member States shall not be entitled to exercise rights under the Convention or relevant protocol concurrently.

3. In their instruments of ratification, acceptance or approval, the organizations referred to in paragraph 1 above shall declare the extent of their competence with respect to the matters governed by the Convention or the relevant protocol. These organizations shall also inform the Depositary of any relevant modification in the extent of their competence.

Article 35. Accession

1. This Convention and any protocol shall be open for accession by States and by regional economic integration organizations from the date on which the Convention or the protocol concerned is closed for signature. The instruments of accession shall be deposited with the Depositary.

2. In their instruments of accession, the organizations referred to in paragraph 1 above shall declare the extent of their competence with respect to the matters governed by the Convention or the relevant

protocol. These organizations shall also inform the Depositary of any relevant modification in the extent of their competence.

3. The provisions of Article 34, paragraph 2, shall apply to regional economic integration organizations which accede to this Convention or any protocol.

Article 36. Entry Into Force

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

2. Any protocol shall enter into force on the ninetieth day after the date of deposit of the number of instruments of ratification, acceptance, approval or accession, specified in that protocol.

3. For each Contracting Party which ratifies, accepts or approves this Convention or accedes thereto after the deposit of the thirtieth instrument of ratification, acceptance, approval or accession, it shall enter into force on the ninetieth day after the date of deposit by such Contracting Party of its instrument of ratification, acceptance, approval or accession.

4. Any protocol, except as otherwise provided in such protocol, shall enter into force for a Contracting Party that ratifies, accepts or approves that protocol or accedes thereto after its entry into force pursuant to paragraph 2 above, on the ninetieth day after the date on which that Contracting Party deposits its instrument of ratification, acceptance, approval or accession, or on the date on which this Convention enters into force for that Contracting Party, whichever shall be the later.

5. For the purposes of paragraphs 1 and 2 above, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

Article 37. Reservations

No reservations may be made to this Convention.

Article 38. Withdrawals

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

2. Any such withdrawal shall take place upon expiry of one year after the date of its receipt by the Depositary, or on such later date as may be specified in the notification of the withdrawal.

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

Article 39. Financial Interim Arrangements

Provided that it has been fully restructured in accordance with the requirements of Article 21, the Global Environment Facility of the United Nations Development Programme, the United Nations Environment Programme and the International Bank for Reconstruction and Development shall be the institutional structure referred to in Article 21 on an interim basis, for the period between the entry into force of this Convention and the first meeting of the Conference of the Parties or until the Conference of the Parties decides which institutional structure will be designated in accordance with Article 21.

Article 40. Secretariat Interim Arrangements

The secretariat to be provided by the Executive Director of the United Nations Environment Programme shall be the secretariat referred to in Article 24, paragraph 2, on an interim basis for the period between the entry into force of this Convention and the first meeting of the Conference of the Parties.

Article 41. Depositary

The Secretary-General of the United Nations shall assume the functions of Depositary of this Convention and any protocols.

Article 42. Authentic Texts

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, being duly authorized to that effect, have signed this Convention.

Done at Rio de Janeiro on this fifth day of June, one thousand nine hundred and ninety-two.

[For the signatures, see p. 254 of this volume.]

Annex I

IDENTIFICATION AND MONITORING

1. Ecosystems and habitats: containing high diversity, large numbers of endemic or threatened species, or wilderness; required by migratory species; of social, economic, cultural or scientific importance; or, which are representative, unique or associated with key evolutionary or other biological processes;
2. Species and communities which are: threatened; wild relatives of domesticated or cultivated species; of medicinal, agricultural or other economic value; or social, scientific or cultural importance; or importance for research into the conservation and sustainable use of biological diversity, such as indicator species; and
3. Described genomes and genes of social, scientific or economic importance.

Annex II

Part I

ARBITRATION

Article 1

The claimant party shall notify the secretariat that the parties are referring a dispute to arbitration pursuant to Article 27. The notification shall state the subject-matter of arbitration and include, in particular, the articles of the Convention or the protocol, the interpretation or application of which are at issue. If the parties do not agree on the subject matter of the dispute before the President of the tribunal is designated, the arbitral tribunal shall determine the subject matter. The secretariat shall forward the information thus received to all Contracting Parties to this Convention or to the protocol concerned.

Article 2

1. In disputes between two parties, the arbitral tribunal shall consist of three members. Each of the parties to the dispute shall appoint an arbitrator and the two arbitrators so appointed shall designate by common agreement the third arbitrator who shall be the President of the tribunal. The latter shall not be a national of one of the parties to the dispute, nor have his or her usual place of residence in the territory of one of these parties, nor be employed by any of them, nor have dealt with the case in any other capacity.

2. In disputes between more than two parties, parties in the same interest shall appoint one arbitrator jointly by agreement.

3. Any vacancy shall be filled in the manner prescribed for the initial appointment.

Article 3

1. If the President of the arbitral tribunal has not been designated within two months of the appointment of the second arbitrator, the Secretary-General of the United Nations shall, at the request of a party, designate the President within a further two-month period.

2. If one of the parties to the dispute does not appoint an arbitrator within two months of receipt of the request, the other party may inform the Secretary-General who shall make the designation within a further two-month period.

Article 4

The arbitral tribunal shall render its decisions in accordance with the provisions of this Convention, any protocols concerned, and international law.

Article 5

Unless the parties to the dispute otherwise agree, the arbitral tribunal shall determine its own rules of procedure.

Article 6

The arbitral tribunal may, at the request of one of the parties, recommend essential interim measures of protection.

Article 7

The parties to the dispute shall facilitate the work of the arbitral tribunal and, in particular, using all means at their disposal, shall:

- (a) Provide it with all relevant documents, information and facilities; and
- (b) Enable it, when necessary, to call witnesses or experts and receive their evidence.

Article 8

The parties and the arbitrators are under an obligation to protect the confidentiality of any information they receive in confidence during the proceedings of the arbitral tribunal.

Article 9

Unless the arbitral tribunal determines otherwise because of the particular circumstances of the case, the costs of the tribunal shall be borne by the parties to the dispute in equal shares. The tribunal shall keep a record of all its costs, and shall furnish a final statement thereof to the parties.

Article 10

Any Contracting Party that has an interest of a legal nature in the subject-matter of the dispute which may be affected by the decision in the case, may intervene in the proceedings with the consent of the tribunal.

Article 11

The tribunal may hear and determine counterclaims arising directly out of the subject-matter of the dispute.

Article 12

Decisions both on procedure and substance of the arbitral tribunal shall be taken by a majority vote of its members.

Article 13

If one of the parties to the dispute does not appear before the arbitral tribunal or fails to defend its case, the other party may

request the tribunal to continue the proceedings and to make its award. Absence of a party or a failure of a party to defend its case shall not constitute a bar to the proceedings. Before rendering its final decision, the arbitral tribunal must satisfy itself that the claim is well founded in fact and law.

Article 14

The tribunal shall render its final decision within five months of the date on which it is fully constituted unless it finds it necessary to extend the time-limit for a period which should not exceed five more months.

Article 15

The final decision of the arbitral tribunal shall be confined to the subject-matter of the dispute and shall state the reasons on which it is based. It shall contain the names of the members who have participated and the date of the final decision. Any member of the tribunal may attach a separate or dissenting opinion to the final decision.

Article 16

The award shall be binding on the parties to the dispute. It shall be without appeal unless the parties to the dispute have agreed in advance to an appellate procedure.

Article 17

Any controversy which may arise between the parties to the dispute as regards the interpretation or manner of implementation of the final decision may be submitted by either party for decision to the arbitral tribunal which rendered it.

Part 2

CONCILIATION

Article 1

A conciliation commission shall be created upon the request of one of the parties to the dispute. The commission shall, unless the parties otherwise agree, be composed of five members, two appointed by each Party concerned and a President chosen jointly by those members.

Article 2

In disputes between more than two parties, parties in the same interest shall appoint their members of the commission jointly by agreement. Where two or more parties have separate interests or there is a disagreement as to whether they are of the same interest, they shall appoint their members separately.

Article 3

If any appointments by the parties are not made within two months of the date of the request to create a conciliation commission, the Secretary-General of the United Nations shall, if asked to do so by the party that made the request, make those appointments within a further two-month period.

Article 4

If a President of the conciliation commission has not been chosen within two months of the last of the members of the commission being appointed, the Secretary-General of the United Nations shall, if asked to do so by a party, designate a President within a further two-month period.

Article 5

The conciliation commission shall take its decisions by majority vote of its members. It shall, unless the parties to the dispute otherwise agree, determine its own procedure. It shall render a proposal for resolution of the dispute, which the parties shall consider in good faith.

Article 6

A disagreement as to whether the conciliation commission has competence shall be decided by the commission.

**Cartagena Protocol on Biosafety to the Convention
on Biological Diversity, 2000**



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No. 30619. Multilateral
CONVENTION ON BIOLOGICAL DIVERSITY. RIO DE JANEIRO, 5 JUNE 1992¹

CARTAGENA PROTOCOL ON BIOSAFETY TO THE CONVENTION ON BIOLOGICAL DIVERSITY. MONTREAL, 29 JANUARY 2000

Entry into force : 11 September 2003, in accordance with article 37 (2) (see following page)

Authentic texts : Arabic, Chinese, English, French, Russian and Spanish

Registration with the Secretariat of the United Nations : ex officio, 11 September 2003

No. 30619. Multilatéral
CONVENTION SUR LA DIVERSITÉ BIOLOGIQUE. RIO DE JANEIRO, 5 JUIN 1992¹

PROTOCOLE DE CARTAGENA SUR LA PRÉVENTION DES RISQUES BIOTECHNOLOGIQUES RELATIF À LA CONVENTION SUR LA DIVERSITÉ BIOLOGIQUE. MONTREAL, 29 JANVIER 2000

Entrée en vigueur : 11 septembre 2003, conformément au paragraphe 2 de l'article 37 (voir la page suivante)

Textes authentiques : arabe, anglais, français, russe et espagnol

Enregistrement auprès du Secrétariat des Nations Unies : d'office, 11 septembre 2003

1. United Nations, *Treaty Series*, Vol. 1760, 1-30619 — Nations Unies, *Recueil des Traités*, Vol. 1760, 1-30619

[ENGLISH TEXT — TEXTE ANGLAIS]

CARTAGENA PROTOCOL ON BIOSAFETY TO THE CONVENTION ON BIOLOGICAL DIVERSITY

The Parties to this Protocol,

Being Parties to the Convention on Biological Diversity, hereinafter referred to as "the Convention",

Recalling Article 19, paragraphs 3 and 4, and Articles 8 (g) and 17 of the Convention, Recalling also decision II/5 of 17 November 1995 of the Conference of the Parties to the Convention to develop a Protocol on biosafety, specifically focusing on transboundary movement of any living modified organism resulting from modern biotechnology that may have adverse effect on the conservation and sustainable use of biological diversity, setting out for consideration, in particular, appropriate procedures for advance informed agreement,

Reaffirming the precautionary approach contained in Principle 15 of the Rio Declaration on Environment and Development,

Aware of the rapid expansion of modern biotechnology and the growing public concern over its potential adverse effects on biological diversity, taking also into account risks to human health,

Recognizing that modern biotechnology has great potential for human well-being if developed and used with adequate safety measures for the environment and human health, Recognizing also the crucial importance to humankind of centres of origin and centres of genetic diversity,

Taking into account the limited capabilities of many countries, particularly developing countries, to cope with the nature and scale of known and potential risks associated with living modified organisms,

Recognizing that trade and environment agreements should be mutually supportive with a view to achieving sustainable development,

Emphasizing that this Protocol shall not be interpreted as implying a change in the rights and obligations of a Party under any existing international agreements,

Understanding that the above recital is not intended to subordinate this Protocol to other international agreements,

Have agreed as follows:

Article 1. Objective

In accordance with the precautionary approach contained in Principle 15 of the Rio Declaration on Environment and Development, the objective of this Protocol is to contribute to ensuring an adequate level of protection in the field of the safe transfer, handling and use of living modified organisms resulting from modern biotechnology that may have ad-

verse effects on the conservation and sustainable use of biological diversity, taking also into account risks to human health, and specifically focusing on transboundary movements.

Article 2. General provisions

1. Each Party shall take necessary and appropriate legal, administrative and other measures to implement its obligations under this Protocol.

2. The Parties shall ensure that the development, handling, transport, use, transfer and release of any living modified organisms are undertaken in a manner that prevents or reduces the risks to biological diversity, taking also into account risks to human health.

3. Nothing in this Protocol shall affect in any way the sovereignty of States over their territorial sea established in accordance with international law, and the sovereign rights and the jurisdiction which States have in their exclusive economic zones and their continental shelves in accordance with international law, and the exercise by ships and aircraft of all States of navigational rights and freedoms as provided for in international law and as reflected in relevant international instruments.

4. Nothing in this Protocol shall be interpreted as restricting the right of a Party to take action that is more protective of the conservation and sustainable use of biological diversity than that called for in this Protocol, provided that such action is consistent with the objective and the provisions of this Protocol and is in accordance with that Party's other obligations under international law.

5. The Parties are encouraged to take into account, as appropriate, available expertise, instruments and work undertaken in international forums with competence in the area of risks to human health.

Article 3. Use of terms

For the purposes of this Protocol:

(a) "Conference of the Parties" means the Conference of the Parties to the Convention; (b) "Contained use" means any operation, undertaken within a facility, installation or other physical structure, which involves living modified organisms that are controlled by specific measures that effectively limit their contact with, and their impact on, the external environment;

(c) "Export" means intentional transboundary movement from one Party to another Party;

(d) "Exporter" means any legal or natural person, under the jurisdiction of the Party of export, who arranges for a living modified organism to be exported;

(e) "Import" means intentional transboundary movement into one Party from another Party;

(f) "Importer" means any legal or natural person, under the jurisdiction of the Party of import, who arranges for a living modified organism to be imported;

(g) "Living modified organism" means any living organism that possesses a novel combination of genetic material obtained through the use of modern biotechnology;

(h) "Living organism" means any biological entity capable of transferring or replicating genetic material, including sterile organisms, viruses and viroids;

(i) "Modern biotechnology" means the application of:

- a. In vitro nucleic acid techniques, including recombinant deoxyribonucleic acid (DNA) and direct injection of nucleic acid into cells or organelles, or
- b. Fusion of cells beyond the taxonomic family, that overcome natural physiological reproductive or recombination barriers and that are not techniques used in traditional breeding and selection;

(j) "Regional economic integration organization" means an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by this Protocol and which has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to it;

(k) "Transboundary movement" means the movement of a living modified organism from one Party to another Party, save that for the purposes of Articles 17 and 24 transboundary movement extends to movement between Parties and non-Parties.

Article 4. Scope

This Protocol shall apply to the transboundary movement, transit, handling and use of all living modified organisms that may have adverse effects on the conservation and sustainable use of biological diversity, taking also into account risks to human health.

Article 5. Pharmaceuticals

Notwithstanding Article 4 and without prejudice to any right of a Party to subject all living modified organisms to risk assessment prior to the making of decisions on import, this Protocol shall not apply to the transboundary movement of living modified organisms which are pharmaceuticals for humans that are addressed by other relevant international agreements or organisations.

Article 6. Transit and contained use

1. Notwithstanding Article 4 and without prejudice to any right of a Party of transit to regulate the transport of living modified organisms through its territory and make available to the Biosafety Clearing-House, any decision of that Party, subject to Article 2, paragraph 3, regarding the transit through its territory of a specific living modified organism, the provisions of this Protocol with respect to the advance informed agreement procedure shall not apply to living modified organisms in transit.

2. Notwithstanding Article 4 and without prejudice to any right of a Party to subject all living modified organisms to risk assessment prior to decisions on import and to set standards for contained use within its jurisdiction, the provisions of this Protocol with respect to the advance informed agreement procedure shall not apply to the transboundary movement of living modified organisms destined for contained use undertaken in accordance with the standards of the Party of import.

Article 7. Application of the advance informed agreement procedure

1. Subject to Articles 5 and 6, the advance informed agreement procedure in Articles 8 to 10 and 12 shall apply prior to the first intentional transboundary movement of living modified organisms for intentional introduction into the environment of the Party of import.
2. "Intentional introduction into the environment" in paragraph 1 above, does not refer to living modified organisms intended for direct use as food or feed, or for processing.
3. Article 11 shall apply prior to the first transboundary movement of living modified organisms intended for direct use as food or feed, or for processing.
4. The advance informed agreement procedure shall not apply to the intentional transboundary movement of living modified organisms identified in a decision of the Conference of the Parties serving as the meeting of the Parties to this Protocol as being not likely to have adverse effects on the conservation and sustainable use of biological diversity, taking also into account risks to human health.

Article 8. Notification

1. The Party of export shall notify, or require the exporter to ensure notification to, in writing, the competent national authority of the Party of import prior to the intentional transboundary movement of a living modified organism that falls within the scope of Article 7, paragraph 1.

The notification shall contain, at a minimum, the information specified in Annex I.

2. The Party of export shall ensure that there is a legal requirement for the accuracy of information provided by the exporter.

Article 9. Acknowledgement of receipt of notification

1. The Party of import shall acknowledge receipt of the notification, in writing, to the notifier within ninety days of its receipt.

2. The acknowledgement shall state:

- (a) The date of receipt of the notification;
 - (b) Whether the notification, prima facie, contains the information referred to in Article 8;
 - (c) Whether to proceed according to the domestic regulatory framework of the Party of import or according to the procedure specified in Article 10.
3. The domestic regulatory framework referred to in paragraph 2 (c) above, shall be consistent with this Protocol.
4. A failure by the Party of import to acknowledge receipt of a notification shall not imply its consent to an intentional transboundary movement.

Article 10. Decision procedure

1. Decisions taken by the Party of import shall be in accordance with Article 15.
2. The Party of import shall, within the period of time referred to in Article 9, inform the notifier, in writing, whether the intentional transboundary movement may proceed:
 - (a) Only after the Party of import has given its written consent; or
 - (b) After no less than ninety days without a subsequent written consent.
3. Within two hundred and seventy days of the date of receipt of notification, the Party of import shall communicate, in writing, to the notifier and to the Biosafety Clearing-House the decision referred to in paragraph 2 (a) above:
 - (a) Approving the import, with or without conditions, including how the decision will apply to subsequent imports of the same living modified organism;
 - (b) Prohibiting the import;
 - (c) Requesting additional relevant information in accordance with its domestic regulatory framework or Annex I; in calculating the time within which the Party of import is to respond, the number of days it has to wait for additional relevant information shall not be taken into account; or
 - (d) Informing the notifier that the period specified in this paragraph is extended by a defined period of time.
4. Except in a case in which consent is unconditional, a decision under paragraph 3 above, shall set out the reasons on which it is based.
5. A failure by the Party of import to communicate its decision within two hundred and seventy days of the date of receipt of the notification shall not imply its consent to an intentional transboundary movement.
6. Lack of scientific certainty due to insufficient relevant scientific information and knowledge regarding the extent of the potential adverse effects of a living modified organism on the conservation and sustainable use of biological diversity in the Party of import, taking also into account risks to human health, shall not prevent that Party from taking a decision, as appropriate, with regard to the import of the living modified organism in question as referred to in paragraph 3 above, in order to avoid or minimize such potential adverse effects.
7. The Conference of the Parties serving as the meeting of the Parties shall, at its first meeting, decide upon appropriate procedures and mechanisms to facilitate decision-making by Parties of import.

Article 11. Procedure for living modified organisms intended for direct use as food or feed, or for processing

1. A Party that makes a final decision regarding domestic use, including placing on the market, of a living modified organism that may be subject to transboundary movement for direct use as food or feed, or for processing shall, within fifteen days of making that decision, inform the Parties through the Biosafety Clearing-House. This information shall con-

tain, at a minimum, the information specified in Annex II. The Party shall provide a copy of the information, in writing, to the national focal point of each Party that informs the Secretariat in advance that it does not have access to the Biosafety Clearing-House. This provision shall not apply to decisions regarding field trials.

2. The Party making a decision under paragraph 1 above, shall ensure that there is a legal requirement for the accuracy of information provided by the applicant.
 3. Any Party may request additional information from the authority identified in paragraph (b) of Annex II.
 4. A Party may take a decision on the import of living modified organisms intended for direct use as food or feed, or for processing, under its domestic regulatory framework that is consistent with the objective of this Protocol.
 5. Each Party shall make available to the Biosafety Clearing-House copies of any national laws, regulations and guidelines applicable to the import of living modified organisms intended for direct use as food or feed, or for processing, if available.
 6. A developing country Party or a Party with an economy in transition may, in the absence of the domestic regulatory framework referred to in paragraph 4 above, and in exercise of its domestic jurisdiction, declare through the Biosafety Clearing-House that its decision prior to the first import of a living modified organism intended for direct use as food or feed, or for processing, on which information has been provided under paragraph 1 above, will be taken according to the following:
 - (a) A risk assessment undertaken in accordance with Annex III; and
 - (b) A decision made within a predictable timeframe, not exceeding two hundred and seventy days.
 7. Failure by a Party to communicate its decision according to paragraph 6 above, shall not imply its consent or refusal to the import of a living modified organism intended for direct use as food or feed, or for processing, unless otherwise specified by the Party.
 8. Lack of scientific certainty due to insufficient relevant scientific information and knowledge regarding the extent of the potential adverse effects of a living modified organism on the conservation and sustainable use of biological diversity in the Party of import, taking also into account risks to human health, shall not prevent that Party from taking a decision, as appropriate, with regard to the import of that living modified organism intended for direct use as food or feed, or for processing, in order to avoid or minimize such potential adverse effects.
 9. A Party may indicate its needs for financial and technical assistance and capacity-building with respect to living modified organisms intended for direct use as food or feed, or for processing.
- Parties shall cooperate to meet these needs in accordance with Articles 22 and 28.

Article 12. Review of decisions

1. A Party of import may, at any time, in light of new scientific information on potential adverse effects on the conservation and sustainable use of biological diversity, taking also into account the risks to human health, review and change a decision regarding an in-

tentional transboundary movement. In such case, the Party shall, within thirty days, inform any notifier that has previously notified movements of the living modified organism referred to in such decision, as well as the Biosafety Clearing-House, and shall set out the reasons for its decision.

2. A Party of export or a notifier may request the Party of import to review a decision it has made in respect of it under Article 10 where the Party of export or the notifier considers that:

- (a) A change in circumstances has occurred that may influence the outcome of the risk assessment upon which the decision was based; or
 - (b) Additional relevant scientific or technical information has become available.
3. The Party of import shall respond in writing to such a request within ninety days and set out the reasons for its decision.
4. The Party of import may, at its discretion, require a risk assessment for subsequent imports.

Article 13. Simplified procedure

1. A Party of import may, provided that adequate measures are applied to ensure the safe intentional transboundary movement of living modified organisms in accordance with the objective of this Protocol, specify in advance to the Biosafety Clearing-House:

- (a) Cases in which intentional transboundary movement to it may take place at the same time as the movement is notified to the Party of import; and
 - (b) Imports of living modified organisms to it to be exempted from the advance informed agreement procedure.
- Notifications under subparagraph (a) above, may apply to subsequent similar movements to the same Party.

2. The information relating to an intentional transboundary movement that is to be provided in the notifications referred to in paragraph 1 (a) above, shall be the information specified in Annex 1.

Article 14. Bilateral, regional and multilateral agreements and arrangements

1. Parties may enter into bilateral, regional and multilateral agreements and arrangements regarding intentional transboundary movements of living modified organisms, consistent with the objective of this Protocol and provided that such agreements and arrangements do not result in a lower level of protection than that provided for by the Protocol.

2. The Parties shall inform each other, through the Biosafety Clearing-House, of any such bilateral, regional and multilateral agreements and arrangements that they have entered into before or after the date of entry into force of this Protocol.

3. The provisions of this Protocol shall not affect intentional transboundary movements that take place pursuant to such agreements and arrangements as between the parties to those agreements or arrangements.

4. Any Party may determine that its domestic regulations shall apply with respect to specific imports to it and shall notify the Biosafety Clearing-House of its decision.

Article 15. Risk assessment

1. Risk assessments undertaken pursuant to this Protocol shall be carried out in a scientifically sound manner, in accordance with Annex III and taking into account recognized risk assessment techniques. Such risk assessments shall be based, at a minimum, on information provided in accordance with Article 8 and other available scientific evidence in order to identify and evaluate the possible adverse effects of living modified organisms on the conservation and sustainable use of biological diversity, taking also into account risks to human health.

2. The Party of import shall ensure that risk assessments are carried out for decisions taken under Article 10. It may require the exporter to carry out the risk assessment.

3. The cost of risk assessment shall be borne by the notifier if the Party of import so requires.

Article 16. Risk management

1. The Parties shall, taking into account Article 8 (g) of the Convention, establish and maintain appropriate mechanisms, measures and strategies to regulate, manage and control risks identified in the risk assessment provisions of this Protocol associated with the use, handling and transboundary movement of living modified organisms.

2. Measures based on risk assessment shall be imposed to the extent necessary to prevent adverse effects of the living modified organism on the conservation and sustainable use of biological diversity, taking also into account risks to human health, within the territory of the Party of import.

3. Each Party shall take appropriate measures to prevent unintentional transboundary movements of living modified organisms, including such measures as requiring a risk assessment to be carried out prior to the first release of a living modified organism.

4. Without prejudice to paragraph 2 above, each Party shall endeavour to ensure that any living modified organism, whether imported or locally developed, has undergone an appropriate period of observation that is commensurate with its life-cycle or generation time before it is put to its intended use.

5. Parties shall cooperate with a view to:

- (a) Identifying living modified organisms or specific traits of living modified organisms that may have adverse effects on the conservation and sustainable use of biological diversity, taking also into account risks to human health; and
- (b) Taking appropriate measures regarding the treatment of such living modified organisms or specific traits.

Article 17. Unintentional transboundary movements and emergency measures

1. Each Party shall take appropriate measures to notify affected or potentially affected States, the Biosafety Clearing-House and, where appropriate, relevant international organizations, when it knows of an occurrence under its jurisdiction resulting in a release that leads, or may lead, to an unintentional transboundary movement of a living modified organism that is likely to have significant adverse effects on the conservation and sustainable use of biological diversity, taking also into account risks to human health in such States. The notification shall be provided as soon as the Party knows of the above situation.
2. Each Party shall, no later than the date of entry into force of this Protocol for it, make available to the Biosafety Clearing-House the relevant details setting out its point of contact for the purposes of receiving notifications under this Article.
3. Any notification arising from paragraph 1 above, should include:
 - (a) Available relevant information on the estimated quantities and relevant characteristics and/or traits of the living modified organism;
 - (b) Information on the circumstances and estimated date of the release, and on the use of the living modified organism in the originating Party;
 - (c) Any available information about the possible adverse effects on the conservation and sustainable use of biological diversity, taking also into account risks to human health, as well as available information about possible risk management measures;
 - (d) Any other relevant information; and
 - (e) A point of contact for further information.

4. In order to minimize any significant adverse effects on the conservation and sustainable use of biological diversity, taking also into account risks to human health, each Party, under whose jurisdiction the release of the living modified organism referred to in paragraph 1 above, occurs, shall immediately consult the affected or potentially affected States to enable them to determine appropriate responses and initiate necessary action, including emergency measures.

Article 18. Handling, transport, packaging and identification

1. In order to avoid adverse effects on the conservation and sustainable use of biological diversity, taking also into account risks to human health, each Party shall take necessary measures to require that living modified organisms that are subject to intentional transboundary movement within the scope of this Protocol are handled, packaged and transported under conditions of safety, taking into consideration relevant international rules and standards.
2. Each Party shall take measures to require that documentation accompanying:
 - (a) Living modified organisms that are intended for direct use as food or feed, or for processing, clearly identifies that they "may contain" living modified organisms and are not intended for intentional introduction into the environment, as well as a contact point for further information.

The Conference of the Parties serving as the meeting of the Parties to this Protocol shall take a decision on the detailed requirements for this purpose, including specification of their identity and any unique identification, no later than two years after the date of entry into force of this Protocol;

- (b) Living modified organisms that are destined for contained use clearly identifies them as living modified organisms; and specifies any requirements for the safe handling, storage, transport and use, the contact point for further information, including the name and address of the individual and institution to whom the living modified organisms are consigned; and
 - (c) Living modified organisms that are intended for intentional introduction into the environment of the Party of import and any other living modified organisms within the scope of the Protocol, clearly identifies them as living modified organisms; specifies the identity and relevant traits and/or characteristics, any requirements for the safe handling, storage, transport and use, the contact point for further information and, as appropriate, the name and address of the importer and exporter; and contains a declaration that the movement is in conformity with the requirements of this Protocol applicable to the exporter.
3. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall consider the need for and modalities of developing standards with regard to identification, handling, packaging and transport practices, in consultation with other relevant international bodies.

Article 19. Competent national authorities and national focal points

1. Each Party shall designate one national focal point to be responsible on its behalf for liaison with the Secretariat. Each Party shall also designate one or more competent national authorities, which shall be responsible for performing the administrative functions required by this Protocol and which shall be authorized to act on its behalf with respect to those functions. A Party may designate a single entity to fulfil the functions of both focal point and competent national authority.
 2. Each Party shall, no later than the date of entry into force of this Protocol for it, notify the Secretariat of the names and addresses of its focal point and its competent national authority or authorities. Where a Party designates more than one competent national authority, it shall convey to the Secretariat, with its notification thereof, relevant information on the respective responsibilities of those authorities. Where applicable, such information shall, at a minimum, specify which competent authority is responsible for which type of living modified organism.
- Each Party shall forthwith notify the Secretariat of any changes in the designation of its national focal point or in the name and address or responsibilities of its competent national authority or authorities.
3. The Secretariat shall forthwith inform the Parties of the notifications it receives under paragraph 2 above, and shall also make such information available through the Biosafety Clearing-House.

Article 20. Information sharing and the biosafety clearing-house

1. A Biosafety Clearing-House is hereby established as part of the clearing-house mechanism under Article 18, paragraph 3, of the Convention, in order to:
 - (a) Facilitate the exchange of scientific, technical, environmental and legal information, and experience with, living modified organisms; and
 - (b) Assist Parties to implement the Protocol, taking into account the special needs of developing country Parties, in particular the least developed and small island developing States among them, and countries with economies in transition as well as countries that are centres of origin and centres of genetic diversity.
2. The Biosafety Clearing-House shall serve as a means through which information is made available for the purposes of paragraph 1 above. It shall provide access to information made available by the Parties relevant to the implementation of the Protocol. It shall also provide access, where possible, to other international biosafety information exchange mechanisms.
3. Without prejudice to the protection of confidential information, each Party shall make available to the Biosafety Clearing-House any information required to be made available to the Biosafety Clearing-House under this Protocol, and:
 - (a) Any existing laws, regulations and guidelines for implementation of the Protocol, as well as information required by the Parties for the advance informed agreement procedure;
 - (b) Any bilateral, regional and multilateral agreements and arrangements;
 - (c) Summaries of its risk assessments or environmental reviews of living modified organisms generated by its regulatory process, and carried out in accordance with Article 15, including, where appropriate, relevant information regarding products thereof, namely, processed materials that are of living modified organism origin, containing detectable novel combinations of replicable genetic material obtained through the use of modern biotechnology;
 - (d) Its final decisions regarding the importation or release of living modified organisms; and
 - (e) Reports submitted by it pursuant to Article 33, including those on implementation of the advance informed agreement procedure.
4. The modalities of the operation of the Biosafety Clearing-House, including reports on its activities, shall be considered and decided upon by the Conference of the Parties serving as the meeting of the Parties to this Protocol at its first meeting, and kept under review thereafter.

Article 21. Confidential information

1. The Party of import shall permit the notifier to identify information submitted under the procedures of this Protocol or required by the Party of import as part of the advance informed agreement procedure of the Protocol that is to be treated as confidential. Justification shall be given in such cases upon request.

2. The Party of import shall consult the notifier if it decides that information identified by the notifier as confidential does not qualify for such treatment and shall, prior to any disclosure, inform the notifier of its decision, providing reasons on request, as well as an opportunity for consultation and for an internal review of the decision prior to disclosure.
3. Each Party shall protect confidential information received under this Protocol, including any confidential information received in the context of the advance informed agreement procedure of the Protocol. Each Party shall ensure that it has procedures to protect such information and shall protect the confidentiality of such information in a manner no less favourable than its treatment of confidential information in connection with domestically produced living modified organisms.
4. The Party of import shall not use such information for a commercial purpose, except with the written consent of the notifier.
5. If a notifier withdraws or has withdrawn a notification, the Party of import shall respect the confidentiality of commercial and industrial information, including research and development information as well as information on which the Party and the notifier disagree as to its confidentiality.
6. Without prejudice to paragraph 5 above, the following information shall not be considered confidential:
 - (a) The name and address of the notifier;
 - (b) A general description of the living modified organism or organisms;
 - (c) A summary of the risk assessment of the effects on the conservation and sustainable use of biological diversity, taking also into account risks to human health; and
 - (d) Any methods and plans for emergency response.

Article 22. Capacity-building

1. The Parties shall cooperate in the development and/or strengthening of human resources and institutional capacities in biosafety, including biotechnology to the extent that it is required for biosafety, for the purpose of the effective implementation of this Protocol, in developing country Parties, in particular the least developed and small island developing States among them, and in Parties with economies in transition, including through existing global, regional, subregional and national institutions and organizations and, as appropriate, through facilitating private sector involvement.
2. For the purposes of implementing paragraph 1 above, in relation to cooperation, the needs of developing country Parties, in particular the least developed and small island developing States among them, for financial resources and access to and transfer of technology and know-how in accordance with the relevant provisions of the Convention, shall be taken fully into account for capacity-building in biosafety. Cooperation in capacity-building shall, subject to the different situation, capabilities and requirements of each Party, include scientific and technical training in the proper and safe management of biotechnology, and in the use of risk assessment and risk management for biosafety, and the enhancement of technological and institutional capacities in biosafety. The needs of Parties with econo-

mies in transition shall also be taken fully into account for such capacity-building in bio-safety.

Article 23. Public awareness and participation

1. The Parties shall:
 - (a) Promote and facilitate public awareness, education and participation concerning the safe transfer, handling and use of living modified organisms in relation to the conservation and sustainable use of biological diversity, taking also into account risks to human health. In doing so, the Parties shall cooperate, as appropriate, with other States and international bodies;
 - (b) Endeavour to ensure that public awareness and education encompass access to information on living modified organisms identified in accordance with this Protocol that may be imported.
2. The Parties shall, in accordance with their respective laws and regulations, consult the public in the decision-making process regarding living modified organisms and shall make the results of such decisions available to the public, while respecting confidential information in accordance with Article 21.
3. Each Party shall endeavour to inform its public about the means of public access to the Biosafety Clearing-House.

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Article 24. Non-parties

1. Transboundary movements of living modified organisms between Parties and non-Parties shall be consistent with the objective of this Protocol. The Parties may enter into bilateral, regional and multilateral agreements and arrangements with non-Parties regarding such transboundary movements.
2. The Parties shall encourage non-Parties to adhere to this Protocol and to contribute appropriate information to the Biosafety Clearing-House on living modified organisms released in, or moved into or out of, areas within their national jurisdictions.

Article 25. Illegal transboundary movements

1. Each Party shall adopt appropriate domestic measures aimed at preventing and, if appropriate, penalizing transboundary movements of living modified organisms carried out in contravention of its domestic measures to implement this Protocol. Such movements shall be deemed illegal transboundary movements.
2. In the case of an illegal transboundary movement, the affected Party may request the Party of origin to dispose, at its own expense, of the living modified organism in question by repatriation or destruction, as appropriate.
3. Each Party shall make available to the Biosafety Clearing-House information concerning cases of illegal transboundary movements pertaining to it.

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Article 26. Socio-economic considerations

1. The Parties, in reaching a decision on import under this Protocol or under its domestic measures implementing the Protocol, may take into account, consistent with their international obligations, socio-economic considerations arising from the impact of living modified organisms on the conservation and sustainable use of biological diversity, especially with regard to the value of biological diversity to indigenous and local communities.
2. The Parties are encouraged to cooperate on research and information exchange on any socio-economic impacts of living modified organisms, especially on indigenous and local communities.

Article 27. Liability and redress

The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first meeting, adopt a process with respect to the appropriate elaboration of international rules and procedures in the field of liability and redress for damage resulting from transboundary movements of living modified organisms, analysing and taking due account of the ongoing processes in international law on these matters, and shall endeavour to complete this process within four years.

Article 28. Financial mechanism and resources

1. In considering financial resources for the implementation of this Protocol, the Parties shall take into account the provisions of Article 20 of the Convention.
2. The financial mechanism established in Article 21 of the Convention shall, through the institutional structure entrusted with its operation, be the financial mechanism for this Protocol.
3. Regarding the capacity-building referred to in Article 22 of this Protocol, the Conference of the Parties serving as the meeting of the Parties to this Protocol, in providing guidance with respect to the financial mechanism referred to in paragraph 2 above, for consideration by the Conference of the Parties, shall take into account the need for financial resources by developing country Parties, in particular the least developed and the small island developing States among them.
4. In the context of paragraph 1 above, the Parties shall also take into account the needs of the developing country Parties, in particular the least developed and the small island developing States among them, and of the Parties with economies in transition, in their efforts to identify and implement their capacity-building requirements for the purposes of the implementation of this Protocol.
5. The guidance to the financial mechanism of the Convention in relevant decisions of the Conference of the Parties, including those agreed before the adoption of this Protocol, shall apply, *mutatis mutandis*, to the provisions of this Article.
6. The developed country Parties may also provide, and the developing country Parties and the Parties with economies in transition avail themselves of, financial and technologi-

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cal resources for the implementation of the provisions of this Protocol through bilateral, regional and multilateral channels.

Article 29. Conference of the parties serving as the meeting of the parties to this protocol

1. The Conference of the Parties shall serve as the meeting of the Parties to this Protocol.
2. Parties to the Convention that are not Parties to this Protocol may participate as observers in the proceedings of any meeting of the Conference of the Parties serving as the meeting of the Parties to this Protocol. When the Conference of the Parties serves as the meeting of the Parties to this Protocol, decisions under this Protocol shall be taken only by those that are Parties to it.
3. When the Conference of the Parties serves as the meeting of the Parties to this Protocol, any member of the bureau of the Conference of the Parties representing a Party to the Convention but, at that time, not a Party to this Protocol, shall be substituted by a member to be elected by and from among the Parties to this Protocol.
4. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall keep under regular review the implementation of this Protocol and shall make, within its mandate, the decisions necessary to promote its effective implementation. It shall perform the functions assigned to it by this Protocol and shall:
 - (a) Make recommendations on any matters necessary for the implementation of this Protocol;
 - (b) Establish such subsidiary bodies as are deemed necessary for the implementation of this Protocol;
 - (c) Seek and utilize, where appropriate, the services and cooperation of, and information provided by, competent international organizations and intergovernmental and non-governmental bodies;
 - (d) Establish the form and the intervals for transmitting the information to be submitted in accordance with Article 33 of this Protocol and consider such information as well as reports submitted by any subsidiary body;
 - (e) Consider and adopt, as required, amendments to this Protocol and its annexes, as well as any additional annexes to this Protocol, that are deemed necessary for the implementation of this Protocol; and
 - (f) Exercise such other functions as may be required for the implementation of this Protocol.

Subsequent ordinary meetings of the Conference of the Parties serving as the meeting of the Parties to this Protocol shall be held in conjunction with ordinary meetings of the Conference of the Parties, unless otherwise decided by the Conference of the Parties serving as the meeting of the Parties to this Protocol.

7. Extraordinary meetings of the Conference of the Parties serving as the meeting of the Parties to this Protocol shall be held at such other times as may be deemed necessary by the Conference of the Parties serving as the meeting of the Parties to this Protocol, or at the written request of any Party, provided that, within six months of the request being communicated to the Parties by the Secretariat, it is supported by at least one third of the Parties.

8. The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State member thereof or observers thereto not party to the Convention, may be represented as observers at meetings of the Conference of the Parties serving as the meeting of the Parties to this Protocol. Any body or agency, whether national or international, governmental or non-governmental, that is qualified in matters covered by this Protocol and that has informed the Secretariat of its wish to be represented at a meeting of the Conference of the Parties serving as a meeting of the Parties to this Protocol as an observer, may be so admitted, unless at least one third of the Parties present object. Except as otherwise provided in this Article, the admission and participation of observers shall be subject to the rules of procedure, as referred to in paragraph 5 above.

Article 30. Subsidiary bodies

1. Any subsidiary body established by or under the Convention may, upon a decision by the Conference of the Parties serving as the meeting of the Parties to this Protocol, serve the Protocol, in which case the meeting of the Parties shall specify which functions that body shall exercise.
2. Parties to the Convention that are not Parties to this Protocol may participate as observers in the proceedings of any meeting of any such subsidiary bodies. When a subsidiary body of the Convention serves as a subsidiary body to this Protocol, decisions under the Protocol shall be taken only by the Parties to the Protocol.
3. When a subsidiary body of the Convention exercises its functions with regard to matters concerning this Protocol, any member of the bureau of that subsidiary body representing a Party to the Convention but, at that time, not a Party to the Protocol, shall be substituted by a member to be elected by and from among the Parties to the Protocol.

Article 31. Secretariat

1. The Secretariat established by Article 24 of the Convention shall serve as the secretariat to this Protocol.
2. Article 24, paragraph 1, of the Convention on the functions of the Secretariat shall apply, *mutatis mutandis*, to this Protocol.
3. To the extent that they are distinct, the costs of the secretariat services for this Protocol shall be met by the Parties hereto. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall

ing of the Parties to this Protocol shall, at its first meeting, decide on the necessary budgetary arrangements to this end.

Article 32. Relationship with the convention

Except as otherwise provided in this Protocol, the provisions of the Convention relating to its protocols shall apply to this Protocol.

Article 33. Monitoring and reporting

Each Party shall monitor the implementation of its obligations under this Protocol, and shall, at intervals to be determined by the Conference of the Parties serving as the meeting of the Parties to this Protocol, report to the Conference of the Parties serving as the meeting of the Parties to this Protocol on measures that it has taken to implement the Protocol.

Article 34. Compliance

The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first meeting, consider and approve cooperative procedures and institutional mechanisms to promote compliance with the provisions of this Protocol and to address cases of non-compliance.

These procedures and mechanisms shall include provisions to offer advice or assistance, where appropriate. They shall be separate from, and without prejudice to, the dispute settlement procedures and mechanisms established by Article 27 of the Convention.

Article 35. Assessment and review

The Conference of the Parties serving as the meeting of the Parties to this Protocol shall undertake, five years after the entry into force of this Protocol and at least every five years thereafter, an evaluation of the effectiveness of the Protocol, including an assessment of its procedures and annexes.

Article 36. Signature

This Protocol shall be open for signature at the United Nations Office at Nairobi by States and regional economic integration organizations from 15 to 26 May 2000, and at United Nations Headquarters in New York from 5 June 2000 to 4 June 2001.

Article 37. Entry into force

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fiftieth instrument of ratification, acceptance, approval or accession by States or regional economic integration organizations that are Parties to the Convention.
2. This Protocol shall enter into force for a State or regional economic integration organization that ratifies, accepts or approves this Protocol or accedes thereto after its entry

into force pursuant to paragraph 1 above, on the ninetieth day after the date on which that State or regional economic integration organization deposits its instrument of ratification, acceptance, approval or accession, or on the date on which the Convention enters into force for that State or regional economic integration organization, whichever shall be the later.

3. For the purposes of paragraphs 1 and 2 above, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

Article 38. Reservations

No reservations may be made to this Protocol.

Article 39. Withdrawal

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

2. Any such withdrawal shall take place upon expiry of one year after the date of its receipt by the Depository, or on such later date as may be specified in the notification of the withdrawal.

Article 40. Authentic texts

The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

In witness whereof the undersigned, being duly authorized to that effect, have signed this Protocol.

Done at Montreal on this twenty-ninth day of January, two thousand.

ANNEX I

INFORMATION REQUIRED IN NOTIFICATIONS UNDER ARTICLES 8, 10 AND 13

- (a) Name, address and contact details of the exporter.
- (b) Name, address and contact details of the importer.
- (c) Name and identity of the living modified organism, as well as the domestic classification, if any, of the biosafety level of the living modified organism in the State of export.
- (d) Intended date or dates of the transboundary movement, if known.
- (e) Taxonomic status, common name, point of collection or acquisition, and characteristics of recipient organism or parental organisms related to biosafety.
- (f) Centres of origin and centres of genetic diversity, if known, of the recipient organism and/or the parental organisms and a description of the habitats where the organisms may persist or proliferate.
- (g) Taxonomic status, common name, point of collection or acquisition, and characteristics of the donor organism or organisms related to biosafety.
- (h) Description of the nucleic acid or the modification introduced, the technique used, and the resulting characteristics of the living modified organism.
- (i) Intended use of the living modified organism or products thereof, namely, processed materials that are of living modified organism origin, containing detectable novel combinations of replicable genetic material obtained through the use of modern biotechnology.
- (j) Quantity or volume of the living modified organism to be transferred.
- (k) A previous and existing risk assessment report consistent with Annex III.
- (l) Suggested methods for the safe handling, storage, transport and use, including packaging, labelling, documentation, disposal and contingency procedures, where appropriate.
- (m) Regulatory status of the living modified organism within the State of export (for example, whether it is prohibited in the State of export, whether there are other restrictions, or whether it has been approved for general release) and, if the living modified organism is banned in the State of export, the reason or reasons for the ban.
- (n) Result and purpose of any notification by the exporter to other States regarding the living modified organism to be transferred.
- (o) A declaration that the above-mentioned information is factually correct.

ANNEX II

INFORMATION REQUIRED CONCERNING LIVING MODIFIED ORGANISMS INTENDED FOR DIRECT USE AS FOOD OR FEED, OR FOR PROCESSING UNDER ARTICLE II

- (a) The name and contact details of the applicant for a decision for domestic use.
- (b) The name and contact details of the authority responsible for the decision.
- (c) Name and identity of the living modified organism.
- (d) Description of the gene modification, the technique used, and the resulting characteristics of the living modified organism.
- (e) Any unique identification of the living modified organism.
- (f) Taxonomic status, common name, point of collection or acquisition, and characteristics of recipient organism or parental organisms related to biosafety.
- (g) Centres of origin and centres of genetic diversity, if known, of the recipient organism and/or the parental organisms and a description of the habitats where the organisms may persist or proliferate.
- (h) Taxonomic status, common name, point of collection or acquisition, and characteristics of the donor organism or organisms related to biosafety.
- (i) Approved uses of the living modified organism.
- (j) A risk assessment report consistent with Annex III.
- (k) Suggested methods for the safe handling, storage, transport and use, including packaging, labelling, documentation, disposal and contingency procedures, where appropriate.

ANNEX III

RISK ASSESSMENT

Objective

1. The objective of risk assessment, under this Protocol, is to identify and evaluate the potential adverse effects of living modified organisms on the conservation and sustainable use of biological diversity in the likely potential receiving environment, taking also into account risks to human health.

2. Risk assessment is, *inter alia*, used by competent authorities to make informed decisions regarding living modified organisms.

*Use of risk assessment**General principles*

3. Risk assessment should be carried out in a scientifically sound and transparent manner, and can take into account expert advice of, and guidelines developed by, relevant international organizations.

4. Lack of scientific knowledge or scientific consensus should not necessarily be interpreted as indicating a particular level of risk, an absence of risk, or an acceptable risk.

5. Risks associated with living modified organisms or products thereof, namely, processed materials that are of living modified organism origin, containing detectable novel combinations of replicable genetic material obtained through the use of modern biotechnology, should be considered in the context of the risks posed by the non-modified recipients or parental organisms in the likely potential receiving environment.

6. Risk assessment should be carried out on a case-by-case basis. The required information may vary in nature and level of detail from case to case, depending on the living modified organism concerned, its intended use and the likely potential receiving environment.

Methodology

7. The process of risk assessment may on the one hand give rise to a need for further information about specific subjects, which may be identified and requested during the assessment process, while on the other hand information on other subjects may not be relevant in some instances.

8. To fulfil its objective, risk assessment entails, as appropriate, the following steps:

(a) An identification of any novel genotypic and phenotypic characteristics associated with the living modified organism that may have adverse effects on biological diversity in the likely potential receiving environment, taking also into account risks to human health;

(b) An evaluation of the likelihood of these adverse effects being realized, taking into account the level and kind of exposure of the likely potential receiving environment to the living modified organism;

(c) An evaluation of the consequences should these adverse effects be realized;

(d) An estimation of the overall risk posed by the living modified organism based on the evaluation of the likelihood and consequences of the identified adverse effects being realized;

(e) A recommendation as to whether or not the risks are acceptable or manageable, including, where necessary, identification of strategies to manage these risks; and

(f) Where there is uncertainty regarding the level of risk, it may be addressed by requesting further information on the specific issues of concern or by implementing appropriate risk management strategies and/or monitoring the living modified organism in the receiving environment.

Points to consider

9. Depending on the case, risk assessment takes into account the relevant technical and scientific details regarding the characteristics of the following subjects:

(a) Recipient organism or parental organisms. The biological characteristics of the recipient organism or parental organisms, including information on taxonomic status, common name, origin, centres of origin and centres of genetic diversity, if known, and a description of the habitat where the organisms may persist or proliferate;

(b) Donor organism or organisms. Taxonomic status and common name, source, and the relevant biological characteristics of the donor organisms;

(c) Vector. Characteristics of the vector, including its identity, if any, and its source or origin, and its host range;

(d) Insert or inserts and/or characteristics of modification. Genetic characteristics of the inserted nucleic acid and the function it specifies, and/or characteristics of the modification introduced;

(e) Living modified organism. Identity of the living modified organism, and the differences between the biological characteristics of the living modified organism and those of the recipient organism or parental organisms;

(f) Detection and identification of the living modified organism. Suggested detection and identification methods and their specificity, sensitivity and reliability;

(g) Information relating to the intended use. Information relating to the intended use of the living modified organism, including new or changed use compared to the recipient organism or parental organisms; and

(h) Receiving environment. Information on the location, geographical, climatic and ecological characteristics, including relevant information on biological diversity and centres of origin of the likely potential receiving environment.

**Nagoya Protocol on Access to Genetic Resources
and the Fair and Equitable Sharing of Benefits
Arising from their Utilization to the Convention on
Biological Diversity, 2010**

**NAGOYA PROTOCOL ON ACCESS TO GENETIC RESOURCES
AND THE FAIR AND EQUITABLE SHARING OF BENEFITS
ARISING FROM THEIR UTILIZATION TO THE CONVENTION
ON BIOLOGICAL DIVERSITY**

**NAGOYA PROTOCOL ON ACCESS TO GENETIC RESOURCES AND
THE FAIR AND EQUITABLE SHARING OF BENEFITS ARISING
FROM THEIR UTILIZATION TO THE CONVENTION ON
BIOLOGICAL DIVERSITY**

The Parties to this Protocol,

Being Parties to the Convention on Biological Diversity, hereinafter referred to as “the Convention”,

Recalling that the fair and equitable sharing of benefits arising from the utilization of genetic resources is one of three core objectives of the Convention, and *recognizing* that this Protocol pursues the implementation of this objective within the Convention,

Reaffirming the sovereign rights of States over their natural resources and according to the provisions of the Convention,

Recalling further Article 15 of the Convention,

Recognizing the important contribution to sustainable development made by technology transfer and cooperation to build research and innovation capacities for adding value to genetic resources in developing countries, in accordance with Articles 16 and 19 of the Convention,

Recognizing that public awareness of the economic value of ecosystems and biodiversity and the fair and equitable sharing of this economic value with the custodians of biodiversity are key incentives for the conservation of biological diversity and the sustainable use of its components,

Acknowledging the potential role of access and benefit-sharing to contribute to the conservation and sustainable use of biological diversity, poverty eradication and environmental sustainability and thereby contributing to achieving the Millennium Development Goals,

Acknowledging the linkage between access to genetic resources and the fair and equitable sharing of benefits arising from the utilization of such resources,

Recognizing the importance of providing legal certainty with respect to access to genetic resources and the fair and equitable sharing of benefits arising from their utilization,



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2010

Further recognizing the importance of promoting equity and fairness in negotiation of mutually agreed terms between providers and users of genetic resources,

Recognizing also the vital role that women play in access and benefit-sharing and *affirming* the need for the full participation of women at all levels of policy-making and implementation for biodiversity conservation,

Determined to further support the effective implementation of the access and benefit-sharing provisions of the Convention,

Recognizing that an innovative solution is required to address the fair and equitable sharing of benefits derived from the utilization of genetic resources and traditional knowledge associated with genetic resources that occur in transboundary situations or for which it is not possible to grant or obtain prior informed consent,

Recognizing the importance of genetic resources to food security, public health, biodiversity conservation, and the mitigation of and adaptation to climate change,

Recognizing the special nature of agricultural biodiversity, its distinctive features and problems needing distinctive solutions,

Recognizing the interdependence of all countries with regard to genetic resources for food and agriculture as well as their special nature and importance for achieving food security worldwide and for sustainable development of agriculture in the context of poverty alleviation and climate change and acknowledging the fundamental role of the International Treaty on Plant Genetic Resources for Food and Agriculture and the FAO Commission on Genetic Resources for Food and Agriculture in this regard,

Mindful of the International Health Regulations (2005) of the World Health Organization and the importance of ensuring access to human pathogens for public health preparedness and response purposes,

Acknowledging ongoing work in other international forums relating to access and benefit-sharing,

Recalling the Multilateral System of Access and Benefit-sharing established under the International Treaty on Plant Genetic Resources for Food and Agriculture developed in harmony with the Convention,

Recognizing that international instruments related to access and benefit-sharing should be mutually supportive with a view to achieving the objectives of the Convention,

Recalling the relevance of Article 8(j) of the Convention as it relates to traditional knowledge associated with genetic resources and the fair and equitable sharing of benefits arising from the utilization of such knowledge,

Noting the interrelationship between genetic resources and traditional knowledge, their inseparable nature for indigenous and local communities, the importance of the traditional knowledge for the conservation of biological diversity and the sustainable use of its components, and for the sustainable livelihoods of these communities,

Recognizing the diversity of circumstances in which traditional knowledge associated with genetic resources is held or owned by indigenous and local communities,

Mindful that it is the right of indigenous and local communities to identify the rightful holders of their traditional knowledge associated with genetic resources, within their communities,

Further recognizing the unique circumstances where traditional knowledge associated with genetic resources is held in countries, which may be oral, documented or in other forms, reflecting a rich cultural heritage relevant for conservation and sustainable use of biological diversity,

Noting the United Nations Declaration on the Rights of Indigenous Peoples, and

Affirming that nothing in this Protocol shall be construed as diminishing or extinguishing the existing rights of indigenous and local communities,

Have agreed as follows:

ARTICLE 1

OBJECTIVE

The objective of this Protocol is the fair and equitable sharing of the benefits arising from the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to

technologies, and by appropriate funding, thereby contributing to the conservation of biological diversity and the sustainable use of its components.

ARTICLE 2

USE OF TERMS

The terms defined in Article 2 of the Convention shall apply to this Protocol. In addition, for the purposes of this Protocol:

- (a) "Conference of the Parties" means the Conference of the Parties to the Convention;
- (b) "Convention" means the Convention on Biological Diversity;
- (c) "Utilization of genetic resources" means to conduct research and development on the genetic and/or biochemical composition of genetic resources, including through the application of biotechnology as defined in Article 2 of the Convention;
- (d) "Biotechnology" as defined in Article 2 of the Convention means any technological application that uses biological systems, living organisms, or derivatives thereof, to make or modify products or processes for specific use;
- (e) "Derivative" means a naturally occurring biochemical compound resulting from the genetic expression or metabolism of biological or genetic resources, even if it does not contain functional units of heredity.

ARTICLE 3

SCOPE

This Protocol shall apply to genetic resources within the scope of Article 15 of the Convention and to the benefits arising from the utilization of such resources. This Protocol shall also apply to traditional knowledge associated with genetic resources within the scope of the Convention and to the benefits arising from the utilization of such knowledge.

ARTICLE 4

RELATIONSHIP WITH INTERNATIONAL AGREEMENTS AND INSTRUMENTS

1. The provisions of this Protocol shall not affect the rights and obligations of any Party deriving from any existing international agreement, except where the exercise of those rights and obligations would cause a serious damage or threat to biological diversity. This paragraph is not intended to create a hierarchy between this Protocol and other international instruments.
2. Nothing in this Protocol shall prevent the Parties from developing and implementing other relevant international agreements, including other specialized access and benefit-sharing agreements, provided that they are supportive of and do not run counter to the objectives of the Convention and this Protocol.
3. This Protocol shall be implemented in a mutually supportive manner with other international instruments relevant to this Protocol. Due regard should be paid to useful and relevant ongoing work or practices under such international instruments and relevant international organizations, provided that they are supportive of and do not run counter to the objectives of the Convention and this Protocol.
4. This Protocol is the instrument for the implementation of the access and benefit-sharing provisions of the Convention. Where a specialized international access and benefit-sharing instrument applies that is consistent with, and does not run counter to the objectives of the Convention and this Protocol, this Protocol does not apply for the Party or Parties to the specialized instrument in respect of the specific genetic resource covered by and for the purpose of the specialized instrument.

ARTICLE 5

FAIR AND EQUITABLE BENEFIT-SHARING

1. In accordance with Article 15, paragraphs 3 and 7 of the Convention, benefits arising from the utilization of genetic resources as well as subsequent applications and commercialization shall be shared in a fair and equitable way with the Party providing such resources that is the country of origin of such resources or a Party that has acquired the genetic resources in accordance with the Convention. Such sharing shall be upon mutually agreed terms.

2. Each Party shall take legislative, administrative or policy measures, as appropriate, with the aim of ensuring that benefits arising from the utilization of genetic resources that are held by indigenous and local communities, in accordance with domestic legislation regarding the established rights of these indigenous and local communities over these genetic resources, are shared in a fair and equitable way with the communities concerned, based on mutually agreed terms.

3. To implement paragraph 1 above, each Party shall take legislative, administrative or policy measures, as appropriate.

4. Benefits may include monetary and non-monetary benefits, including but not limited to those listed in the Annex.

5. Each Party shall take legislative, administrative or policy measures, as appropriate, in order that the benefits arising from the utilization of traditional knowledge associated with genetic resources are shared in a fair and equitable way with indigenous and local communities holding such knowledge. Such sharing shall be upon mutually agreed terms.

ARTICLE 6

ACCESS TO GENETIC RESOURCES

1. In the exercise of sovereign rights over natural resources, and subject to domestic access and benefit-sharing legislation or regulatory requirements, access to genetic resources for their utilization shall be subject to the prior informed consent of the Party providing such resources that is the country of origin of such resources or a Party that has acquired the genetic resources in accordance with the Convention, unless otherwise determined by that Party.

2. In accordance with domestic law, each Party shall take measures, as appropriate, with the aim of ensuring that the prior informed consent or approval and involvement of indigenous and local communities is obtained for access to genetic resources where they have the established right to grant access to such resources.

3. Pursuant to paragraph 1 above, each Party requiring prior informed consent shall take the necessary legislative, administrative or policy measures, as appropriate, to:

(a) Provide for legal certainty, clarity and transparency of their domestic access and benefit-sharing legislation or regulatory requirements;

(b) Provide for fair and non-arbitrary rules and procedures on accessing genetic resources;

(c) Provide information on how to apply for prior informed consent;

(d) Provide for a clear and transparent written decision by a competent national authority, in a cost-effective manner and within a reasonable period of time;

(e) Provide for the issuance at the time of access of a permit or its equivalent as evidence of the decision to grant prior informed consent and of the establishment of mutually agreed terms, and notify the Access and Benefit-sharing Clearing-House accordingly;

(f) Where applicable, and subject to domestic legislation, set out criteria and/or processes for obtaining prior informed consent or approval and involvement of indigenous and local communities for access to genetic resources; and

(g) Establish clear rules and procedures for requiring and establishing mutually agreed terms. Such terms shall be set out in writing and may include, *inter alia*:

(i) A dispute settlement clause;

(ii) Terms on benefit-sharing, including in relation to intellectual property rights;

(iii) Terms on subsequent third-party use, if any; and

(iv) Terms on changes of intent, where applicable.

ARTICLE 7

ACCESS TO TRADITIONAL KNOWLEDGE ASSOCIATED WITH GENETIC RESOURCES

In accordance with domestic law, each Party shall take measures, as appropriate, with the aim of ensuring that traditional knowledge associated with genetic resources that is held by indigenous and local communities is accessed with the prior and informed consent or approval and involvement of these indigenous and local communities, and that mutually agreed terms have been established.

ARTICLE 8

SPECIAL CONSIDERATIONS

In the development and implementation of its access and benefit-sharing legislation or regulatory requirements, each Party shall:

- (a) Create conditions to promote and encourage research which contributes to the conservation and sustainable use of biological diversity, particularly in developing countries, including through simplified measures on access for non-commercial research purposes, taking into account the need to address a change of intent for such research;
- (b) Pay due regard to cases of present or imminent emergencies that threaten or damage human, animal or plant health, as determined nationally or internationally. Parties may take into consideration the need for expeditious access to genetic resources and expeditious fair and equitable sharing of benefits arising out of the use of such genetic resources, including access to affordable treatments by those in need, especially in developing countries;
- (c) Consider the importance of genetic resources for food and agriculture and their special role for food security.

ARTICLE 9

CONTRIBUTION TO CONSERVATION AND SUSTAINABLE USE

The Parties shall encourage users and providers to direct benefits arising from the utilization of genetic resources towards the conservation of biological diversity and the sustainable use of its components.

ARTICLE 10

GLOBAL MULTILATERAL BENEFIT-SHARING MECHANISM

Parties shall consider the need for and modalities of a global multilateral benefit-sharing mechanism to address the fair and equitable sharing of benefits derived from the utilization of genetic resources and traditional knowledge associated with genetic resources that occur in transboundary situations or for which it is not possible to grant or obtain prior informed consent. The benefits shared by users of genetic resources and traditional knowledge associated with genetic resources through this mechanism shall be used to support the conservation of biological diversity and the sustainable use of its components globally.

ARTICLE 11

TRANSBOUNDARY COOPERATION

1. In instances where the same genetic resources are found *in situ* within the territory of more than one Party, those Parties shall endeavour to cooperate, as appropriate, with the involvement of indigenous and local communities concerned, where applicable, with a view to implementing this Protocol.
2. Where the same traditional knowledge associated with genetic resources is shared by one or more indigenous and local communities in several Parties, those Parties shall endeavour to cooperate, as appropriate, with the involvement of the indigenous and local communities concerned, with a view to implementing the objective of this Protocol.

ARTICLE 12

TRADITIONAL KNOWLEDGE ASSOCIATED WITH GENETIC RESOURCES

1. In implementing their obligations under this Protocol, Parties shall in accordance with domestic law take into consideration indigenous and local communities' customary laws, community protocols and procedures, as applicable, with respect to traditional knowledge associated with genetic resources.
2. Parties, with the effective participation of the indigenous and local communities concerned, shall establish mechanisms to inform potential users of traditional knowledge associated with genetic resources about their obligations, including measures as made available through the Access and Benefit-sharing Clearing-House for access to and fair and equitable sharing of benefits arising from the utilization of such knowledge.
3. Parties shall endeavour to support, as appropriate, the development by indigenous and local communities, including women within these communities, of:
 - (a) Community protocols in relation to access to traditional knowledge associated with genetic resources and the fair and equitable sharing of benefits arising out of the utilization of such knowledge;
 - (b) Minimum requirements for mutually agreed terms to secure the fair and equitable sharing of benefits arising from the utilization of traditional knowledge associated with genetic resources; and

(c) Model contractual clauses for benefit-sharing arising from the utilization of traditional knowledge associated with genetic resources.

4. Parties, in their implementation of this Protocol, shall, as far as possible, not restrict the customary use and exchange of genetic resources and associated traditional knowledge within and amongst indigenous and local communities in accordance with the objectives of the Convention.

ARTICLE 13

NATIONAL FOCAL POINTS AND COMPETENT NATIONAL AUTHORITIES

1. Each Party shall designate a national focal point on access and benefit-sharing. The national focal point shall make information available as follows:

(a) For applicants seeking access to genetic resources, information on procedures for obtaining prior informed consent and establishing mutually agreed terms, including benefit-sharing;

(b) For applicants seeking access to traditional knowledge associated with genetic resources, where possible, information on procedures for obtaining prior informed consent or approval and involvement, as appropriate, of indigenous and local communities and establishing mutually agreed terms including benefit-sharing; and

(c) Information on competent national authorities, relevant indigenous and local communities and relevant stakeholders.

The national focal point shall be responsible for liaison with the Secretariat.

2. Each Party shall designate one or more competent national authorities on access and benefit-sharing. Competent national authorities shall, in accordance with applicable national legislative, administrative or policy measures, be responsible for granting access or, as applicable, issuing written evidence that access requirements have been met and be responsible for advising on applicable procedures and requirements for obtaining prior informed consent and entering into mutually agreed terms.

3. A Party may designate a single entity to fulfil the functions of both focal point and competent national authority.

4. Each Party shall, no later than the date of entry into force of this Protocol for it, notify the Secretariat of the contact information of its national

focal point and its competent national authority or authorities. Where a Party designates more than one competent national authority, it shall convey to the Secretariat, with its notification thereof, relevant information on the respective responsibilities of those authorities. Where applicable, such information shall, at a minimum, specify which competent authority is responsible for the genetic resources sought. Each Party shall forthwith notify the Secretariat of any changes in the designation of its national focal point or in the contact information or responsibilities of its competent national authority or authorities.

5. The Secretariat shall make information received pursuant to paragraph 4 above available through the Access and Benefit-sharing Clearing-House.

ARTICLE 14

THE ACCESS AND BENEFIT-SHARING CLEARING-HOUSE AND INFORMATION SHARING

1. An Access and Benefit-sharing Clearing-House is hereby established as part of the clearing-house mechanism under Article 18, paragraph 3, of the Convention. It shall serve as a means for sharing of information related to access and benefit-sharing. In particular, it shall provide access to information made available by each Party relevant to the implementation of this Protocol.

2. Without prejudice to the protection of confidential information, each Party shall make available to the Access and Benefit-sharing Clearing-House any information required by this Protocol, as well as information required pursuant to the decisions taken by the Conference of the Parties serving as the meeting of the Parties to this Protocol. The information shall include:

(a) Legislative, administrative and policy measures on access and benefit-sharing;

(b) Information on the national focal point and competent national authority or authorities; and

(c) Permits or their equivalent issued at the time of access as evidence of the decision to grant prior informed consent and of the establishment of mutually agreed terms.

3. Additional information, if available and as appropriate, may include:

(a) Relevant competent authorities of indigenous and local communities, and information as so decided;

- (b) Model contractual clauses;
 - (c) Methods and tools developed to monitor genetic resources; and
 - (d) Codes of conduct and best practices.
4. The modalities of the operation of the Access and Benefit-sharing Clearing-House, including reports on its activities, shall be considered and decided upon by the Conference of the Parties serving as the meeting of the Parties to this Protocol at its first meeting, and kept under review thereafter.

ARTICLE 15

**COMPLIANCE WITH DOMESTIC LEGISLATION
OR REGULATORY REQUIREMENTS ON ACCESS
AND BENEFIT-SHARING**

1. Each Party shall take appropriate, effective and proportionate legislative, administrative or policy measures to provide that genetic resources utilized within its jurisdiction have been accessed in accordance with prior informed consent and that mutually agreed terms have been established, as required by the domestic access and benefit-sharing legislation or regulatory requirements of the other Party.
2. Parties shall take appropriate, effective and proportionate measures to address situations of non-compliance with measures adopted in accordance with paragraph 1 above.
3. Parties shall, as far as possible and as appropriate, cooperate in cases of alleged violation of domestic access and benefit-sharing legislation or regulatory requirements referred to in paragraph 1 above.

ARTICLE 16

**COMPLIANCE WITH DOMESTIC LEGISLATION OR
REGULATORY REQUIREMENTS ON ACCESS AND BENEFIT-
SHARING FOR TRADITIONAL KNOWLEDGE ASSOCIATED
WITH GENETIC RESOURCES**

1. Each Party shall take appropriate, effective and proportionate legislative, administrative or policy measures, as appropriate, to provide that traditional knowledge associated with genetic resources utilized within their jurisdiction has been accessed in accordance with prior informed consent or approval and involvement of indigenous and local communities and that

mutually agreed terms have been established, as required by domestic access and benefit-sharing legislation or regulatory requirements of the other Party where such indigenous and local communities are located.

2. Each Party shall take appropriate, effective and proportionate measures to address situations of non-compliance with measures adopted in accordance with paragraph 1 above.
3. Parties shall, as far as possible and as appropriate, cooperate in cases of alleged violation of domestic access and benefit-sharing legislation or regulatory requirements referred to in paragraph 1 above.

ARTICLE 17

MONITORING THE UTILIZATION OF GENETIC RESOURCES

1. To support compliance, each Party shall take measures, as appropriate, to monitor and to enhance transparency about the utilization of genetic resources. Such measures shall include:
 - (a) The designation of one or more checkpoints, as follows:
 - (i) Designated checkpoints would collect or receive, as appropriate, relevant information related to prior informed consent, to the source of the genetic resource, to the establishment of mutually agreed terms, and/or to the utilization of genetic resources, as appropriate;
 - (ii) Each Party shall, as appropriate and depending on the particular characteristics of a designated checkpoint, require users of genetic resources to provide the information specified in the above paragraph at a designated checkpoint. Each Party shall take appropriate, effective and proportionate measures to address situations of non-compliance;
 - (iii) Such information, including from internationally recognized certificates of compliance where they are available, will, without prejudice to the protection of confidential information, be provided to relevant national authorities, to the Party providing prior informed consent and to the Access and Benefit-sharing Clearing-House, as appropriate;

(iv) Checkpoints must be effective and should have functions relevant to implementation of this subparagraph (a). They should be relevant to the utilization of genetic resources, or to the collection of relevant information at, *inter alia*, any stage of research, development, innovation, pre-commercialization or commercialization.

(b) Encouraging users and providers of genetic resources to include provisions in mutually agreed terms to share information on the implementation of such terms, including through reporting requirements; and

(c) Encouraging the use of cost-effective communication tools and systems.

2. A permit or its equivalent issued in accordance with Article 6, paragraph 3 (e) and made available to the Access and Benefit-sharing Clearing-House, shall constitute an internationally recognized certificate of compliance.

3. An internationally recognized certificate of compliance shall serve as evidence that the genetic resource which it covers has been accessed in accordance with prior informed consent and that mutually agreed terms have been established, as required by the domestic access and benefit-sharing legislation or regulatory requirements of the Party providing prior informed consent.

4. The internationally recognized certificate of compliance shall contain the following minimum information when it is not confidential:

- (a) Issuing authority;
- (b) Date of issuance;
- (c) The provider;
- (d) Unique identifier of the certificate;
- (e) The person or entity to whom prior informed consent was granted;
- (f) Subject-matter or genetic resources covered by the certificate;
- (g) Confirmation that mutually agreed terms were established;

- (h) Confirmation that prior informed consent was obtained; and
- (i) Commercial and/or non-commercial use.

ARTICLE 18

COMPLIANCE WITH MUTUALLY AGREED TERMS

1. In the implementation of Article 6, paragraph 3 (g) (i) and Article 7, each Party shall encourage providers and users of genetic resources and/or traditional knowledge associated with genetic resources to include provisions in mutually agreed terms to cover, where appropriate, dispute resolution including:

- (a) The jurisdiction to which they will subject any dispute resolution processes;
- (b) The applicable law; and/or
- (c) Options for alternative dispute resolution, such as mediation or arbitration.

2. Each Party shall ensure that an opportunity to seek recourse is available under their legal systems, consistent with applicable jurisdictional requirements, in cases of disputes arising from mutually agreed terms.

3. Each Party shall take effective measures, as appropriate, regarding:

- (a) Access to justice; and
- (b) The utilization of mechanisms regarding mutual recognition and enforcement of foreign judgments and arbitral awards.

4. The effectiveness of this article shall be reviewed by the Conference of the Parties serving as the meeting of the Parties to this Protocol in accordance with Article 31 of this Protocol.

ARTICLE 19

MODEL CONTRACTUAL CLAUSES

1. Each Party shall encourage, as appropriate, the development, update and use of sectoral and cross-sectoral model contractual clauses for mutually agreed terms.

2. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall periodically take stock of the use of sectoral and cross-sectoral model contractual clauses.

ARTICLE 20

CODES OF CONDUCT, GUIDELINES AND BEST PRACTICES AND/OR STANDARDS

1. Each Party shall encourage, as appropriate, the development, update and use of voluntary codes of conduct, guidelines and best practices and/or standards in relation to access and benefit-sharing.
2. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall periodically take stock of the use of voluntary codes of conduct, guidelines and best practices and/or standards and consider the adoption of specific codes of conduct, guidelines and best practices and/or standards.

ARTICLE 21

AWARENESS-RAISING

Each Party shall take measures to raise awareness of the importance of genetic resources and traditional knowledge associated with genetic resources, and related access and benefit-sharing issues. Such measures may include, *inter alia*:

- (a) Promotion of this Protocol, including its objective;
- (b) Organization of meetings of indigenous and local communities and relevant stakeholders;
- (c) Establishment and maintenance of a help desk for indigenous and local communities and relevant stakeholders;
- (d) Information dissemination through a national clearing-house;
- (e) Promotion of voluntary codes of conduct, guidelines and best practices and/or standards in consultation with indigenous and local communities and relevant stakeholders;
- (f) Promotion of, as appropriate, domestic, regional and international exchanges of experience;

(g) Education and training of users and providers of genetic resources and traditional knowledge associated with genetic resources about their access and benefit-sharing obligations;

(h) Involvement of indigenous and local communities and relevant stakeholders in the implementation of this Protocol; and

(i) Awareness-raising of community protocols and procedures of indigenous and local communities.

ARTICLE 22

CAPACITY

1. The Parties shall cooperate in the capacity-building, capacity development and strengthening of human resources and institutional capacities to effectively implement this Protocol in developing country Parties, in particular the least developed countries and small island developing States among them, and Parties with economies in transition, including through existing global, regional, subregional and national institutions and organizations. In this context, Parties should facilitate the involvement of indigenous and local communities and relevant stakeholders, including non-governmental organizations and the private sector.

2. The need of developing country Parties, in particular the least developed countries and small island developing States among them, and Parties with economies in transition for financial resources in accordance with the relevant provisions of the Convention shall be taken fully into account for capacity-building and development to implement this Protocol.

3. As a basis for appropriate measures in relation to the implementation of this Protocol, developing country Parties, in particular the least developed countries and small island developing States among them, and Parties with economies in transition should identify their national capacity needs and priorities through national capacity self-assessments. In doing so, such Parties should support the capacity needs and priorities of indigenous and local communities and relevant stakeholders, as identified by them, emphasizing the capacity needs and priorities of women.

4. In support of the implementation of this Protocol, capacity-building and development may address, *inter alia*, the following key areas:

- (a) Capacity to implement, and to comply with the obligations of, this Protocol;

(b) Capacity to negotiate mutually agreed terms;

(c) Capacity to develop, implement and enforce domestic legislative, administrative or policy measures on access and benefit-sharing; and

(d) Capacity of countries to develop their endogenous research capabilities to add value to their own genetic resources.

5. Measures in accordance with paragraphs 1 to 4 above may include, *inter alia*:

(a) Legal and institutional development;

(b) Promotion of equity and fairness in negotiations, such as training to negotiate mutually agreed terms;

(c) The monitoring and enforcement of compliance;

(d) Employment of best available communication tools and Internet-based systems for access and benefit-sharing activities;

(e) Development and use of valuation methods;

(f) Bioprospecting, associated research and taxonomic studies;

(g) Technology transfer, and infrastructure and technical capacity to make such technology transfer sustainable;

(h) Enhancement of the contribution of access and benefit-sharing activities to the conservation of biological diversity and the sustainable use of its components;

(i) Special measures to increase the capacity of relevant stakeholders in relation to access and benefit-sharing; and

(j) Special measures to increase the capacity of indigenous and local communities with emphasis on enhancing the capacity of women within those communities in relation to access to genetic resources and/or traditional knowledge associated with genetic resources.

6. Information on capacity-building and development initiatives at national, regional and international levels, undertaken in accordance with paragraphs 1 to 5 above, should be provided to the Access and Benefit-sharing

Clearing-House with a view to promoting synergy and coordination on capacity-building and development for access and benefit-sharing.

ARTICLE 23

TECHNOLOGY TRANSFER, COLLABORATION AND COOPERATION

In accordance with Articles 15, 16, 18 and 19 of the Convention, the Parties shall collaborate and cooperate in technical and scientific research and development programmes, including biotechnological research activities, as a means to achieve the objective of this Protocol. The Parties undertake to promote and encourage access to technology by, and transfer of technology to, developing country Parties, in particular the least developed countries and small island developing States among them, and Parties with economies in transition, in order to enable the development and strengthening of a sound and viable technological and scientific base for the attainment of the objectives of the Convention and this Protocol. Where possible and appropriate such collaborative activities shall take place in and with a Party or the Parties providing genetic resources that is the country or are the countries of origin of such resources or a Party or Parties that have acquired the genetic resources in accordance with the Convention.

ARTICLE 24

NON-PARTIES

The Parties shall encourage non-Parties to adhere to this Protocol and to contribute appropriate information to the Access and Benefit-sharing Clearing-House.

ARTICLE 25

FINANCIAL MECHANISM AND RESOURCES

1. In considering financial resources for the implementation of this Protocol, the Parties shall take into account the provisions of Article 20 of the Convention.

2. The financial mechanism of the Convention shall be the financial mechanism for this Protocol.

3. Regarding the capacity-building and development referred to in Article 22 of this Protocol, the Conference of the Parties serving as the

meeting of the Parties to this Protocol, in providing guidance with respect to the financial mechanism referred to in paragraph 2 above, for consideration by the Conference of the Parties, shall take into account the need of developing country Parties, in particular the least developed countries and small island developing States among them, and of Parties with economies in transition, for financial resources, as well as the capacity needs and priorities of indigenous and local communities, including women within these communities.

4. In the context of paragraph 1 above, the Parties shall also take into account the needs of the developing country Parties, in particular the least developed countries and small island developing States among them, and of the Parties with economies in transition, in their efforts to identify and implement their capacity-building and development requirements for the purposes of the implementation of this Protocol.

5. The guidance to the financial mechanism of the Convention in relevant decisions of the Conference of the Parties, including those agreed before the adoption of this Protocol, shall apply, *mutatis mutandis*, to the provisions of this Article.

6. The developed country Parties may also provide, and the developing country Parties and the Parties with economies in transition avail themselves of, financial and other resources for the implementation of the provisions of this Protocol through bilateral, regional and multilateral channels.

ARTICLE 26

CONFERENCE OF THE PARTIES SERVING AS THE MEETING OF THE PARTIES TO THIS PROTOCOL

1. The Conference of the Parties shall serve as the meeting of the Parties to this Protocol.

2. Parties to the Convention that are not Parties to this Protocol may participate as observers in the proceedings of any meeting of the Conference of the Parties serving as the meeting of the Parties to this Protocol. When the Conference of the Parties serves as the meeting of the Parties to this Protocol, decisions under this Protocol shall be taken only by those that are Parties to it.

3. When the Conference of the Parties serves as the meeting of the Parties to this Protocol, any member of the Bureau of the Conference of the Parties representing a Party to the Convention but, at that time, not a Party to this Protocol, shall be substituted by a member to be elected by and from among the Parties to this Protocol.

4. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall keep under regular review the implementation of this Protocol and shall make, within its mandate, the decisions necessary to promote its effective implementation. It shall perform the functions assigned to it by this Protocol and shall:

(a) Make recommendations on any matters necessary for the implementation of this Protocol;

(b) Establish such subsidiary bodies as are deemed necessary for the implementation of this Protocol;

(c) Seek and utilize, where appropriate, the services and cooperation of, and information provided by, competent international organizations and intergovernmental and non-governmental bodies;

(d) Establish the form and the intervals for transmitting the information to be submitted in accordance with Article 29 of this Protocol and consider such information as well as reports submitted by any subsidiary body;

(e) Consider and adopt, as required, amendments to this Protocol and its Annex, as well as any additional annexes to this Protocol, that are deemed necessary for the implementation of this Protocol; and

(f) Exercise such other functions as may be required for the implementation of this Protocol.

5. The rules of procedure of the Conference of the Parties and financial rules of the Convention shall be applied, *mutatis mutandis*, under this Protocol, except as may be otherwise decided by consensus by the Conference of the Parties serving as the meeting of the Parties to this Protocol.

6. The first meeting of the Conference of the Parties serving as the meeting of the Parties to this Protocol shall be convened by the Secretariat and held concurrently with the first meeting of the Conference of the Parties that is scheduled after the date of the entry into force of this Protocol. Subsequent ordinary meetings of the Conference of the Parties serving as the meeting of the Parties to this Protocol shall be held concurrently with ordinary meetings of the Conference of the Parties, unless otherwise decided by the Conference of the Parties serving as the meeting of the Parties to this Protocol.

7. Extraordinary meetings of the Conference of the Parties serving as the meeting of the Parties to this Protocol shall be held at such other times as may be deemed necessary by the Conference of the Parties serving as the meeting

of the Parties to this Protocol, or at the written request of any Party, provided that, within six months of the request being communicated to the Parties by the Secretariat, it is supported by at least one third of the Parties.

8. The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State member thereof or observers thereto not party to the Convention, may be represented as observers at meetings of the Conference of the Parties serving as the meeting of the Parties to this Protocol. Any body or agency, whether national or international, governmental or non-governmental, that is qualified in matters covered by this Protocol and that has informed the Secretariat of its wish to be represented at a meeting of the Conference of the Parties serving as a meeting of the Parties to this Protocol as an observer, may be so admitted, unless at least one third of the Parties present object. Except as otherwise provided in this Article, the admission and participation of observers shall be subject to the rules of procedure, as referred to in paragraph 5 above.

ARTICLE 27

SUBSIDIARY BODIES

1. Any subsidiary body established by or under the Convention may serve this Protocol, including upon a decision of the Conference of the Parties serving as the meeting of the Parties to this Protocol. Any such decision shall specify the tasks to be undertaken.
2. Parties to the Convention that are not Parties to this Protocol may participate as observers in the proceedings of any meeting of any such subsidiary bodies. When a subsidiary body of the Convention serves as a subsidiary body to this Protocol, decisions under this Protocol shall be taken only by Parties to this Protocol.
3. When a subsidiary body of the Convention exercises its functions with regard to matters concerning this Protocol, any member of the bureau of that subsidiary body representing a Party to the Convention but, at that time, not a Party to this Protocol, shall be substituted by a member to be elected by and from among the Parties to this Protocol.

ARTICLE 28

SECRETARIAT

1. The Secretariat established by Article 24 of the Convention shall serve as the secretariat to this Protocol.

2. Article 24, paragraph 1, of the Convention on the functions of the Secretariat shall apply, *mutatis mutandis*, to this Protocol.

3. To the extent that they are distinct, the costs of the secretariat services for this Protocol shall be met by the Parties hereto. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first meeting, decide on the necessary budgetary arrangements to this end.

ARTICLE 29

MONITORING AND REPORTING

Each Party shall monitor the implementation of its obligations under this Protocol, and shall, at intervals and in the format to be determined by the Conference of the Parties serving as the meeting of the Parties to this Protocol, report to the Conference of the Parties serving as the meeting of the Parties to this Protocol on measures that it has taken to implement this Protocol.

ARTICLE 30

PROCEDURES AND MECHANISMS TO PROMOTE COMPLIANCE WITH THIS PROTOCOL

The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first meeting, consider and approve cooperative procedures and institutional mechanisms to promote compliance with the provisions of this Protocol and to address cases of non-compliance. These procedures and mechanisms shall include provisions to offer advice or assistance, where appropriate. They shall be separate from, and without prejudice to, the dispute settlement procedures and mechanisms under Article 27 of the Convention.

ARTICLE 31

ASSESSMENT AND REVIEW

The Conference of the Parties serving as the meeting of the Parties to this Protocol shall undertake, four years after the entry into force of this Protocol and thereafter at intervals determined by the Conference of the Parties serving as the meeting of the Parties to this Protocol, an evaluation of the effectiveness of this Protocol.

ARTICLE 32

SIGNATURE

This Protocol shall be open for signature by Parties to the Convention at the United Nations Headquarters in New York, from 2 February 2011 to 1 February 2012.

ARTICLE 33

ENTRY INTO FORCE

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fiftieth instrument of ratification, acceptance, approval or accession by States or regional economic integration organizations that are Parties to the Convention.
2. This Protocol shall enter into force for a State or regional economic integration organization that ratifies, accepts or approves this Protocol or accedes thereto after the deposit of the fiftieth instrument as referred to in paragraph 1 above, on the ninetieth day after the date on which that State or regional economic integration organization deposits its instrument of ratification, acceptance, approval or accession, or on the date on which the Convention enters into force for that State or regional economic integration organization, whichever shall be the later.
3. For the purposes of paragraphs 1 and 2 above, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

ARTICLE 34

RESERVATIONS

No reservations may be made to this Protocol.

ARTICLE 35

WITHDRAWAL

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

2. Any such withdrawal shall take place upon expiry of one year after the date of its receipt by the Depository, or on such later date as may be specified in the notification of the withdrawal.

ARTICLE 36

AUTHENTIC TEXTS

The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, being duly authorized to that effect, have signed this Protocol on the dates indicated.

DONE at Nagoya on this twenty-ninth day of October, two thousand and ten.

Annex

MONETARY AND NON-MONETARY BENEFITS

1. Monetary benefits may include, but not be limited to:

- (a) Access fees/fee per sample collected or otherwise acquired;
- (b) Up-front payments;
- (c) Milestone payments;
- (d) Payment of royalties;
- (e) Licence fees in case of commercialization;
- (f) Special fees to be paid to trust funds supporting conservation and sustainable use of biodiversity;
- (g) Salaries and preferential terms where mutually agreed;
- (h) Research funding;
- (i) Joint ventures;
- (j) Joint ownership of relevant intellectual property rights.

2. Non-monetary benefits may include, but not be limited to:

- (a) Sharing of research and development results;
- (b) Collaboration, cooperation and contribution in scientific research and development programmes, particularly biotechnological research activities, where possible in the Party providing genetic resources;
- (c) Participation in product development;
- (d) Collaboration, cooperation and contribution in education and training;
- (e) Admittance to *ex situ* facilities of genetic resources and to databases;

- (f) Transfer to the provider of the genetic resources of knowledge and technology under fair and most favourable terms, including on concessional and preferential terms where agreed, in particular, knowledge and technology that make use of genetic resources, including biotechnology, or that are relevant to the conservation and sustainable utilization of biological diversity;
- (g) Strengthening capacities for technology transfer;
- (h) Institutional capacity-building;
- (i) Human and material resources to strengthen the capacities for the administration and enforcement of access regulations;
- (j) Training related to genetic resources with the full participation of countries providing genetic resources, and where possible, in such countries;
- (k) Access to scientific information relevant to conservation and sustainable use of biological diversity, including biological inventories and taxonomic studies;
- (l) Contributions to the local economy;
- (m) Research directed towards priority needs, such as health and food security, taking into account domestic uses of genetic resources in the Party providing genetic resources;
- (n) Institutional and professional relationships that can arise from an access and benefit-sharing agreement and subsequent collaborative activities;
- (o) Food and livelihood security benefits;
- (p) Social recognition;
- (q) Joint ownership of relevant intellectual property rights.

**Nagoya - Kuala Lumpur Supplementary Protocol on
Liability and Redress to the Cartagena Protocol on
Biosafety, 2010**

NAGOYA — KUALA LUMPUR SUPPLEMENTARY PROTOCOL
ON LIABILITY AND REDRESS TO THE CARTAGENA
PROTOCOL ON BIOSAFETY



UNITED NATIONS
2010

NAGOYA — KUALA LUMPUR SUPPLEMENTARY PROTOCOL
ON LIABILITY AND REDRESS TO THE CARTAGENA
PROTOCOL ON BIOSAFETY

The Parties to this Supplementary Protocol,

Being Parties to the Cartagena Protocol on Biosafety to the Convention on Biological Diversity, hereinafter referred to as “the Protocol”,

Taking into account Principle 13 of the Rio Declaration on Environment and Development,

Reaffirming the precautionary approach contained in Principle 15 of the Rio Declaration on Environment and Development,

Recognizing the need to provide for appropriate response measures where there is damage or sufficient likelihood of damage, consistent with the Protocol,

Recalling Article 27 of the Protocol,

Have agreed as follows:

Article
1

OBJECTIVE

The objective of this Supplementary Protocol is to contribute to the conservation and sustainable use of biological diversity, taking also into account risks to human health, by providing international rules and procedures in the field of liability and redress relating to living modified organisms.

Article
2

USE OF TERMS

1. The terms used in Article 2 of the Convention on Biological Diversity, hereinafter referred to as “the Convention”, and Article 3 of the Protocol shall apply to this Supplementary Protocol.

2. In addition, for the purposes of this Supplementary Protocol:

(a) “Conference of the Parties serving as the meeting of the Parties to the Protocol” means the Conference of the Parties to the Convention serving as the meeting of the Parties to the Protocol;

(b) “Damage” means an adverse effect on the conservation and sustainable use of biological diversity, taking also into account risks to human health, that:

(i) Is measurable or otherwise observable taking into account, wherever available, scientifically-established baselines recognized by a competent authority that takes into account any other human induced variation and natural variation; and

(ii) Is significant as set out in paragraph 3 below;

(c) “Operator” means any person in direct or indirect control of the living modified organism which could, as appropriate and as determined by domestic law, include, *inter alia*, the permit holder, person who placed the living modified organism on the market, developer, producer, notifier, exporter, importer, carrier or supplier;

(d) “Response measures” means reasonable actions to:

(i) Prevent, minimize, contain, mitigate, or otherwise avoid damage, as appropriate;

(ii) Restore biological diversity through actions to be undertaken in the following order of preference:

a. Restoration of biological diversity to the condition that existed before the damage occurred, or its nearest equivalent; and where the competent authority determines this is not possible;

b. Restoration by, *inter alia*, replacing the loss of biological diversity with other components of biological diversity for the same, or for another type of use either at the same or, as appropriate, at an alternative location.

3. A "significant" adverse effect is to be determined on the basis of factors, such as:
- (a) The long-term or permanent change, to be understood as change that will not be redressed through natural recovery within a reasonable period of time;
 - (b) The extent of the qualitative or quantitative changes that adversely affect the components of biological diversity;
 - (c) The reduction of the ability of components of biological diversity to provide goods and services;
 - (d) The extent of any adverse effects on human health in the context of the Protocol.

Article
3
SCOPE

1. This Supplementary Protocol applies to damage resulting from living modified organisms which find their origin in a transboundary movement. The living modified organisms referred to are those:
 - (a) Intended for direct use as food or feed, or for processing;
 - (b) Destined for contained use;
 - (c) Intended for intentional introduction into the environment.
2. With respect to intentional transboundary movements, this Supplementary Protocol applies to damage resulting from any authorized use of the living modified organisms referred to in paragraph 1 above.
3. This Supplementary Protocol also applies to damage resulting from unintentional transboundary movements as referred to in Article 17 of the Protocol as well as damage resulting from illegal transboundary movements as referred to in Article 25 of the Protocol.
4. This Supplementary Protocol applies to damage resulting from a transboundary movement of living modified organisms that started after the entry into force of this Supplementary Protocol for the Party into whose jurisdiction the transboundary movement was made.

5. This Supplementary Protocol applies to damage that occurred in areas within the limits of the national jurisdiction of Parties.
6. Parties may use criteria set out in their domestic law to address damage that occurs within the limits of their national jurisdiction.
7. Domestic law implementing this Supplementary Protocol shall also apply to damage resulting from transboundary movements of living modified organisms from non-Parties.

Article
4
CAUSATION

A causal link shall be established between the damage and the living modified organism in question in accordance with domestic law.

Article
5
RESPONSE MEASURES

1. Parties shall require the appropriate operator or operators, in the event of damage, subject to any requirements of the competent authority, to:
 - (a) Immediately inform the competent authority;
 - (b) Evaluate the damage; and
 - (c) Take appropriate response measures.
2. The competent authority shall:
 - (a) Identify the operator which has caused the damage;
 - (b) Evaluate the damage; and
 - (c) Determine which response measures should be taken by the operator.
3. Where relevant information, including available scientific information or information available in the Biosafety Clearing-House, indicates that there is a sufficient likelihood that damage will result if timely response measures are not taken, the operator shall be required to take appropriate response measures so as to avoid such damage.

4. The competent authority may implement appropriate response measures, including, in particular, when the operator has failed to do so.

5. The competent authority has the right to recover from the operator the costs and expenses of, and incidental to, the evaluation of the damage and the implementation of any such appropriate response measures. Parties may provide, in their domestic law, for other situations in which the operator may not be required to bear the costs and expenses.

6. Decisions of the competent authority requiring the operator to take response measures should be reasoned. Such decisions should be notified to the operator. Domestic law shall provide for remedies, including the opportunity for administrative or judicial review of such decisions. The competent authority shall, in accordance with domestic law, also inform the operator of the available remedies. Recourse to such remedies shall not impede the competent authority from taking response measures in appropriate circumstances, unless otherwise provided by domestic law.

7. In implementing this Article and with a view to defining the specific response measures to be required or taken by the competent authority, Parties may, as appropriate, assess whether response measures are already addressed by their domestic law on civil liability.

8. Response measures shall be implemented in accordance with domestic law.

Article 6

EXEMPTIONS

1. Parties may provide, in their domestic law, for the following exemptions:

- (a) Act of God or *force majeure*; and
- (b) Act of war or civil unrest.

2. Parties may provide, in their domestic law, for any other exemptions or mitigations as they may deem fit.

Article 7

TIME LIMITS

Parties may provide, in their domestic law, for:

- (a) Relative and/or absolute time limits including for actions related to response measures; and
- (b) The commencement of the period to which a time limit applies.

Article 8

FINANCIAL LIMITS

Parties may provide, in their domestic law, for financial limits for the recovery of costs and expenses related to response measures.

Article 9

RIGHT OF RECOURSE

This Supplementary Protocol shall not limit or restrict any right of recourse or indemnity that an operator may have against any other person.

Article 10

FINANCIAL SECURITY

1. Parties retain the right to provide, in their domestic law, for financial security.

2. Parties shall exercise the right referred to in paragraph 1 above in a manner consistent with their rights and obligations under international law, taking into account the final three preambular paragraphs of the Protocol.

3. The first meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol after the entry into force of the Supplementary Protocol shall request the Secretariat to undertake a comprehensive study which shall address, *inter alia*:

- (a) The modalities of financial security mechanisms;

- (b) An assessment of the environmental, economic and social impacts of such mechanisms, in particular on developing countries; and
- (c) An identification of the appropriate entities to provide financial security.

Article

11

RESPONSIBILITY OF STATES FOR INTERNATIONALLY WRONGFUL ACTS

This Supplementary Protocol shall not affect the rights and obligations of States under the rules of general international law with respect to the responsibility of States for internationally wrongful acts.

Article

12

IMPLEMENTATION AND RELATION TO CIVIL LIABILITY

1. Parties shall provide, in their domestic law, for rules and procedures that address damage. To implement this obligation, Parties shall provide for response measures in accordance with this Supplementary Protocol and may, as appropriate:

- (a) Apply their existing domestic law, including, where applicable, general rules and procedures on civil liability;
 - (b) Apply or develop civil liability rules and procedures specifically for this purpose; or
 - (c) Apply or develop a combination of both.
2. Parties shall, with the aim of providing adequate rules and procedures in their domestic law on civil liability for material or personal damage associated with the damage as defined in Article 2, paragraph 2 (b):
- (a) Continue to apply their existing general law on civil liability;
 - (b) Develop and apply or continue to apply civil liability law specifically for that purpose; or
 - (c) Develop and apply or continue to apply a combination of both.

3. When developing civil liability law as referred to in subparagraphs (b) or (c) of paragraphs 1 or 2 above, Parties shall, as appropriate, address, inter alia, the following elements:

- (a) Damage;
- (b) Standard of liability, including strict or fault-based liability;
- (c) Channelling of liability, where appropriate;
- (d) Right to bring claims.

Article

13

ASSESSMENT AND REVIEW

The Conference of the Parties serving as the meeting of the Parties to the Protocol shall undertake a review of the effectiveness of this Supplementary Protocol five years after its entry into force and every five years thereafter, provided information requiring such a review has been made available by Parties. The review shall be undertaken in the context of the assessment and review of the Protocol as specified in Article 35 of the Protocol, unless otherwise decided by the Parties to this Supplementary Protocol. The first review shall include a review of the effectiveness of Articles 10 and 12.

Article

14

CONFERENCE OF THE PARTIES SERVING AS THE MEETING OF THE PARTIES TO THE PROTOCOL

- 1. Subject to paragraph 2 of Article 32 of the Convention, the Conference of the Parties serving as the meeting of the Parties to the Protocol shall serve as the meeting of the Parties to this Supplementary Protocol.
- 2. The Conference of the Parties serving as the meeting of the Parties to the Protocol shall keep under regular review the implementation of this Supplementary Protocol and shall make, within its mandate, the decisions necessary to promote its effective implementation. It shall perform the functions assigned to it by this Supplementary Protocol and, *mutatis mutandis*, the functions assigned to it by paragraphs 4 (a) and (f) of Article 29 of the Protocol.

Article
15
SECRETARIAT

The Secretariat established by Article 24 of the Convention shall serve as the secretariat to this Supplementary Protocol.

Article
16

RELATIONSHIP WITH THE CONVENTION AND THE PROTOCOL

1. This Supplementary Protocol shall supplement the Protocol and shall neither modify nor amend the Protocol.
2. This Supplementary Protocol shall not affect the rights and obligations of the Parties to this Supplementary Protocol under the Convention and the Protocol.
3. Except as otherwise provided in this Supplementary Protocol, the provisions of the Convention and the Protocol shall apply, *mutatis mutandis*, to this Supplementary Protocol.
4. Without prejudice to paragraph 3 above, this Supplementary Protocol shall not affect the rights and obligations of a Party under international law.

Article
17
SIGNATURE

This Supplementary Protocol shall be open for signature by Parties to the Protocol at the United Nations Headquarters in New York from 7 March 2011 to 6 March 2012.

Article
18
ENTRY INTO FORCE

1. This Supplementary Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession by States or regional economic integration organizations that are Parties to the Protocol.
2. This Supplementary Protocol shall enter into force for a State or regional economic integration organization that ratifies, accepts or approves it or accedes thereto after the deposit of the fortieth instrument as referred to in

paragraph 1 above, on the ninetieth day after the date on which that State or regional economic integration organization deposits its instrument of ratification, acceptance, approval, or accession, or on the date on which the Protocol enters into force for that State or regional economic integration organization, whichever shall be the later.

3. For the purposes of paragraphs 1 and 2 above, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

Article
19
RESERVATIONS

No reservations may be made to this Supplementary Protocol.

Article
20
WITHDRAWAL

1. At any time after two years from the date on which this Supplementary Protocol has entered into force for a Party, that Party may withdraw from this Supplementary Protocol by giving written notification to the Depository.
2. Any such withdrawal shall take place upon expiry of one year after the date of its receipt by the Depository, or on such later date as may be specified in the notification of the withdrawal.
3. Any Party which withdraws from the Protocol in accordance with Article 39 of the Protocol shall be considered as also having withdrawn from this Supplementary Protocol.

Article
21
AUTHENTIC TEXTS

The original of this Supplementary Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, being duly authorized to that effect, have signed this Supplementary Protocol.

DONE at Nagoya on this fifteenth day of October two thousand and ten.

**Marrakesh Agreement Establishing the World Trade
Organization (Preamble), 1994**

Marrakesh Agreement Establishing the World Trade Organization

Preamble

The *Parties* to this Agreement,

Recognizing that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development.

Recognizing further that there is a need for positive efforts designed to ensure that developing countries, and especially the least developed among them, secure a share in the growth of international trade commensurate with the needs of their economic development,

Being desirous of contributing to these objectives by entering into reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and to the eliminations of discriminatory treatment in international trade relations,

Resolved, therefore, to develop an integrated, more viable and durable multilateral trading system encompassing the General Agreement on Tariffs and Trade, the results of past liberalization efforts, and all of the results of the Uruguay Round of Multilateral Trade Negotiations,

Determined to preserve the basic principles and to further the objectives underlying this multilateral trading system,

Agree as follows:

**Environment, Sustainable Development and
International Law - Extracts from Relevant Case Law,
1993-2011
(Professor Laurence Boisson de Chazournes)**

Professor L. Boisson de Chazournes
Environment, Sustainable Development and International Law

Extracts¹ from Relevant Case Law

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Albania: Power Sector Generation and Restructuring Project (IDA Credit No. 3872-ALB), World Bank's Inspection Panel, Investigation Report, 7 August 2009 (paragraphs 322-332)..... 29

Case Concerning Pulp Mills on the River Uruguay (Argentina/Uruguay), Judgment of the International Court of Justice, 20 April 2010 (paras 101, 164, 177, 188, 204-205, 215-217 and 219)..... 31

Responsibilities and Obligations of States sponsoring Persons and Entities with respect to Activities in The Area, Advisory Opinion of the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea, February 2011 (paras 121-137 and 141-163)..... 33

¹ All original footnotes falling within the scope of the extracts have been omitted.

Minors Oposa v. Secretary of the Department of Environment and Natural Resources, Judgment of the Supreme Court of the Republic of the Philippines, 30 July 1993, 33 I.L.M. 174 1994, (p. 185)

This case, however, has a special and novel element. Petitioners minors assert that they represent their generation as well as generations yet unborn. We find no difficulty in ruling that they can, for themselves, for others of their generation and for the succeeding generations, file a class suit. Their personality to sue in behalf of the succeeding generations can only be based on the concept of intergenerational responsibility insofar as the right to a balanced and healthful ecology is concerned. Such a right, as hereinafter expounded, considers the "rhythm and harmony of nature." Nature means the created world in its entirety. Such rhythm and harmony indispensably include, *inter alia*, the judicious disposition, utilization, management, renewal and conservation of the country's forest, mineral, land, waters, fisheries, wildlife, off-shore areas and other natural resources to the end that their exploration, development and utilization be equitably accessible to the present as well as future generations. Needless to say, every generation has a responsibility to the next to preserve that rhythm and harmony for the full enjoyment of a balanced and healthful ecology. Put a little differently, the minors' assertion of their right to a sound environment constitutes, at the same time, the performance of their obligation to ensure the protection of that right for the generations to come.

United States — Standards for Reformulated and Conventional Gasoline (DS 2), Report of the Appellate Body of the World Trade Organization, 29 April 1996 (p. 13, 15, 16-18)

The Panel Report took the view that clean air was a "natural resource" that could be "depleted." Accordingly, as already noted earlier, the Panel concluded that a policy to reduce the depletion of clean air was a policy to conserve an exhaustible natural resource within the meaning of Article XX(g). Shortly thereafter, however, the Panel Report also concluded that "the less favourable baseline establishments methods" were *not* primarily aimed at the conservation of exhaustible natural resources and thus fell outside the justifying scope of Article XX(g).

[...]

Furthermore, the Panel Report appears to have utilized a conclusion it had reached earlier in holding that the baseline establishment rules did not fall within the justifying terms of Articles XX(b); i.e. that the baseline establishment rules were not "necessary" for the protection of human, animal or plant life. The Panel Report, it will be recalled, found that the baseline establishment rules had not been shown by the United States to be "necessary" under Article XX(b) since alternative measures either consistent or less inconsistent with the General Agreement were reasonably available to the United States for achieving its aim of protecting human, animal or plant life. In other words, the Panel Report appears to have applied the "necessary" test not only in examining the baseline establishment rules under Article XX(b), but also in the course of applying Article XX(g).

[...]

Applying the basic principle of interpretation that the words of a treaty, like the *General Agreement*, are to be given their ordinary meaning, in their context and in the light of the treaty's object and purpose, the Appellate Body observes that the Panel Report failed to take adequate account of the words actually used by Article XX in its several paragraphs. In enumerating the various categories of governmental acts, laws or regulations which WTO Members may carry out or promulgate in pursuit of differing legitimate state policies or interests outside the realm of trade liberalization, Article XX uses different terms in respect of different categories:

"necessary" - in paragraphs (a), (b) and (d);

"essential" - in paragraph (j);

"relating to" - in paragraphs (c), (e) and (g);

"for the protection of" - in paragraph (f);

"in pursuance of" - in paragraph (h); and

"involving" - in paragraph (i).

It does not seem reasonable to suppose that the WTO Members intended to require, in respect of each and every category, the same kind or degree of connection or relationship between the measure under appraisal and the state interest or policy sought to be promoted or realized.

At the same time, Article XX(g) and its phrase, "relating to the conservation of exhaustible natural resources," need to be read in context and in such a manner as to give effect to the purposes and objects of the *General Agreement*. The context of Article XX(g) includes the provisions of the rest of the *General Agreement*, including in particular Articles I, III and XI; conversely, the context of Articles I and III and XI includes Article XX. Accordingly, the phrase "relating to the conservation of exhaustible natural resources" may not be read so expansively as seriously to subvert the purpose and object of Article III:4. Nor may Article III:4 be given so broad a reach as effectively to emasculate Article XX(g) and the policies and interests it embodies. The relationship between the affirmative commitments set out in, e.g., Articles I, III and XI, and the policies and interests embodied in the "General Exceptions" listed in Article XX, can be given meaning within the framework of the *General Agreement* and its object and purpose by a treaty interpreter only on a case-to-case basis, by careful scrutiny of the factual and legal context in a given dispute, without disregarding the words actually used by the WTO Members themselves to express their intent and purpose.

The 1987 *Herring and Salmon* report, and the Panel Report itself, gave some recognition to the foregoing considerations of principle. As earlier noted, the Panel Report quoted the following excerpt from the *Herring and Salmon* report:

as the preamble of Article XX indicates, the purpose of including Article XX(g) in the General Agreement was not to widen the scope for measures serving trade policy purposes but merely to ensure that the commitments under the *General Agreement do not hinder the pursuit of policies* aimed at the conservation of exhaustible natural resources. (emphasis added)

All the participants and the third participants in this appeal accept the propriety and applicability of the view of the *Herring and Salmon* report and the Panel Report that a measure must be

"primarily aimed at" the conservation of exhaustible natural resources in order to fall within the scope of Article XX(g). Accordingly, we see no need to examine this point further, save, perhaps, to note that the phrase "primarily aimed at" is not itself treaty language and was not designed as a simple litmus test for inclusion or exclusion from Article XX(g).

Against this background, we turn to the specific question of whether the baseline establishment rules are appropriately regarded as "primarily aimed at" the conservation of natural resources for the purposes of Article XX(g). We consider that this question must be answered in the affirmative.

The baseline establishment rules, taken as a whole (that is, the provisions relating to establishment of baselines for domestic refiners, along with the provisions relating to baselines for blenders and importers of gasoline), need to be related to the "non-degradation" requirements set out elsewhere in the Gasoline Rule. Those provisions can scarcely be understood if scrutinized strictly by themselves, totally divorced from other sections of the Gasoline Rule which certainly constitute part of the context of these provisions. The baseline establishment rules whether individual or statutory, were designed to permit scrutiny and monitoring of the level of compliance of refiners, importers and blenders with the "non-degradation" requirements. Without baselines of some kind, such scrutiny would not be possible and the Gasoline Rule's objective of stabilizing and preventing further deterioration of the level of air pollution prevailing in 1990, would be substantially frustrated. The relationship between the baseline establishment rules and the "non-degradation" requirements of the Gasoline Rule is not negated by the inconsistency, found by the Panel, of the baseline establishment rules with the terms of Article III:4. We consider that, given that substantial relationship, the baseline establishment rules cannot be regarded as merely incidentally or inadvertently aimed at the conservation of clean air in the United States for the purposes of Article XX(g).

Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion of the International Court of Justice, 8 July 1996 (paras 27-36)

27. In both their written and oral statements, some States furthermore argued that any use of nuclear weapons would be unlawful by reference to existing norms relating to the safeguarding and protection of the environment, in view of their essential importance.

Specific references were made to various existing international treaties and instruments. These included Additional Protocol 1 of 1977 to the Geneva Conventions of 1949, Article 35, paragraph 3, of which prohibits the employment of "methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment"; and the Convention of 18 May 1977 on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, which prohibits the use of weapons which have "widespread, long-lasting or severe effects" on the environment (Art. 1). Also cited were Principle 21 of the Stockholm Declaration of 1972 and Principle 2 of the Rio Declaration of 1992 which express the common conviction of the States concerned that they have a duty

"to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction".

These instruments and other provisions relating to the protection and safeguarding of the environment were said to apply at all times, in war as well as in peace, and it was contended that they would be violated by the use of nuclear weapons whose consequences would be widespread and would have transboundary effects.

28. Other States questioned the binding legal quality of these precepts of environmental law; or, in the context of the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, denied that it was concerned at all with the use of nuclear weapons in hostilities; or, in the case of Additional Protocol 1, denied that they were generally bound by its terms, or recalled that they had reserved their position in respect of Article 35, paragraph 3, thereof.

It was also argued by some States that the principal purpose of environmental treaties and norms was the protection of the environment in time of peace. It was said that those treaties made no mention of nuclear weapons. It was also pointed out that warfare in general, and nuclear warfare in particular, were not mentioned in their texts and that it would be destabilizing to the rule of law and to confidence in international negotiations if those treaties were now interpreted in such a way as to prohibit the use of nuclear weapons.

29. The Court recognizes that the environment is under daily threat and that the use of nuclear weapons could constitute a catastrophe for the environment. The Court also recognizes that the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn. The existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment.

30. However, the Court is of the view that the issue is not whether the treaties relating to the protection of the environment are or are not applicable during an armed conflict, but rather whether the obligations stemming from these treaties were intended to be obligations of total restraint during military conflict.

The Court does not consider that the treaties in question could have intended to deprive a State of the exercise of its right of self-defence under international law because of its obligations to protect the environment. Nonetheless, States must take environmental considerations into account when assessing what is necessary and proportionate in the pursuit of legitimate military objectives. Respect for the environment is one of the elements that go to assessing whether an action is in conformity with the principles of necessity and proportionality.

This approach is supported, indeed, by the terms of Principle 24 of the Rio Declaration, which provides that:

"Warfare is inherently destructive of sustainable development. States shall therefore respect international law providing protection for the environment in times of armed conflict and cooperate in its further development, as necessary."

31. The Court notes furthermore that Articles 35, paragraph 3, and 55 of Additional Protocol 1 provide additional protection for the environment. Taken together, these provisions embody a

general obligation to protect the natural environment against widespread, long-term and severe environmental damage; the prohibition of methods and means of warfare which are intended, or may be expected, to cause such damage; and the prohibition of attacks against the natural environment by way of reprisals.

These are powerful constraints for all the States having subscribed to these provisions.

32. General Assembly resolution 47/37 of 25 November 1992 on the "Protection of the Environment in Times of Armed Conflict" is also of interest in this context. It affirms the general view according to which environmental considerations constitute one of the elements to be taken into account in the implementation of the principles of the law applicable in armed conflict: it states that "destruction of the environment, not justified by military necessity and carried out wantonly, is clearly contrary to existing international law". Addressing the reality that certain instruments are not yet binding on all States, the General Assembly in this resolution "[a]ppeals to all States that have not yet done so to consider becoming parties to the relevant international conventions".

In its recent Order in the *Request for an Examination of the Situation in Accordance with Paragraph 63 of the Court's Judgment of 20 December 1974 in the Nuclear Tests (New Zealand v. France) Case*, the Court stated that its conclusion was "without prejudice to the obligations of States to respect and protect the natural environment" (*Order of 22 September 1995, I. C. J. Reports 1995*, p. 306, para. 64). Although that statement was made in the context of nuclear testing, it naturally also applies to the actual use of nuclear weapons in armed conflict.

33. The Court thus finds that while the existing international law relating to the protection and safeguarding of the environment does not specifically prohibit the use of nuclear weapons, it indicates important environmental factors that are properly to be taken into account in the context of the implementation of the principles and rules of the law applicable in armed conflict.

34. In the light of the foregoing the Court concludes that the most directly relevant applicable law governing the question of which it was seized, is that relating to the use of force enshrined in the United Nations Charter and the law applicable in armed conflict which regulates the conduct of hostilities, together with any specific treaties on nuclear weapons that the Court might determine to be relevant.

35. In applying this law to the present case, the Court cannot however fail to take into account certain unique characteristics of nuclear weapons. The Court has noted the definitions of nuclear weapons contained in various treaties and accords. It also notes that nuclear weapons are explosive devices whose energy results from the fusion or fission of the atom. By its very nature, that process, in nuclear weapons as they exist today, releases not only immense quantities of heat and energy, but also powerful and prolonged radiation. According to the material before the Court, the first two causes of damage are vastly more powerful than the damage caused by other weapons, while the phenomenon of radiation is said to be peculiar to nuclear weapons. These characteristics render the nuclear weapon potentially catastrophic. The destructive power of nuclear weapons cannot be contained in either space or time. They have the potential to destroy all civilization and the entire ecosystem of the planet.

The radiation released by a nuclear explosion would affect health, agriculture, natural resources

and demography over a very wide area.

Further, the use of nuclear weapons would be a serious danger to future generations. Ionizing radiation has the potential to damage the future environment, food and marine ecosystem, and to cause genetic defects and illness in future generations.

36. In consequence, in order correctly to apply to the present case the Charter law on the use of force and the law applicable in armed conflict, in particular humanitarian law, it is imperative for the Court to take account of the unique characteristics of nuclear weapons, and in particular their destructive capacity, their capacity to cause untold human suffering, and their ability to cause damage to generations to come.

Case Concerning the Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment of the International Court of Justice, 25 September 1997 (paras 53 and 140)

53. The Court has no difficulty in acknowledging that the concerns expressed by Hungary for its natural environment in the region affected by the Gabčíkovo-Nagymaros Project related to an "essential interest" of that State, within the meaning given to that expression in Article 33 of the Draft of the International Law Commission.

The Commission, in its Commentary, indicated that one should not, in that context, reduce an "essential interest" to a matter only of the "existence" of the State, and that the whole question was, ultimately, to be judged in the light of the particular case (see *Yearbook of the International Law Commission*, 1980, Vol. II, Part 2, p. 49, para. 32); at the same time, it included among the situations that could occasion a state of necessity, "a grave danger to . . . the ecological preservation of all or some of [the] territory [of a State]" (*ibid.*, p. 35, para. 3); and specified, with reference to State practice, that "It is primarily in the last two decades that safeguarding the ecological balance has come to be considered an 'essential interest' of all States." (*ibid.*, p. 39, para. 14.)

The Court recalls that it has recently had occasion to stress, in the following terms, the great significance that it attaches to respect for the environment, not only for States but also for the whole of mankind:

"the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn. The existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment." (*Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I. C. J. Reports 1996, pp. 241 -242, para. 29.)

[...]

140. It is clear that the Project's impact upon, and its implications for, the environment are of necessity a key issue. The numerous scientific reports which have been presented to the Court by the Parties even if their conclusions are often contradictory . . . provide abundant evidence that this impact and these implications are considerable.

In order to evaluate the environmental risks, current standards must be taken into consideration. This is not only allowed by the wording of Articles 15 and 19, but even prescribed, to the extent that these articles impose a continuing . . . and thus necessarily evolving - obligation on the parties to maintain the quality of the water of the Danube and to protect nature.

The Court is mindful that, in the field of environmental protection, vigilance and prevention are required on account of the often irreversible character of damage to the environment and of the limitations inherent in the very mechanism of reparation of this type of damage.

Throughout the ages, mankind has, for economic and other reasons, constantly interfered with nature. In the past, this was often done without consideration of the effects upon the environment. Owing to new scientific insights and to a growing awareness of the risks for mankind — for present and future generations — of pursuit of such interventions at an unconsidered and unabated pace, new norms and standards have been developed, set forth in a great number of instruments during the last two decades. Such new norms have to be taken into consideration, and such new standards given proper weight, not only when States contemplate new activities but also when continuing with activities begun in the past.

This need to reconcile economic development with protection of the environment is aptly expressed in the concept of sustainable development.

For the purposes of the present case, this means that the Parties together should look afresh at the effects on the environment of the operation of the Gabčíkovo power plant. In particular they must find a satisfactory solution for the volume of water to be released into the old bed of the Danube and into the side-arms on both sides of the river.

United States — Import Prohibition of certain Shrimp and Shrimp Products (DS 58), Report of the Appellate Body of the World Trade Organization, 12 October 1998 (paras 128-131, 152-153, 167-169 and 185-186)

128. [...] Textually, Article XX(g) is not limited to the conservation of "mineral" or "non-living" natural resources. The complainants' principal argument is rooted in the notion that "living" natural resources are "renewable" and therefore cannot be "exhaustible" natural resources. We do not believe that "exhaustible" natural resources and "renewable" natural resources are mutually exclusive. One lesson that modern biological sciences teach us is that living species, though in principle, capable of reproduction and, in that sense, "renewable", are in certain circumstances indeed susceptible of depletion, exhaustion and extinction, frequently because of human activities. Living resources are just as "finite" as petroleum, iron ore and other non-living resources.

129. The words of Article XX(g), "exhaustible natural resources", were actually crafted more than 50 years ago. They must be read by a treaty interpreter in the light of contemporary concerns of the community of nations about the protection and conservation of the environment. While Article XX was not modified in the Uruguay Round, the preamble attached to the *WTO Agreement* shows that the signatories to that Agreement were, in 1994, fully aware of the importance and legitimacy of environmental protection as a goal of national and international policy. The preamble of the *WTO Agreement* -- which informs not only the GATT 1994, but

also the other covered agreements -- explicitly acknowledges "the objective of *sustainable development*":

The Parties to this Agreement.

Recognizing that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development, ... (emphasis added)

130. From the perspective embodied in the preamble of the *WTO Agreement*, we note that the generic term "natural resources" in Article XX(g) is not "static" in its content or reference but is rather "by definition, evolutionary". It is, therefore, pertinent to note that modern international conventions and declarations make frequent references to natural resources as embracing both living and non-living resources. For instance, the 1982 United Nations Convention on the Law of the Sea ("UNCLOS"), in defining the jurisdictional rights of coastal states in their exclusive economic zones, provides:

Article 56 - Rights, jurisdiction and duties of the coastal State in the exclusive economic zone

1. In the exclusive economic zone, the coastal State has:
 - (a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the *natural resources, whether living or non-living*, of the waters superjacent to the sea-bed and of the sea-bed and its subsoil, ... (emphasis added)

The UNCLOS also repeatedly refers in Articles 61 and 62 to "living resources" in specifying rights and duties of states in their exclusive economic zones. The Convention on Biological Diversity uses the concept of "biological resources". Agenda 21 speaks most broadly of "natural resources" and goes into detailed statements about "marine living resources". In addition, the Resolution on Assistance to Developing Countries, adopted in conjunction with the Convention on the Conservation of Migratory Species of Wild Animals, recites:

Conscious that an important element of development lies in the conservation and management of *living natural resources* and that migratory species constitute a significant part of these resources; ... (emphasis added)

131. Given the recent acknowledgement by the international community of the importance of concerted bilateral or multilateral action to protect living natural resources, and recalling the explicit recognition by WTO Members of the objective of sustainable development in the preamble of the *WTO Agreement*, we believe it is too late in the day to suppose that Article XX(g) of the GATT 1994 may be read as referring only to the conservation of

exhaustible mineral or other non-living natural resources.

[...]

152. At the end of the Uruguay Round, negotiators fashioned an appropriate preamble for the new *WTO Agreement*, which strengthened the multilateral trading system by establishing an international organization, *inter alia*, to facilitate the implementation, administration and operation, and to further the objectives, of that Agreement and the other agreements resulting from that Round. In recognition of the importance of continuity with the previous GATT system, negotiators used the preamble of the GATT 1947 as the template for the preamble of the new *WTO Agreement*. Those negotiators evidently believed, however, that the objective of "full use of the resources of the world" set forth in the preamble of the GATT 1947 was no longer appropriate to the world trading system of the 1990's. As a result, they decided to qualify the original objectives of the GATT 1947 with the following words:

... while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development, ...

153. We note once more that this language demonstrates a recognition by WTO negotiators that optimal use of the world's resources should be made in accordance with the objective of sustainable development. As this preambular language reflects the intentions of negotiators of the *WTO Agreement*, we believe it must add colour, texture and shading to our interpretation of the agreements annexed to the *WTO Agreement*, in this case, the GATT 1994. We have already observed that Article XX(g) of the GATT 1994 is appropriately read with the perspective embodied in the above preamble.

[...]

167. *A propos* this failure to have prior consistent recourse to diplomacy as an instrument of environmental protection policy, which produces discriminatory impacts on countries exporting shrimp to the United States with which no international agreements are reached or even seriously attempted, a number of points must be made. First, the Congress of the United States expressly recognized the importance of securing international agreements for the protection and conservation of the sea turtle species in enacting this law. Section 609(a) directs the Secretary of State to: [...]

Apart from the negotiation of the Inter-American Convention for the Protection and Conservation of Sea Turtles (the "Inter-American Convention") which concluded in 1996, the record before the Panel does not indicate any serious, substantial efforts to carry out these express directions of Congress.

168. Second, the protection and conservation of highly migratory species of sea turtles, that is, the very policy objective of the measure, demands concerted and cooperative efforts on the part of the many countries whose waters are traversed in the course of recurrent sea turtle

migrations. The need for, and the appropriateness of, such efforts have been recognized in the WTO itself as well as in a significant number of other international instruments and declarations. As stated earlier, the Decision on Trade and Environment, which provided for the establishment of the CTE and set out its terms of reference, refers to both the Rio Declaration on Environment and Development and Agenda 21. Of particular relevance is Principle 12 of the Rio Declaration on Environment and Development, which states, in part:

Unilateral actions to deal with environmental challenges outside the jurisdiction of the importing country should be avoided. *Environmental measures addressing transboundary or global environmental problems should, as far as possible, be based on international consensus.* (emphasis added)

In almost identical language, paragraph 2.22(i) of Agenda 21 provides:

Governments should encourage GATT, UNCTAD and other relevant international and regional economic institutions to examine, in accordance with their respective mandates and competences, the following propositions and principles: ...

(i) Avoid unilateral action to deal with environmental challenges outside the jurisdiction of the importing country. *Environmental measures addressing transborder problems should, as far as possible, be based on an international consensus.* (emphasis added)

Moreover, we note that Article 5 of the Convention on Biological Diversity states:

... each contracting party shall, as far as possible and as appropriate, cooperate with other contracting parties directly or, where appropriate, through competent international organizations, in respect of areas beyond national jurisdiction and on other matters of mutual interest, for the conservation and sustainable use of biological diversity.

The Convention on the Conservation of Migratory Species of Wild Animals, which classifies the relevant species of sea turtles in its Annex I as "Endangered Migratory Species", states:

The contracting parties [are] convinced that conservation and effective management of migratory species of wild animals requires the concerted action of all States within the national boundaries of which such species spend any part of their life cycle.

Furthermore, we note that WTO Members in the Report of the CTE, forming part of the Report of the General Council to Ministers on the occasion of the Singapore Ministerial Conference, endorsed and supported:

... *multilateral solutions based on international cooperation and consensus as the best and most effective way for governments to tackle environmental problems of a transboundary or global nature.* WTO Agreements and multilateral environmental agreements (MEAs) are representative of efforts of the international community to pursue *shared goals*, and in the development of a mutually supportive relationship between them, *due respect must be afforded to both.* (emphasis added)

169. Third, the United States did negotiate and conclude one regional international

agreement for the protection and conservation of sea turtles: The Inter-American Convention. [...]

185. In reaching these conclusions, we wish to underscore what we have *not* decided in this appeal. We have *not* decided that the protection and preservation of the environment is of no significance to the Members of the WTO. Clearly, it is. We have *not* decided that the sovereign nations that are Members of the WTO cannot adopt effective measures to protect endangered species, such as sea turtles. Clearly, they can and should. And we have *not* decided that sovereign states should not act together bilaterally, plurilaterally or multilaterally, either within the WTO or in other international fora, to protect endangered species or to otherwise protect the environment. Clearly, they should and do.

186. What we *have* decided in this appeal is simply this: although the measure of the United States in dispute in this appeal serves an environmental objective that is recognized as legitimate under paragraph (g) of Article XX of the GATT 1994, this measure has been applied by the United States in a manner which constitutes arbitrary and unjustifiable discrimination between Members of the WTO, contrary to the requirements of the chapeau of Article XX. For all of the specific reasons outlined in this Report, this measure does not qualify for the exemption that Article XX of the GATT 1994 affords to measures which serve certain recognized, legitimate environmental purposes but which, at the same time, are not applied in a manner that constitutes a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade. As we emphasized in *United States – Gasoline*, WTO Members are free to adopt their own policies aimed at protecting the environment as long as, in so doing, they fulfill their obligations and respect the rights of other Members under the *WTO Agreement*.

The Ogoni Case (Nigeria), Communication 155/96 of the African Commission on Human and Peoples' Rights in response to a petition by the Social and Economic Rights Action Center and the Center for Economic and Social Rights / Nigeria, 27 May 2002 (paras 53-58, 68-69 and findings)

53. Government compliance with the spirit of Articles 16 and 24 of the African Charter must also include ordering or at least permitting independent scientific monitoring of threatened environments, requiring and publicising environmental and social impact studies prior to any major industrial development, undertaking appropriate monitoring and providing information to those communities exposed to hazardous materials and activities and providing meaningful opportunities for individuals to be heard and to participate in the development decisions affecting their communities.

54. We now examine the conduct of the government of Nigeria in relation to Articles 16 and 24 of the African Charter. Undoubtedly and admittedly, the government of Nigeria, through NNPC has the right to produce oil, the income from which will be used to fulfil the economic and social rights of Nigerians. But the care that should have been taken as outlined in the preceding paragraph and which would have protected the rights of the victims of the violations complained of was not taken. To exacerbate the situation, the security forces of the government engaged in conduct in violation of the rights of the Ogonis by attacking, burning and destroying several

Ogoni villages and homes.

55. The Complainants also allege a violation of Article 21 of the African Charter by the government of Nigeria. The Complainants allege that the Military government of Nigeria was involved in oil production and thus did not monitor or regulate the operations of the oil companies and in so doing paved a way for the Oil Consortiums to exploit oil reserves in Ogoniland. Furthermore, in all their dealings with the Oil Consortiums, the government did not involve the Ogoni Communities in the decisions that affected the development of Ogoniland. The destructive and selfish role-played by oil development in Ogoniland, closely tied with repressive tactics of the Nigerian Government, and the lack of material benefits accruing to the local population, may well be said to constitute a violation of Article 21.

Article 21 provides

1. All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it.
2. In case of spoliation the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation.
3. The free disposal of wealth and natural resources shall be exercised without prejudice to the obligation of promoting international economic co-operation based on mutual respect, equitable exchange and the principles of international law.
4. States parties to the present Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African unity and solidarity.
5. States Parties to the present Charter shall undertake to eliminate all forms of foreign economic exploitation particularly that practised by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources.

56. The origin of this provision may be traced to colonialism, during which the human and material resources of Africa were largely exploited for the benefit of outside powers, creating tragedy for Africans themselves, depriving them of their birthright and alienating them from the land. The aftermath of colonial exploitation has left Africa's precious resources and people still vulnerable to foreign misappropriation. The drafters of the Charter obviously wanted to remind African governments of the continent's painful legacy and restore co-operative economic development to its traditional place at the heart of African Society.

57. Governments have a duty to protect their citizens, not only through appropriate legislation and effective enforcement but also by protecting them from damaging acts that may be perpetrated by private parties (See Union des Jeunes Avocats /Chad). This duty calls for positive action on part of governments in fulfilling their obligation under human rights instruments. The practice before other tribunals also enhances this requirement as is evidenced in the case *Velásquez Rodríguez v. Honduras*. In this landmark judgment, the Inter-American Court of Human Rights held that when a State allows private persons or groups to act freely and with impunity to the detriment of the rights recognised, it would be in clear violation of its

obligations to protect the human rights of its citizens. Similarly, this obligation of the State is further emphasised in the practice of the European Court of Human Rights, in *X and Y v. Netherlands*. In that case, the Court pronounced that there was an obligation on authorities to take steps to make sure that the enjoyment of the rights is not interfered with by any other private person.

58. The Commission notes that in the present case, despite its obligation to protect persons against interferences in the enjoyment of their rights, the Government of Nigeria facilitated the destruction of the Ogoniland. Contrary to its Charter obligations and despite such internationally established principles, the Nigerian Government has given the green light to private actors, and the oil Companies in particular, to devastatingly affect the well-being of the Ogonis. By any measure of standards, its practice falls short of the minimum conduct expected of governments, and therefore, is in violation of Article 21 of the African Charter

[...]

68. The uniqueness of the African situation and the special qualities of the African Charter on Human and Peoples' Rights imposes upon the African Commission an important task. International law and human rights must be responsive to African circumstances. Clearly, collective rights, environmental rights, and economic and social rights are essential elements of human rights in Africa. The African Commission will apply any of the diverse rights contained in the African Charter. It welcomes this opportunity to make clear that there is no right in the African Charter that cannot be made effective. As indicated in the preceding paragraphs, however, the Nigerian Government did not live up to the minimum expectations of the African Charter.

69. The Commission does not wish to fault governments that are labouring under difficult circumstances to improve the lives of their people. The situation of the people of Ogoniland, however, requires, in the view of the Commission, a reconsideration of the Government's attitude to the allegations contained in the instant communication. The intervention of multinational corporations may be a potentially positive force for development if the State and the people concerned are ever mindful of the common good and the sacred rights of individuals and communities. The Commission however takes note of the efforts of the present civilian administration to redress the atrocities that were committed by the previous military administration as illustrated in the Note Verbale referred to in paragraph 30 of this decision

For the above reasons, the Commission, [...]

Appeals to the government of the Federal Republic of Nigeria to ensure protection of the environment, health and livelihood of the people of Ogoniland by: [...]

- Ensuring that appropriate environmental and social impact assessments are prepared for any future oil development and that the safe operation of any further oil development is guaranteed through effective and independent oversight bodies for the petroleum industry; and
- Providing information on health and environmental risks and meaningful access to regulatory and decision-making bodies to communities likely to be affected by oil operations.

Arbitration Regarding the Iron Rhine ("Ijzeren Rijn") Railway (Belgium v Netherlands), Award of the Permanent Court of Arbitration ad hoc Arbitral Tribunal, 24 May 2005 (paras 58-59 and 221-223)

58. It is to be recalled that Article 31, paragraph 3, subparagraph (c) of the Vienna Convention on the Law of Treaties makes reference to "any relevant rules of international law applicable in the relations between the parties." For this reason – as well as for reasons relating to its own jurisdiction – the Tribunal has examined any provisions of European law that might be considered of possible relevance in this case (see Chapter III below). Provisions of general international law are also applicable to the relations between the Parties, and thus should be taken into account in interpreting Article XII of the 1839 Treaty of Separation and Article IV of the Iron Rhine Treaty. Further, international environmental law has relevance to the relations between the Parties. There is considerable debate as to what, within the field of environmental law, constitutes "rules" or "principles"; what is "soft law"; and which environmental treaty law or principles have contributed to the development of customary international law. Without entering further into those controversies, the Tribunal notes that in all of these categories "environment" is broadly referred to as including air, water, land, flora and fauna, natural ecosystems and sites, human health and safety, and climate. The emerging principles, whatever their current status, make reference to conservation, management, notions of prevention and of sustainable development, and protection for future generations.

59. Since the Stockholm Conference on the Environment in 1972 there has been a marked development of international law relating to the protection of the environment. Today, both international and EC law require the integration of appropriate environmental measures in the design and implementation of economic development activities. Principle 4 of the Rio Declaration on Environment and Development, adopted in 1992 (31 I.L.M. p. 874, at p. 877), which reflects this trend, provides that "environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it." Importantly, these emerging principles now integrate environmental protection into the development process. Environmental law and the law on development stand not as alternatives but as mutually reinforcing, integral concepts, which require that where development may cause significant harm to the environment there is a duty to prevent, or at least mitigate, such harm (see paragraph 222). This duty, in the opinion of the Tribunal, has now become a principle of general international law. This principle applies not only in autonomous activities but also in activities undertaken in implementation of specific treaties between the Parties. The Tribunal would recall the observation of the International Court of Justice in the *Gabcikovo-Nagymaros* case that "[t]his need to reconcile economic development with protection of the environment is aptly expressed in the concept of sustainable development" (*Gabcikovo-Nagymaros (Hungary/Slovakia), Judgment, I.C.J. Reports 1997, p. 7 at p. 78, para. 140*). And in that context the Court further clarified that "new norms have to be taken into consideration, and . . . new standards given proper weight, not only when States contemplate new activities but also when continuing with activities begun in the past" (*Ibid.*). In the view of the Tribunal this dictum applies equally to the Iron Rhine railway.

[...]

221. [...] As the Tribunal has already observed above (see paragraph 59), economic development is to be reconciled with the protection of the environment, and, in so doing, new norms have to be taken into consideration, including when activities begun in the past are now expanded and upgraded.

222. The use of the Iron Rhine railway started some 120 years ago and it is now envisaged and requested by Belgium at a substantially increased and intensified level. Such new use "is susceptible of having an adverse impact on the environment and causing harm to it. Today, in international environmental law, a growing emphasis is being put on the duty of prevention. Much of international environmental law has been formulated by reference to the impact that activities in one territory may have on the territory of another. The International Court of Justice expressed the view that "[t]he existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment" (*Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, IC.J. Reports 1996(1), p. 226 at pp. 241-242, para. 29).

223. Applying the principles of international environmental law, the Tribunal observes that it is faced, in the instant case, not with a situation of a transboundary effect of the economic activity in the territory of one state on the territory of another state, but with the effect of the exercise of a treaty-guaranteed right of one state in the territory of another state and a possible impact of such exercise on the territory of the latter state. The Tribunal is of the view that, by analogy, where a state exercises a right under international law within the territory of another state, considerations of environmental protection also apply. The exercise of Belgium's right of transit, as it has formulated its request, thus may well necessitate measures by the Netherlands to protect the environment to which Belgium will have to contribute as an integral element of its request. The reactivation of the Iron Rhine railway cannot be viewed in isolation from the environmental protection measures necessitated by the intended use of the railway line. These measures are to be fully integrated into the project and its costs.

European Communities – Measures Affecting the Approval and Marketing of Biotech Products (DS 291/292/293), Report of a Panel of the World Trade Organization, 29 September 2006 (paras 7.65, 7.67-7.76 and 7.86-7.96)

[...]

7. Relevance of other rules of international law to the interpretation of the WTO agreements at issue in this dispute

(a) Other applicable rules of international law as an interpretative element to be taken into account together with the "context" (Article 31(3)(c) of the Vienna Convention on the Law of Treaties)

(i) General

7.65 Pursuant to Article 3.2 of the DSU, we are to interpret the WTO agreements "in accordance with customary rules of interpretation of public international law". These customary rules are reflected, in part, in Article 31 of the Vienna Convention.

[...]

7.67 Article 31(3)(c) directly speaks to the issue of the relevance of other rules of international law to the interpretation of a treaty. In considering the provisions of Article 31(3)(c), we note, initially, that it refers to "rules of international law". Textually, this reference seems sufficiently broad to encompass all generally accepted sources of public international law, that is to say, (i) international conventions (treaties), (ii) international custom (customary international law), and (iii) the recognized general principles of law. In our view, there can be no doubt that treaties and customary rules of international law are "rules of international law" within the meaning of Article 31(3)(c). We therefore agree with the European Communities that a treaty like the Biosafety Protocol would qualify as a "rule of international law". Regarding the recognized general principles of law which are applicable in international law, it may not appear self-evident that they can be considered as "rules of international law" within the meaning of Article 31(3)(c). However, the Appellate Body in *US – Shrimp* made it clear that pursuant to Article 31(3)(c) general principles of international law are to be taken into account in the interpretation of WTO provisions. As we mention further below, the European Communities considers that the principle of precaution is a "general principle of international law". Based on the Appellate Body report on *US – Shrimp*, we would agree that if the precautionary principle is a general principle of international law, it could be considered a "rule of international law" within the meaning of Article 31(3)(c).

7.68 Furthermore, and importantly, Article 31(3)(c) indicates that it is only those rules of international law which are "applicable in the relations between the parties" that are to be taken into account in interpreting a treaty. This limitation gives rise to the question of what is meant by the term "the parties". In considering this issue, we note that Article 31(3)(c) does not refer to "one or more parties". Nor does it refer to "the parties to a dispute". We further note that Article 2.1(g) of the Vienna Convention defines the meaning of the term "party" for the purposes of the Vienna Convention. Thus, "party" means "a State which has consented to be bound by the treaty and for which the treaty is in force". It may be inferred from these elements that the rules of international law applicable in the relations between "the parties" are the rules of international law applicable in the relations between the States which have consented to be bound by the treaty which is being interpreted, and for which that treaty is in force. This understanding of the term "the parties" leads logically to the view that the rules of international law to be taken into account in interpreting the WTO agreements at issue in this dispute are those which are applicable in the relations between the WTO Members.

7.69 It is important to note that Article 31(3)(c) mandates a treaty interpreter to take into account other rules of international law ("[t]here shall be taken into account"); it does not merely give a treaty interpreter the option of doing so. It is true that the obligation is to "take account" of such rules, and thus no particular outcome is prescribed. However, Article 31(1) makes clear that a treaty is to be interpreted "in good faith". Thus, where consideration of all other interpretative elements set out in Article 31 results in more than one permissible interpretation, a treaty interpreter following the instructions of Article 31(3)(c) in good faith would in our view need to settle for that interpretation which is more in accord with other applicable rules of international law.

7.70 Taking account of the fact that Article 31(3)(c) mandates consideration of other applicable rules of international law, and that such consideration may prompt a treaty interpreter to adopt one interpretation rather than another, we think it makes sense to interpret Article 31(3)(c) as requiring consideration of those rules of international law which are applicable in the relations between all parties to the treaty which is being interpreted. Requiring that a treaty be interpreted in the light of other rules of international law which bind the States parties to the treaty ensures or enhances the consistency of the rules of international law applicable to these States and thus contributes to avoiding conflicts between the relevant rules.

7.71 The European Communities appears to suggest that we must interpret the WTO agreements at issue in this dispute in the light of other rules of international law even if these rules are not binding on all Parties to this dispute. In addressing this argument, we first recall our view that Article 31(3)(c) should be interpreted to mandate consideration of rules of international law which are applicable in the relations between all parties to the treaty which is being interpreted. The parties to a dispute over compliance with a particular treaty are, of course, parties to that treaty. In relation to the present dispute it can thus be said that if a rule of international law is not applicable to one of the four WTO Members which are parties to the present dispute, the rule is not applicable in the relations between all WTO Members. Accordingly, based on our interpretation of Article 31(3)(c), we do not consider that in interpreting the relevant WTO agreements we are required to take into account other rules of international law which are not applicable to one of the Parties to this dispute. But even independently of our own interpretation, we think Article 31(3)(c) cannot reasonably be interpreted as the European Communities suggests. Indeed, it is not apparent why a sovereign State would agree to a mandatory rule of treaty interpretation which could have as a consequence that the interpretation of a treaty to which that State is a party is affected by other rules of international law which that State has decided not to accept.

7.72 Before applying our interpretation of Article 31(3)(c) to the present case, it is important to note that the present case is not one in which relevant rules of international law are applicable in the relations between all parties to the dispute, but not between all WTO Members, and in which all parties to the dispute argue that a multilateral WTO agreement should be interpreted in the light of these other rules of international law. Therefore, we need not, and do not, take a position on whether in such a situation we would be entitled to take the relevant other rules of international law into account.

(ii) *Convention on Biological Diversity and Biosafety Protocol*

7.73 With the foregoing observations in mind, we now consider whether the multilateral treaties identified by the European Communities are "relevant rules of international law applicable in the relations between the parties". The European Communities has identified two multilateral treaties, the Convention on Biological Diversity and the Biosafety Protocol. We first address the Convention on Biological Diversity.

7.74 We note that like most other WTO Members, Argentina, Canada and the European Communities have ratified the Convention on Biological Diversity and are thus parties to it. The United States has signed it in 1993, but has not ratified it since. Thus, the United States is not a party to the Convention on Biological Diversity, and so for the United States the Convention is

not in force. In other words, the Convention on Biological Diversity is not "applicable" in the relations between the United States and all other WTO Members. The mere fact that the United States has signed the Convention on Biological Diversity does not mean that the Convention is applicable to it. Nor does it mean that the United States will ratify it, or that it is under an obligation to do so. We have said that if a rule of international law is not applicable to one of the Parties to this dispute, it is not applicable in the relations between all WTO Members. Therefore, in view of the fact that the United States is not a party to the Convention on Biological Diversity, we do not agree with the European Communities that we are required to take into account the Convention on Biological Diversity in interpreting the multilateral WTO agreements at issue in this dispute.

7.75 Turning to the Biosafety Protocol, we note that it entered into force only on 11 September 2003, i.e., after this Panel was established by the DSB. Among the WTO Members parties to the Biosafety Protocol is the European Communities. Argentina and Canada have signed the Biosafety Protocol, but have not ratified it since. Hence, they are not parties to it. The United States has not signed the Biosafety Protocol. While this does not preclude the United States from ratifying the Protocol, the United States has so far not done so. Accordingly, it, too, is not a party to the Biosafety Protocol. We do not consider that the rules of the Biosafety Protocol can be deemed to be applicable to the United States merely because the United States participates in the Protocol's Clearing-House Mechanism. It follows that the Biosafety Protocol is not in force for Argentina, Canada or the United States. We deduce from this that the Biosafety Protocol is not "applicable" in the relations between these WTO Members and all other WTO Members. As we have said above, in our view, the mere fact that WTO Members like Argentina and Canada have signed the Biosafety Protocol does not mean that the Protocol is applicable to them. In view of the fact that several WTO Members, including the Complaining Parties to this dispute, are not parties to the Biosafety Protocol, we do not agree with the European Communities that we are required to take into account the Biosafety Protocol in interpreting the multilateral WTO agreements at issue in this dispute.

(iii) *Precautionary principle*

7.76 We have stated earlier that, in our view, the relevant rules of international law to be taken into account include general principles of law.

[...]

7.86 The Panel notes the European Communities' contention that the precautionary principle has "by now" become a fully-fledged and general principle of international law. The European Communities has not explained exactly what it means by the term "general principle of international law". We note that this term may be understood as encompassing either rules of customary law or the recognized general principles of law or both. Given this, we are prepared to consider whether the precautionary principle fits within either of these categories. This approach is consistent with the position taken by the European Communities in EC – Hormones where the European Communities contended on appeal that the precautionary principle was a general customary rule of international law or at least a general principle of law.

7.87 In its report on EC – Hormones, the Appellate Body had this to say in response to the

forementioned contention by the European Communities:

"The status of the precautionary principle in international law continues to be the subject of debate among academics, law practitioners, regulators and judges. The precautionary principle is regarded by some as having crystallized into a general principle of customary international environmental law. Whether it has been widely accepted by Members as a principle of general or customary international law appears less than clear. We consider, however, that it is unnecessary, and probably imprudent, for the Appellate Body in this appeal to take a position on this important, but abstract, question. We note that the Panel itself did not make any definitive finding with regard to the status of the precautionary principle in international law and that the precautionary principle, at least outside the field of international environmental law, still awaits authoritative formulation.

It appears to us important, nevertheless, to note some aspects of the relationship of the precautionary principle to the SPS Agreement. First, the principle has not been written into the SPS Agreement as a ground for justifying SPS measures that are otherwise inconsistent with the obligations of Members set out in particular provisions of that Agreement. Secondly, the precautionary principle indeed finds reflection in Article 5.7 of the SPS Agreement. We agree, at the same time, with the European Communities, that there is no need to assume that Article 5.7 exhausts the relevance of a precautionary principle. It is reflected also in the sixth paragraph of the preamble and in Article 3.3. These explicitly recognize the right of Members to establish their own appropriate level of sanitary protection, which level may be higher (i.e., more cautious) than that implied in existing international standards, guidelines and recommendations. Thirdly, a panel charged with determining, for instance, whether "sufficient scientific evidence" exists to warrant the maintenance by a Member of a particular SPS measure may, of course, and should, bear in mind that responsible, representative governments commonly act from perspectives of prudence and precaution where risks of irreversible, e.g. life-terminating, damage to human health are concerned. Lastly, however, the precautionary principle does not, by itself, and without a clear textual directive to that effect, relieve a panel from the duty of applying the normal (i.e. customary international law) principles of treaty interpretation in reading the provisions of the SPS Agreement."

7.88 The Appellate Body made this statement in January 1998. It appears to us from the Parties' arguments and other available materials that the legal debate over whether the precautionary principle constitutes a recognized principle of general or customary international law is still ongoing. Notably, there has, to date, been no authoritative decision by an international court or tribunal which recognizes the precautionary principle as a principle of general or customary international law. It is correct that provisions explicitly or implicitly applying the precautionary principle have been incorporated into numerous international conventions and declarations, although, for the most part, they are environmental conventions and declarations. Also, the principle has been referred to and applied by States at the domestic level, again mostly in domestic environmental law. On the other hand, there remain questions regarding the precise definition and content of the precautionary principle. Finally, regarding doctrine, we note that many authors have expressed the view that the precautionary principle exists as a general principle in international law. At the same time, as already noted by the Appellate Body, others have expressed scepticism and consider that the precautionary principle has not yet attained the status of a general principle in international law.

7.89 Since the legal status of the precautionary principle remains unsettled, like the Appellate Body before us, we consider that prudence suggests that we not attempt to resolve this complex issue, particularly if it is not necessary to do so. Our analysis below makes clear that for the

purposes of disposing of the legal claims before us, we need not take a position on whether or not the precautionary principle is a recognized principle of general or customary international law. Therefore, we refrain from expressing a view on this issue.

(b) Other rules of international law as evidence of the ordinary meaning of terms used in a treaty

7.90 Up to this point, we have examined whether there are other applicable rules of international law which we are required to take into account, in accordance with Article 31(3)(c) of the *Vienna Convention*, in interpreting the WTO agreements at issue in this dispute. We now turn to examine whether other rules of international law could be considered by us in the interpretation of the WTO agreements at issue even if these rules are not applicable in the relations between the WTO Members and thus do not fall within the category of rules which is at issue in Article 31(3)(c).

7.91 The European Communities notes in this regard that in *US – Shrimp* the Appellate Body interpreted WTO rules by reference to treaties which were not binding on all parties to the proceedings. More specifically, the European Communities points out that the Appellate Body in that case invoked treaties in support of arguments made by the United States, even though the United States had either not signed or not ratified these treaties. The European Communities notes that one such treaty was the *Convention on Biological Diversity*.

7.92 The Panel recalls that pursuant to Article 31(1) of the Vienna Convention, the terms of a treaty must be interpreted in accordance with the "ordinary meaning" to be given to these terms in their context and in the light of its object and purpose. The ordinary meaning of treaty terms is often determined on the basis of dictionaries. We think that, in addition to dictionaries, other relevant rules of international law may in some cases aid a treaty interpreter in establishing, or confirming, the ordinary meaning of treaty terms in the specific context in which they are used. Such rules would not be considered because they are legal rules, but rather because they may provide evidence of the ordinary meaning of terms in the same way that dictionaries do. They would be considered for their informative character. It follows that when a treaty interpreter does not consider another rule of international law to be informative, he or she need not rely on it.

7.93 In the light of the foregoing, we consider that a panel may consider other relevant rules of international law when interpreting the terms of WTO agreements if it deems such rules to be informative. But a panel need not necessarily rely on other rules of international law, particularly if it considers that the ordinary meaning of the terms of WTO agreements may be ascertained by reference to other elements.

7.94 This approach is consistent with the Appellate Body's approach in *US – Shrimp*, as we understand it. In that case, the Appellate Body had to interpret the term "exhaustible natural resources" in Article XX(g) of the GATT 1994. The Appellate Body found that this term was by definition evolutionary and therefore found it "pertinent to note that modern international conventions and declarations make frequent references to natural resources as embracing both living and non-living resources". Thus, as we understand it, the Appellate Body drew on other rules of international law because it considered that they were informative and aided it in

establishing the meaning and scope of the term "exhaustible natural resources". The European Communities correctly points out that the Appellate Body referred to conventions which were not applicable to all disputing parties. However, the mere fact that one or more disputing parties are not parties to a convention does not necessarily mean that a convention cannot shed light on the meaning and scope of a treaty term to be interpreted.

7.95 In the present case, in response to a question from the Panel, the European Communities has identified a number of provisions of the *Convention on Biological Diversity* and of the *Biosafety Protocol* which it considers must be taken into account by the Panel. The European Communities has not explained how these provisions are relevant to the interpretation of the WTO agreements at issue in this dispute. We have carefully considered the provisions referred to by the European Communities. Ultimately, however, we did not find it necessary or appropriate to rely on these particular provisions in interpreting the WTO agreements at issue in this dispute.

7.96 Furthermore, we recall that after consulting the Parties, we have requested several international organizations (Codex, FAO, the IPPC Secretariat, WHO, OIE, the CBD Secretariat and UNEP) to identify materials (reference works, glossaries, official documents of the relevant international organizations, including conventions, standards and guidelines, etc.) that might aid us in determining the ordinary meaning of certain terms used in the definitions provided in Annex A to the *SPS Agreement*. The materials we have obtained in this way have been taken into account by us, as appropriate.

Brazil – Measures affecting Imports of Retreaded Tyres (DS 332), Report of the Appellate Body of the World Trade Organization, 3 December 2007 (paras 139-155 and 178-183)

139. We begin by recalling that the analysis of a measure under Article XX of the GATT 1994 is two-tiered. First, a panel must examine whether the measure falls under at least one of the ten exceptions listed under Article XX. Secondly, the question of whether the measure at issue satisfies the requirements of the chapeau of Article XX must be considered.

140. We note at the outset that the participants do not dispute that it is within the authority of a WTO Member to set the public health or environmental objectives it seeks to achieve, as well as the level of protection that it wants to obtain, through the measure or the policy it chooses to adopt.

141. Article XX(b) of the GATT 1994 refers to measures "necessary to protect human, animal or plant life or health". The term "necessary" is mentioned not only in Article XX(b) of the GATT 1994, but also in Articles XX(a) and XX(d) of the GATT 1994, as well as in Article XIV(a), (b), and (c) of the GATS. In *Korea – Various Measures on Beef*, the Appellate Body underscored that "the word 'necessary' is not limited to that which is 'indispensable'". The Appellate Body added:

Measures which are indispensable or of absolute necessity or inevitable to secure compliance certainly fulfil the requirements of Article XX(d). But other measures, too, may fall within the ambit of this exception. As used in Article XX(d), the term "necessary" refers, in our view, to a range of degrees of necessity. At one end of this

continuum lies "necessary" understood as "indispensable"; at the other end, is "necessary" taken to mean as "making a contribution to." We consider that a "necessary" measure is, in this continuum, located significantly closer to the pole of "indispensable" than to the opposite pole of simply "making a contribution to". (footnote omitted)

142. In *Korea – Various Measures on Beef*, the Appellate Body explained that determining whether a measure is "necessary" within the meaning of Article XX(d):

... involves in every case a process of weighing and balancing a series of factors which prominently include the contribution made by the compliance measure to the enforcement of the law or regulation at issue, the importance of the common interests or values protected by that law or regulation, and the accompanying impact of the law or regulation on imports or exports.

143. In *US – Gambling*, the Appellate Body addressed the "necessity" test in the context of Article XIV of the GATS. The Appellate Body stated that the weighing and balancing process inherent in the necessity analysis "begins with an assessment of the 'relative importance' of the interests or values furthered by the challenged measure", and also involves an assessment of other factors, which will usually include "the contribution of the measure to the realization of the ends pursued by it" and "the restrictive impact of the measure on international commerce".

144. It is against this background that we must determine whether the Panel erred in assessing the contribution of the Import Ban to the realization of the objective pursued by it, and in the manner in which it weighed this contribution in its analysis of the necessity of the Import Ban. We begin by identifying the objective pursued by the Import Ban. The Panel found that the objective of the Import Ban is the reduction of the "exposure to the risks to human, animal or plant life or health arising from the accumulation of waste tyres", and noted that "few interests are more 'vital' and 'important' than

protecting human beings from health risks, and that protecting the environment is no less important." The Panel also observed that "Brazil's chosen level of protection is the reduction of the risks of waste tyre accumulation to the maximum extent possible." Regarding the trade restrictiveness of the measure, the Panel noted that it is "as trade-restrictive as can be, as far as retreaded tyres from non-MERCOSUR countries are concerned, since it aims to halt completely their entry into Brazil."

145. We turn to the methodology used by the Panel in analyzing the contribution of the Import Ban to the achievement of its objective. Such a contribution exists when there is a genuine relationship of ends and means between the objective pursued and the measure at issue. The selection of a methodology to assess a measure's contribution is a function of the nature of the risk, the objective pursued, and the level of protection sought. It ultimately also depends on the nature, quantity, and quality of evidence existing at the time the analysis is made. Because the Panel, as the trier of the facts, is in a position to evaluate these circumstances, it should enjoy a certain latitude in designing the appropriate methodology to use and deciding how to structure or organize the analysis of the contribution of the measure at issue to the realization of the ends pursued by it. This latitude is not, however, boundless. Indeed, a panel must analyze the contribution of the measure at issue to the realization of the ends pursued by it in accordance with the requirements of Article XX of the GATT 1994 and Article 11 of the DSU.

146. We note that the Panel chose to conduct a qualitative analysis of the contribution of the Import Ban to the achievement of its objective. In previous cases, the Appellate Body has not established a requirement that such a contribution be quantified. To the contrary, in *EC – Asbestos*, the Appellate Body emphasized that there is "no requirement under Article XX(b) of the GATT 1994 to quantify, as such, the risk to human life or health". In other words, "[a] risk may be evaluated either in quantitative or qualitative terms." Although the reference by the Appellate Body

to the quantification of a risk is not the same as the quantification of the contribution of a measure to the realization of the objective pursued by it (which could be, as it is in this case, the reduction of a risk), it appears to us that the same line of reasoning applies to the analysis of the contribution, which can be done either in quantitative or in qualitative terms.

147. Accordingly, we do not accept the European Communities' contention that the Panel was under an obligation to quantify the contribution of the Import Ban to the reduction in the number of waste tyres and to determine the number of waste tyres that would be reduced as a result of the Import Ban. In our view, the Panel's choice of a qualitative analysis was within the bounds of the latitude it enjoys in choosing a methodology for the analysis of the contribution.

148. The Panel analyzed the contribution of the Import Ban to the achievement of its objective in a coherent sequence. It examined first the impact of the replacement of imported retreaded tyres with *new tyres* on the reduction of waste. Secondly, the Panel sought to determine whether imported retreaded tyres would be replaced with *domestically retreaded tyres*, which led it to examine whether domestic used tyres can be and are being retreaded in Brazil. Thirdly, it considered whether the reduction in the number of waste tyres would contribute to a reduction of the risks to human, animal, and plant life and health.

149. The Panel's analysis was not only directed at an assessment of the current situation and the *immediate* effects of the Import Ban on the reduction of the exposure to the targeted risks. The Panel's approach also focused on evaluating the extent to which the Import Ban is likely to result in a reduction of the exposure to these risks. In the course of its reasoning, the Panel made and tested some key hypotheses, including: that imported retreaded tyres are being replaced with new tyres and domestically retreaded tyres; that some proportion of domestic used tyres are retreadable and are being retreaded; that Brazil introduced a number of measures to facilitate the access of domestic retreaders to good-quality used tyres; that more automotive inspections in Brazil lead to an increase in the number of retreadable used tyres; and that Brazil has the production capacity to retread such tyres. The Panel sought to verify these hypotheses on the basis of the evidence adduced by the parties and found them to be logically sound and supported by sufficient evidence. In the next Section, we will examine the European Communities' claim that the Panel failed to make an objective assessment of the facts with respect to the verification of some of these hypotheses. Assuming, for the time being, that the Panel assessed the facts in accordance with Article 11 of the DSU, it appears to us that the Panel's analysis supports its conclusion that the Import Ban is capable of making a contribution and can result in a reduction of exposure to the targeted risks. We have now to determine whether this was sufficient to conclude that the Import Ban is "necessary" within the meaning of Article XX(b) of the GATT 1994.

150. As the Panel recognized, an import ban is "by design as trade-restrictive as can be". We agree with the Panel that there may be circumstances where such a measure can nevertheless be necessary, within the meaning of Article XX(b). We also recall that, in *Korea – Various Measures on Beef*, the Appellate Body indicated that "the word 'necessary' is not limited to that which is 'indispensable'". Having said that, when a measure produces restrictive effects on international trade as severe as those resulting from an import ban, it appears to us that it would be difficult for a panel to find that measure necessary unless it is satisfied that the measure is apt to make a material contribution to the achievement of its objective. Thus, we disagree with Brazil's suggestion that, because it aims to reduce risk exposure to the maximum extent possible, an import ban that brings a marginal or insignificant contribution can nevertheless be considered necessary.

151. This does not mean that an import ban, or another trade-restrictive measure, the contribution of which is not immediately observable, cannot be justified under Article XX(b). We recognize that certain complex public health or environmental problems may be tackled only with a comprehensive policy comprising a multiplicity of interacting measures. In the short-term, it may prove difficult to isolate the contribution to public health or environmental objectives of one specific measure from those attributable to the other measures that are part of the same comprehensive policy. Moreover, the results obtained from certain actions—for instance, measures adopted in order to attenuate global warming and climate change, or certain preventive actions to reduce the incidence of diseases that may manifest themselves only after a certain period of time—can only be evaluated with the benefit of time. In order to justify an import ban under Article XX(b), a panel must be satisfied that it brings about a material contribution to the achievement of its objective. Such a demonstration can of course be made by resorting to evidence or data, pertaining to the past or the present, that establish that the import ban at issue makes a material contribution to the protection of public health or environmental objectives pursued. This is not, however, the only type of demonstration that could establish such a contribution. Thus, a panel might conclude that an import ban is necessary on the basis of a demonstration that the import ban at issue is apt to produce a material contribution to the achievement of its objective. This demonstration could consist of quantitative projections in the future, or qualitative reasoning based on a set of hypotheses that are tested and supported by sufficient evidence.

152. We have now to assess whether the qualitative analysis provided by the Panel establishes that the Import Ban is apt to produce a material contribution to the achievement of the objective of reducing exposure to the risks arising from the accumulation of waste tyres.

153. We observe, first, that the Panel analyzed the contribution of the Import Ban as initially designed, without taking into account the imports of remoulded tyres under the MERCOSUR exemption. As we indicated above, this is not the only possible approach. Nevertheless, we proceed with our examination of the Panel's reasoning on that basis for the reasons we explained earlier. In the light of the evidence adduced by the parties, the Panel was of the view that the Import Ban would lead to imported retreaded tyres being replaced with retreaded tyres made from local casings, or with new tyres that are retreadable. As concerns new tyres, the Panel observed, and we agree, that retreaded tyres "have by definition a shorter lifespan than new tyres" and that, accordingly, the

Import Ban "may lead to a reduction in the total number of waste tyres because imported retreaded tyres may be substituted for by new tyres which have a longer lifespan." As concerns tyres retreaded in Brazil from local casings, the Panel was satisfied that Brazil had the production capacity to retread domestic used tyres and that "at least some domestic used tyres are being retreaded in Brazil." The Panel also agreed that Brazil has taken a series of measures to facilitate the access of domestic retreaders to good-quality used tyres, and that new tyres sold in Brazil are high-quality tyres that comply with international standards and have the potential to be retreaded. The Panel's conclusion with which we agree was that, "if the domestic retreading industry retreads more domestic used tyres, the overall number of waste tyres will be reduced by giving a second life to some used tyres, which otherwise would have become waste immediately after their first and only life." For these reasons, the Panel found that a reduction of waste tyres would result from the Import Ban and that, therefore, the Import Ban would contribute to reducing exposure to the risks associated with the accumulation of waste tyres. As the Panel's analysis was qualitative, the Panel did not seek to estimate, in quantitative terms, the reduction of waste tyres that would result from the Import Ban, or the time horizon of such a reduction. Such estimates would have been very useful and, undoubtedly, would have strengthened the foundation of the Panel's findings. Having said that, it does not appear to us erroneous to conclude, on the basis of the hypotheses made, tested, and accepted by the Panel, that fewer waste tyres will be generated with the Import Ban than otherwise.

154. Moreover, we wish to underscore that the Import Ban must be viewed in the broader context of the comprehensive strategy designed and implemented by Brazil to deal with waste tyres. This comprehensive strategy includes not only the Import Ban but also the import ban on used tyres, as well as the collection and disposal scheme adopted by CONAMA Resolution 258/1999, as amended in 2002, which makes it mandatory for domestic manufacturers and importers of new tyres to provide for the safe disposal of waste tyres in specified proportions. For its part, CONAMA Resolution 258/1999, as amended in 2002, aims to reduce the exposure to risks arising from the accumulation of waste tyres by forcing manufacturers and importers of new tyres to collect and dispose of waste tyres at a ratio of five waste tyres for every four new tyres. This measure also encourages Brazilian retreaders to retread more domestic used tyres by exempting domestic retreaders from disposal obligations as long as they process tyres consumed within Brazil. Thus, the CONAMA scheme provides additional support for and is consistent with the design of Brazil's strategy for reducing the number of waste tyres. The two mutually enforcing pillars of Brazil's overall strategy—the Import Ban and the import ban on used tyres—imply that the demand for retreaded tyres in Brazil must be met by the domestic retreaders, and that these retreaders, in principle, can use only domestic used tyres for raw material. Over time, this comprehensive regulatory scheme is apt to induce sustainable changes in the practices and behaviour of the domestic retreaders, as well as other actors, and result in an increase in the number of retreadable tyres in Brazil and a higher rate of retreading of domestic casings in Brazil. Thus, the Import Ban appears to us as one of the key elements of the comprehensive strategy designed by Brazil to deal with waste tyres, along with the import ban on used tyres and the collection and disposal scheme established by CONAMA Resolution 258/1999, as amended in 2002.

155. As we explained above, we agree with the Panel's reasoning suggesting that fewer

waste tyres will be generated with the Import Ban in place. In addition, Brazil has developed and implemented a comprehensive strategy to deal with waste tyres. As a *key element* of this strategy, the Import Ban is likely to bring a material contribution to the achievement of its objective of reducing the exposure to risks arising from the accumulation of waste tyres. On the basis of these considerations, we are of the view that the Panel did not err in finding that the Import Ban contributes to the achievement of its objective.

[...]

178. We begin our analysis by recalling that, in order to determine whether a measure is "necessary" within the meaning of Article XX(b) of the GATT 1994, a panel must consider the relevant factors, particularly the importance of the interests or values at stake, the extent of the contribution to the achievement of the measure's objective, and its trade restrictiveness. If this analysis yields a preliminary conclusion that the measure is necessary, this result must be confirmed by comparing the measure with possible alternatives, which may be less trade restrictive while providing an equivalent contribution to the achievement of the objective. This comparison should be carried out in the light of the importance of the interests or values at stake. It is through this process that a panel determines whether a measure is necessary.

179. In this case, the Panel identified the objective of the Import Ban as being the reduction of the exposure to risks arising from the accumulation of waste tyres. It assessed the importance of the interests underlying this objective. It found that risks of dengue fever and malaria arise from the accumulation of waste tyres and that the objective of protecting human life and health against such diseases "is both vital and important in the highest degree". The Panel noted that the objective of the Import Ban also relates to the protection of the environment, a value that it considered—correctly, in our view—important. Then, the Panel analyzed the trade restrictiveness of the Import Ban and its contribution to the achievement of its objective. It appears from the Panel's reasoning that it considered that, in the light of the importance of the interests protected by the objective of the Import Ban, the contribution of the Import Ban to the achievement of its objective outweighs its trade restrictiveness. This finding of the Panel does not appear erroneous to us.

180. The Panel then proceeded to examine the alternatives to the Import Ban proposed by the European Communities. The Panel explained that some of them could not be viewed as alternatives to the Import Ban because they were complementary to it and were already included in Brazil's comprehensive policy. Next, the Panel compared the other alternatives proposed by the European Communities—landfilling, stockpiling, incineration, and material recycling—with the Import Ban, taking into consideration the specific risks associated with these proposed alternatives. The Panel concluded from this comparative assessment that none of the proposed options was a reasonably available alternative to the Import Ban.

181. The European Communities argues that the Panel failed to make a proper collective assessment of all the proposed alternatives, a contention that does not stand for the following reasons. First, the Panel did refer to its collective examination of these alternatives in concluding that "none of these, either individually or collectively, would be such that the risks arising from waste tyres in Brazil would be safely eliminated, as is intended by the current import ban." Secondly, as noted by the Panel and discussed above, some of the proposed

alternatives are not real substitutes for the Import Ban since they complement each other as part of Brazil's comprehensive policy. Finally, having found that other proposed alternatives were not reasonably available or carried their own risks, these alternatives would not have weighed differently in a collective assessment of alternatives.

182. In sum, the Panel's conclusion that the Import Ban is necessary was the result of a process involving, first, the examination of the contribution of the Import Ban to the achievement of its objective against its trade restrictiveness in the light of the interests at stake, and, secondly, the comparison of the possible alternatives, including associated risks, with the Import Ban. The analytical process followed by the Panel is consistent with the approach previously defined by the Appellate Body. The weighing and balancing is a holistic operation that involves putting all the variables of the equation together and evaluating them in relation to each other after having examined them individually, in order to reach an overall judgement. We therefore do not share the European Communities' view that the Panel did not "actually" weigh and balance the relevant factors, or that the Panel made a methodological error in comparing the alternative options proposed by the European Communities with the Import Ban.

183. In the light of all these considerations, we are of the view that the Panel did not err in the manner it conducted its analysis under Article XX(b) of the GATT 1994 as to whether the Import Ban was "necessary to protect human, animal or plant life or health".

C. General Conclusion on the Necessity Analysis under Article XX(b) of the GATT 1994

210. At this stage, it may be useful to recapitulate our views on the issue of whether the Import Ban is necessary within the meaning of Article XX(b) of the GATT 1994. This issue illustrates the tensions that may exist between, on the one hand, international trade and, on the other hand, public health and environmental concerns arising from the handling of waste generated by a product at the end of its useful life. In this respect, the fundamental principle is the right that WTO Members have to determine the level of protection that they consider appropriate in a given context. Another key element of the analysis of the necessity of a measure under Article XX(b) is the contribution it brings to the achievement of its objective. A contribution exists when there is a genuine relationship of ends and means between the objective pursued and the measure at issue. To be characterized as necessary, a measure does not have to be indispensable. However, its contribution to the achievement of the objective must be material, not merely marginal or insignificant, especially if the measure at issue is as trade restrictive as an import ban. Thus, the contribution of the measure has to be weighed against its trade restrictiveness, taking into account the importance of the interests or the values underlying the objective pursued by it. As a key component of a comprehensive policy aiming to reduce the risks arising from the accumulation of waste tyres, the Import Ban produces such a material contribution to the realization of its objective. Like the Panel, we consider that this contribution is sufficient to conclude that the Import Ban is necessary, in the absence of reasonably available alternatives.

211. The European Communities proposed a series of alternatives to the Import Ban. Whereas the Import Ban is a preventive non-generation measure, most of the proposed alternatives are waste management and disposal measures that are remedial in character. We consider that measures to encourage domestic retreading or to improve the retreadability of

tyres, a better enforcement of the import ban on used tyres, and a better implementation of existing collection and disposal schemes, are complementary to the Import Ban; indeed, they constitute mutually supportive elements of a comprehensive policy to deal with waste tyres. Therefore, these measures cannot be considered real alternatives to the Import Ban. As regards landfilling, stockpiling, co-incineration of waste tyres, and material recycling, these remedial methods carry their own risks or, because of the costs involved, are capable of disposing of only a limited number of waste tyres. The Panel did not err in concluding that the proposed measures or practices are not reasonably available alternatives.

212. Accordingly, having already found that the Panel did not breach its duty under Article 11 of the DSU, and in the light of the above considerations, we uphold the Panel's finding, in paragraph 7.215 of the Panel Report, that the Import Ban can be considered "necessary to protect human, animal or plant life or health."

Albania: Power Sector Generation and Restructuring Project (IDA Credit No. 3872-AIJB), World Bank's Inspection Panel, Investigation Report, 7 August 2009 (paragraphs 322-332)

322. Given that the Requestors first approached the Aarhus Convention Compliance Committee, which carried out its inquiry before that of the Panel, we will summarize the Aarhus investigation and its findings.

323. Importantly, the Aarhus Convention Compliance Committee's review focused on the actions of Albania (Party), not on the Bank. However, the conclusions of the Committee are relevant because Bank policy gives the main responsibility for consultation to the borrower and requires the Bank to ensure that the borrower fulfills this requirement. Furthermore, requirements of the Aarhus Convention are largely similar to Bank's public consultation and disclosure requirements set forth in OP 4.01. The Committee primarily addressed the issue of public participation with regard to Decision 20 of the Council of Territorial Adjustment of Albania, dated February 19, 2003, approving the construction site of the Vlora thermal power station. The Aarhus Committee determined that the requirements of paragraphs 3, 4 and 8 of Article 6 of the Aarhus Convention³¹⁹ are applicable. Article 6 of the Aarhus Convention applies to decisions on proposed activities listed in Annex I, which include thermal power stations and other combustion installations with heat input of 50 megawatts or more, among other activities, and to decisions on other proposed activities which may have "a significant effect on the environment."

324. Regarding the decision to establish the site of the thermal power plant, the Aarhus Committee concluded that the only element of public participation in this phase of the process appears to have been the public meeting that took place on October 28 or 31, 2002. The Aarhus Committee examined the minutes and the list of participants of the October 31, 2002, meeting and compared them with the minutes and the list of participants of the September 3, 2003 meeting. The Aarhus Committee noted "out of 16 questions put forward by the participants of the first meeting and 18 questions raised at the second meeting, 12 are exactly the same."

325. The Aarhus Committee further noted that nine of these questions received practically verbatim identical replies. In addition, introductions to the meetings and some of the general

interventions made by the public officials were also identical. The Aarhus Committee found that the lists of participants of the two meetings differ only regarding four additional public officials who attended the first meeting. The Aarhus Committee stated that "the results of this comparative analysis raise serious concerns regarding the extent to which the report of the meeting can be relied upon as an accurate record of the proceedings as well as regarding the genuine nature of the questions and concerns raised, recorded and subsequently taken into account in the decision-making process."

326. With respect to the October 31, 2002, meeting, the Aarhus Committee concluded the following:

"The unclear circumstances surrounding the meeting in October 2002, and the failure of the Party concerned to provide anything to substantiate the claim that the meeting was duly announced and open for public participation, as well as concerns about the quality of the meeting records, lead the Committee to conclude that the Party concerned failed to comply with the requirements for public participation set out in paragraphs 3, 4 and 8 of article 6 of the Convention."

327. The Aarhus Committee also reviewed and commented on the meetings that took place on April 2, 2003, and September 3, 2003. (As noted above, Management indicates that the meetings held on April 2, 2003, and September 3, 2003 correspond to the two EA consultations required by the Bank for a Category A project.) The Aarhus Committee stated that the two meetings that took place on April 2, 2003, and September 3, 2003, took place after the decision on the approval of the construction site in Vlora and "therefore cannot be considered as events contributing to the involvement of the public in that decision."

328. The Aarhus Committee further noted that Albania did not provide any information "to demonstrate that the meetings in April and September 2003 were publicly announced, so as to allow members of the public opposing the project to actively take part in the decision-making." In addition, the Aarhus Committee stated that Albania did not "give any reasonable explanation as to why the rather strong local opposition to the project, indicated by the 14,000 people calling for a referendum, was not heard or represented properly at any of these meetings." With respect to the meetings held on April 2, 2003, and September 3, 2003, the Aarhus Committee concluded that "[t]his gives rise to concerns that the invitation process also at this stage was selective and insufficient."

329. Following its field inquiry, the Aarhus Committee (see Box 1, Ch.1) issued its overall conclusion after its June 2007 meeting. The Aarhus Committee found that: "[a]lthough some efforts were made to provide for public participation, these largely took place after the crucial decision on siting and were subject to some qualitative deficiencies, leading the Committee to find that the Party concerned failed to comply fully with the requirements in question."

330. In accordance with OP 4.01, it is necessary that an EA takes into account, *inter alia*, the country's obligations pertaining to project activities under relevant international environmental treaties and agreements. OP 4.01 states that the Bank does not finance project activities that would contravene a country's obligations under any such international treaty or agreement.

331. As noted above, with respect to the proposed thermal power plant, the Aarhus Committee found that some efforts were made to provide for public participation, but noted that "...these

largely took place after the crucial decision on siting and were subject to some qualitative deficiencies". The Aarhus Committee concluded that Albania failed to comply with the requirements for public participation set out in paragraphs 3, 4 and 8 of Article 6 of the Aarhus Convention.

332. Based on the foregoing, the Panel finds that Management did not ensure that the Project preparation activities complied with the consultation and public participation requirements of the Aarhus Convention. This does not comply with OP 4.01.

Case Concerning Pulp Mills on the River Uruguay (Argentina/Uruguay), Judgment of the International Court of Justice, 20 April 2010 (paras 101, 164, 177, 188, 204-205, 215-217 and 219)

101. The Court points out that the principle of prevention, as a customary rule, has its origins in the due diligence that is required of a State in its territory. It is "every State's obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States" (*Corfu Channel (United Kingdom v. Albania), Merits, Judgment, I.C.J. Reports 1949, p. 22*). A State is thus obliged to use all the means at its disposal in order to avoid activities which take place in its territory, or in any area under its jurisdiction, causing significant damage to the environment of another State. This Court has established that this obligation "is now part of the corpus of international law relating to the environment" (*Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I), p. 242, para. 29*).

[...]

164. Regarding the arguments put forward by Argentina on the reversal of the burden of proof and on the existence, vis-à-vis each Party, of an equal onus to prove under the 1975 Statute, the Court considers that while a precautionary approach may be relevant in the interpretation and application of the provisions of the Statute, it does not follow that it operates as a reversal of the burden of proof. The Court is also of the view that there is nothing in the 1975 Statute itself to indicate that it places the burden of proof equally on both Parties.

[...]

177. Regarding Article 27, it is the view of the Court that its formulation reflects not only the need to reconcile the varied interests of riparian States in a transboundary context and in particular in the use of a shared natural resource, but also the need to strike a balance between the use of the waters and the protection of the river consistent with the objective of sustainable development. The Court has already dealt with the obligations arising from Articles 7 to 12 of the 1975 Statute which have to be observed, according to Article 27, by any Party wishing to exercise its right to use the waters of the river for any of the purposes mentioned therein insofar as such use may be liable to affect the régime of the river or the quality of its waters. The Court wishes to add that such utilization could not be considered to be equitable and reasonable if the interests of the other riparian State in the shared resource and the environmental protection of the latter were not taken into account. Consequently, it is the opinion of the Court that Article 27 embodies this interconnectedness between equitable and reasonable utilization of a shared resource and the balance between economic development and environmental protection that is the essence of sustainable development.

[...]

188. This vigilance and prevention is all the more important in the preservation of the ecological balance, since the negative impact of human activities on the waters of the river may affect other components of the ecosystem of the watercourse such as its flora, fauna, and soil. The obligation to co-ordinate, through the Commission, the adoption of the necessary measures, as well as their enforcement and observance, assumes, in this context, a central role in the overall system of protection of the River Uruguay established by the 1975 Statute. It is therefore of crucial importance that the Parties respect this obligation.

[...]

204. It is the opinion of the Court that in order for the Parties properly to comply with their obligations under Article 41 (a) and (b) of the 1975 Statute, they must, for the purposes of protecting and preserving the aquatic environment with respect to activities which may be liable to cause transboundary harm, carry out an environmental impact assessment. As the Court has observed in the case concerning the *Dispute Regarding Navigational and Related Rights*, "there are situations in which the parties' intent upon conclusion of the treaty was, or may be presumed to have been, to give the terms used – or some of them – a meaning or content capable of evolving, not one fixed once and for all, so as to make allowance for, among other things, developments in international law" (*Dispute Regarding Navigational and Related Rights (Costa Rica v. Nicaragua)*, Judgment of 13 July 2009, para. 64). In this sense, the obligation to protect and preserve, under Article 41 (a) of the Statute, has to be interpreted in accordance with a practice, which in recent years has gained so much acceptance among States that it may now be considered a requirement under general international law to undertake an environmental impact assessment where there is a risk that the proposed industrial activity may have a significant adverse impact in a transboundary context, in particular, on a shared resource. Moreover, due diligence, and the duty of vigilance and prevention which it implies, would not be considered to have been exercised, if a party planning works liable to affect the régime of the river or the quality of its waters did not undertake an environmental impact assessment on the potential effects of such works.

205. The Court observes that neither the 1975 Statute nor general international law specify the scope and content of an environmental impact assessment. It points out moreover that Argentina and Uruguay are not parties to the Espoo Convention. Finally, the Court notes that the other instrument to which Argentina refers in support of its arguments, namely, the UNEP Goals and Principles, is not binding on the Parties, but, as guidelines issued by an international technical body, has to be taken into account by each Party in accordance with Article 41 (a) in adopting measures within its domestic regulatory framework. Moreover, this instrument provides only that the "environmental effects in an EIA should be assessed with a degree of detail commensurate with their likely environmental significance" (Principle 5) without giving any indication of minimum core components of the assessment. Consequently, it is the view of the Court that it is for each State to determine in its domestic legislation or in the authorization process for the project, the specific content of the environmental impact assessment required in each case, having regard to the nature and magnitude of the proposed development and its likely adverse impact on the environment as well as to the need to exercise due diligence in conducting such an assessment. The Court also considers that an environmental impact

assessment must be conducted prior to the implementation of a project. Moreover, once operations have started and, where necessary, throughout the life of the project, continuous monitoring of its effects on the environment shall be undertaken.

[...]

(ii) Consultation of the affected populations

215. The Parties disagree on the extent to which the populations likely to be affected by the construction of the Orion (Botnia) mill, particularly on the Argentine side of the river, were consulted in the course of the environmental impact assessment. While both Parties agree that consultation of the affected populations should form part of an environmental impact assessment, Argentina asserts that international law imposes specific obligations on States in this regard. In support of this argument, Argentina points to Articles 2.6 and 3.8 of the Espoo Convention, Article 13 of the 2001 International Law Commission draft Articles on Prevention of Transboundary Harm from Hazardous Activities, and Principles 7 and 8 of the UNEP Goals and Principles. Uruguay considers that the provisions invoked by Argentina cannot serve as a legal basis for an obligation to consult the affected populations and adds that in any event the affected populations had indeed been consulted.

216. The Court is of the view that no legal obligation to consult the affected populations arises for the Parties from the instruments invoked by Argentina.

217. Regarding the facts, the Court notes that both before and after the granting of the initial environmental authorization, Uruguay did undertake activities aimed at consulting the affected populations, both on the Argentine and the Uruguayan sides of the river. These activities included meetings on 2 December 2003 in Río Negro, and on 26 May 2004 in Fray Bentos, with participation of Argentine non-governmental organizations. In addition, on 21 December 2004, a public hearing was convened in Fray Bentos which, according to Uruguay, addressed among other subjects, the “handling of chemical products in the plant and in the port; the appearance of acid rain, dioxins, furans and other polychlorates of high toxicity that could affect the environment; compliance with the Stockholm Convention; atmospheric emissions of the plant; electromagnetic and electrostatic emissions; [and] liquid discharges into the river”.

Inhabitants of Fray Bentos and nearby regions of Uruguay and Argentina participated in the meeting and submitted 138 documents containing questions or concerns.

[...]

219. In the light of the above, the Court finds that consultation by Uruguay of the affected populations did indeed take place.

Responsibilities and Obligations of States sponsoring Persons and Entities with respect to Activities in The Area, Advisory Opinion of the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea, February 2011 (paras 121-137 and 141-163)

V. Direct obligations of sponsoring States

121. The obligations of sponsoring States are not limited to the due diligence “obligation to ensure”. Under the Convention and related instruments, sponsoring States also have obligations with which they have to comply independently of their obligation to ensure a certain behaviour by the sponsored contractor. These obligations may be characterized as “direct obligations”.

122. Among the most important of these direct obligations incumbent on sponsoring States are: the obligation to assist the Authority in the exercise of control over activities in the Area; the obligation to apply a precautionary approach; the obligation to apply best environmental practices; the obligation to take measures to ensure the provision of guarantees in the event of an emergency order by the Authority for protection of the marine environment; the obligation to ensure the availability of recourse for compensation in respect of damage caused by pollution; and the obligation to conduct environmental impact assessments. These obligations will be examined in paragraphs 124-150.

123. It must nevertheless be stated, at the outset, that compliance with these obligations can also be seen as a relevant factor in meeting the due diligence “obligation to ensure” and that the said obligations are in most cases couched as obligations to ensure compliance with a specific rule.

The obligation to assist the Authority

124. Pursuant to the last sentence of article 153, paragraph 4, of the Convention, sponsoring States have the obligation to assist the Authority in its task of controlling activities in the Area for the purpose of ensuring compliance with the relevant provisions of Part XI of the Convention and related instruments. This obligation is to be met “by taking all measures necessary to ensure such compliance in accordance with article 139”. The obligation of the sponsoring States is a direct one, but it is to be met through compliance with the “due diligence obligation” set out in article 139 of the Convention.

Precautionary approach

125. The Nodules Regulations and the Sulphides Regulations contain provisions that establish a direct obligation for sponsoring States. This obligation is relevant for implementing the “responsibility to ensure” that sponsored contractors meet the obligations set out in Part XI of the Convention and related instruments. These are regulation 31, paragraph 2, of the Nodules Regulations and regulation 33, paragraph 2, of the Sulphides Regulations, both of which state that sponsoring States (as well as the Authority) “shall apply a precautionary approach, as reflected in Principle 15 of the Rio Declaration” in order “to ensure effective protection for the marine environment from harmful effects which may arise from activities in the Area”.

126. Principle 15 of the 1992 Rio Declaration on Environment and Development (hereinafter “the Rio Declaration”) reads:

In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

127. The provisions of the aforementioned Regulations transform this non-binding statement of the precautionary approach in the Rio Declaration into a binding obligation. The implementation of the precautionary approach as defined in these Regulations is one of the obligations of sponsoring States.

128. It should be noted that while the first sentence of Principle 15 seems to refer in general terms to the “precautionary approach”, the second sentence limits its scope to threats of “serious or irreversible damage” and to “cost-effective” measures adopted in order to prevent “environmental degradation”.

129. Moreover, by stating that the precautionary approach shall be applied by States “according to their capabilities”, the first sentence of Principle 15 introduces the possibility of differences in application of the precautionary approach in light of the different capabilities of each State (see paragraphs 151-163).

130. The reference to the precautionary approach as set out in the two Regulations applies specifically to the activities envisaged therein, namely, prospecting and exploration for polymetallic nodules and polymetallic sulphides. It is to be expected that the Authority will either repeat or further develop this approach when it regulates exploitation activities and activities concerning other types of minerals.

131. Having established that under the Nodules Regulations and the Sulphides Regulations, both sponsoring States and the Authority are under an obligation to apply the precautionary approach in respect of activities in the Area, it is appropriate to point out that the precautionary approach is also an integral part of the general obligation of due diligence of sponsoring States, which is applicable even outside the scope of the Regulations. The due diligence obligation of the sponsoring States requires them to take all appropriate measures to prevent damage that might result from the activities of contractors that they sponsor. This obligation applies in situations where scientific evidence concerning the scope and potential negative impact of the activity in question is insufficient but where there are plausible indications of potential risks. A sponsoring State would not meet its obligation of due diligence if it disregarded those risks. Such disregard would amount to a failure to comply with the precautionary approach.

132. The link between an obligation of due diligence and the precautionary approach is implicit in the Tribunal’s Order of 27 August 1999 in the *Southern Bluefin Tuna Cases (New Zealand v. Japan; Australia v. Japan)*. This emerges from the declaration of the Tribunal that the parties “should in the circumstances act with prudence and caution to ensure that conservation measures are taken ...” (*ITLOS Reports 1999*, p. 274, at paragraph 77), and is confirmed by the further statements that “there is scientific uncertainty regarding measures to be taken to conserve the stock of southern bluefin tuna” (paragraph 79) and that “although the Tribunal cannot conclusively assess the scientific evidence presented by the parties, it finds that measures should be taken as a matter of urgency” (paragraph 80).

133. It should be further noted that the Sulphides Regulations, Annex 4, section 5.1, in setting out a “standard clause” for exploration contracts, provides that:

The Contractor shall take necessary measures to prevent, reduce and control pollution and other hazards to the marine environment arising from its activities in the Area as far

as reasonably possible applying a precautionary approach and best environmental practices.

Thus, the precautionary approach (called “principle” in the French text of the standard clause just mentioned) is a contractual obligation of the sponsored contractors whose compliance the sponsoring State has the responsibility to ensure.

134. In the parallel provision of the corresponding standard clauses for exploration contracts in the Nodules Regulations, Annex 4, section 5.1, no reference is made to the precautionary approach. However, under the general obligation illustrated in paragraph 131, the sponsoring State has to take measures within the framework of its own legal system in order to oblige sponsored entities to adopt such an approach.

135. The Chamber observes that the precautionary approach has been incorporated into a growing number of international treaties and other instruments, many of which reflect the formulation of Principle 15 of the Rio Declaration. In the view of the Chamber, this has initiated a trend towards making this approach part of customary international law. This trend is clearly reinforced by the inclusion of the precautionary approach in the Regulations and in the “standard clause” contained in Annex 4, section 5.1, of the Sulphides Regulations. So does the following statement in paragraph 164 of the ICI Judgment in *Pulp Mills on the River Uruguay* that “a precautionary approach may be relevant in the interpretation and application of the provisions of the Statute” (i.e., the environmental bilateral treaty whose interpretation was the main bone of contention between the parties). This statement may be read in light of article 31, paragraph 3(c), of the Vienna Convention, according to which the interpretation of a treaty should take into account not only the context but “any relevant rules of international law applicable in the relations between the parties”.

Best environmental practices

136. Moreover, regulation 33, paragraph 2, of the Sulphides Regulations supplements the sponsoring State’s obligation to apply the precautionary approach with an obligation to apply “best environmental practices”. The same obligation is established as a contractual obligation in section 5.1 of Annex 4 (Standard Clauses for exploration contracts) of the Sulphides Regulations. There is no reference to “best environmental practices” in the Nodules Regulations; their standard contract clause (Annex 4, section 5.1), merely refers to the “best technology” available to the contractor. The adoption of higher standards in the more recent Sulphides Regulations would seem to indicate that, in light of the advancement in scientific knowledge, member States of the Authority have become convinced of the need for sponsoring States to apply “best environmental practices” in general terms so that they may be seen to have become enshrined in the sponsoring States’ obligation of due diligence.

137. In the absence of a specific reason to the contrary, it may be held that the Nodules Regulations should be interpreted in light of the development of the law, as evidenced by the subsequent adoption of the Sulphides Regulations.

[...]

VI. Environmental impact assessment

141. The obligation of the contractor to conduct an environmental impact assessment is explicitly set out in section 1, paragraph 7, of the Annex to the 1994 Agreement as follows: “An application for approval of a plan of work shall be accompanied by an assessment of the potential environmental impacts of the proposed activities ...”. The sponsoring State is under a due diligence obligation to ensure compliance by the sponsored contractor with this obligation.

142. Regulation 31, paragraph 6, of the Nodules Regulations and regulation 33, paragraph 6, of the Sulphides Regulations establish a direct obligation of the sponsoring State concerning environmental impact assessment, which can also be read as a relevant factor for meeting the sponsoring State’s due diligence obligation. This obligation is linked to the direct obligation of assisting the Authority considered at paragraph 124. The abovementioned provisions of the two Regulations read as follows: “[c]ontractors, sponsoring States and other interested States or entities shall cooperate with the Authority in the establishment and implementation of programmes for monitoring and evaluating the impacts of deep seabed mining on the marine environment”. This provision is designed to clarify and ensure compliance with the sponsoring State’s obligation to cooperate with the Authority in the exercise of the latter’s control over activities in the Area under article 153, paragraph 4, of the Convention, and of its general obligation of due diligence under article 139 thereof.

The sponsoring State is obliged not only to cooperate with the Authority in the establishment and implementation of impact assessments, but also to use appropriate means to ensure that the contractor complies with its obligation to conduct an environmental impact assessment.

143. Contractors and sponsoring States must cooperate with the Authority in the establishment of monitoring programmes to evaluate the impact of deep seabed mining on the marine environment, particularly through the creation of “impact reference zones” and “preservation reference zones” (regulation 31, paragraphs 6 and 7, of the Nodules Regulations and regulation 33, paragraph 6, of the Sulphides Regulations). A comparison between environmental conditions in the “impact reference zone” and in the “preservation reference zone” makes it possible to assess the impact of activities in the Area.

144. As clarified in paragraph 10 of the Recommendations for the Guidance of the Contractors for the Assessment of the Possible Environmental Impacts Arising from Exploration for Polymetallic Nodules in the Area, issued by the Authority’s Legal and Technical Commission in 2002 pursuant to regulation 38 of the Nodules Regulations (ISBA/7/LTC/1/Rev.1 of 13 February 2002), certain activities require “prior environmental impact assessment, as well as an environmental monitoring programme”. These activities are listed in paragraph 10 (a) to (c) of the Recommendations.

145. It should be stressed that the obligation to conduct an environmental impact assessment is a direct obligation under the Convention and a general obligation under customary international law.

146. As regards the Convention, article 206 states the following:

When States have reasonable grounds for believing that planned activities under their jurisdiction or control may cause substantial pollution or significant and harmful changes to the marine environment, they shall, as far as practicable, assess the potential

effects of such activities on the marine environment and shall communicate reports of the results of such assessments in the manner provided in article 205.

[Article 205 refers to an obligation to publish reports.]

147. With respect to customary international law, the ICJ, in its Judgment in *Pulp Mills on the River Uruguay*, speaks of:

a practice, which in recent years has gained so much acceptance among States that it may now be considered a requirement under general international law to undertake an environmental impact assessment where there is a risk that the proposed industrial activity may have a significant adverse impact in a transboundary context, in particular, on a shared resource. Moreover, due diligence, and the duty of vigilance and prevention which it implies, would not be considered to have been exercised, if a party planning works liable to affect the régime of the river or the quality of its waters did not undertake an environmental impact assessment on the potential effects of such works. (Paragraph 204)

148. Although aimed at the specific situation under discussion by the Court, the language used seems broad enough to cover activities in the Area even beyond the scope of the Regulations. The Court’s reasoning in a transboundary context may also apply to activities with an impact on the environment in an area beyond the limits of national jurisdiction; and the Court’s references to “shared resources” may also apply to resources that are the common heritage of mankind. Thus, in light of the customary rule mentioned by the ICJ, it may be considered that environmental impact assessments should be included in the system of consultations and prior notifications set out in article 142 of the Convention with respect to “resource deposits in the Area which lie across limits of national jurisdiction”.

149. It must, however, be observed that, in the view of the ICJ, general international law does not “specify the scope and content of an environmental impact assessment” (paragraph 205 of the Judgment in *Pulp Mills on the River Uruguay*). While article 206 of the Convention gives only few indications of this scope and content, the indications in the Regulations, and especially in the Recommendations referred to in paragraph 144, add precision and specificity to the obligation as it applies in the context of activities in the Area.

150. In light of the above, the Chamber is of the view that the obligations of the contractors and of the sponsoring States concerning environmental impact assessments extend beyond the scope of application of specific provisions of the Regulations.

VII. Interests and needs of developing States

151. With respect to activities in the Area, the fifth preambular paragraph of the Convention states that the achievement of the goals set out in previous preambular paragraphs:

will contribute to the realization of a just and equitable international economic order which takes into account the interests and needs of mankind as a whole and, in particular, the special interests and needs of developing countries, whether coastal or land-locked.

152. Accordingly, it is necessary to examine whether developing sponsoring States enjoy preferential treatment as compared with that granted to developed sponsoring States under the Convention and related instruments.

153. Under article 140, paragraph 1, of the Convention:

Activities in the Area shall, as specifically provided for in this Part, be carried out for the benefit of mankind as a whole, irrespective of the geographical location of States, whether coastal or land-locked, and taking into particular consideration the interests and needs of developing States ...

154. According to article 148 of the Convention:

The effective participation of developing States in activities in the Area shall be promoted as specifically provided for in this Part, having due regard to their special interests and needs, and in particular to the special needs of the land-locked and geographically disadvantaged among them to overcome obstacles arising from their disadvantaged location, including remoteness from the Area and difficulty of access to and from it.

155. These provisions develop, with respect to activities in the Area, the statement in the fifth preambular paragraph of the Convention.

156. For the purposes of the present Advisory Opinion, and in particular of Question 1, it is important to determine the meaning of article 148 of the Convention. According to this provision, the general purpose of promoting the participation of developing States in activities in the Area taking into account their special interests and needs is to be achieved "as specifically provided for" in Part XI (an expression also found in article 140 of the Convention). This means that there is no general clause for the consideration of such interests and needs beyond what is provided for in specific provisions of Part XI of the Convention. A perusal of Part XI shows immediately that there are several provisions designed to ensure the participation of developing States in activities in the Area and to take into particular consideration their interests and needs.

157. The approach of the Convention to this is particularly evident in the provisions granting a preference to developing States that wish to engage in mining in areas of the deep seabed reserved for the Authority (Annex III, articles 8 and 9, of the Convention); in the obligation of States to promote international cooperation in marine scientific research in the Area in order to ensure that programmes are developed "for the benefit of developing States" (article 143, paragraph 3, of the Convention); and in the obligation of the Authority and of States Parties to promote the transfer of technology to developing States (article 144, paragraph 1, of the Convention and section 5 of the Annex to the 1994 Agreement), and to provide training opportunities for personnel from developing States (article 144, paragraph 2, of the Convention and section 5 of the Annex to the 1994 Agreement); in the permission granted to the Authority in the exercise of its powers and functions to give special consideration to developing States, notwithstanding the rule against discrimination (article 152 of the Convention); and in the obligation of the Council to take "into particular consideration the interests and needs of developing States" in recommending, and approving, respectively, rules regulations and procedures on the equitable sharing of financial and other benefits derived from activities in the Area (articles 160, paragraph 2(f)(i), and 162, paragraph 2(o)(i), of the Convention).

158. However, none of the general provisions of the Convention concerning the responsibilities (or the liability) of the sponsoring State "specifically provides" for according preferential treatment to sponsoring States that are developing States. As observed above, there is no provision requiring the consideration of such interests and needs beyond what is specifically

stated in Part XI. It may therefore be concluded that the general provisions concerning the responsibilities and liability of the sponsoring State apply equally to all sponsoring States, whether developing or developed.

159. Equality of treatment between developing and developed sponsoring States is consistent with the need to prevent commercial enterprises based in developed States from setting up companies in developing States, acquiring their nationality and obtaining their sponsorship in the hope of being subjected to less burdensome regulations and controls. The spread of sponsoring States "of convenience" would jeopardize uniform application of the highest standards of protection of the marine environment, the safe development of activities in the Area and protection of the common heritage of mankind.

160. These observations do not exclude that rules setting out direct obligations of the sponsoring State could provide for different treatment for developed and developing sponsoring States.

161. As pointed out in paragraph 125, the provisions of the Nodules Regulations and the Sulphides Regulations that set out the obligation for the sponsoring State to apply a precautionary approach in ensuring effective protection of the marine environment refer to Principle 15 of the Rio Declaration. As mentioned earlier, Principle 15 provides that the precautionary approach shall be applied by States "according to their capabilities". It follows that the requirements for complying with the obligation to apply the precautionary approach may be stricter for the developed than for the developing sponsoring States. The reference to different capabilities in the Rio Declaration does not, however, apply to the obligation to follow "best environmental practices" set out, as mentioned above, in regulation 33, paragraph 2, of the Sulphides Regulations.

162. Furthermore, the reference to "capabilities" is only a broad and imprecise reference to the differences in developed and developing States. What counts in a specific situation is the level of scientific knowledge and technical capability available to a given State in the relevant scientific and technical fields.

163. It should be pointed out that the fifth preambular paragraph of the Convention emphasizes that the achievement of the goals of the Convention will "contribute to the realization of a just and equitable international economic order which takes into account the interests and needs of mankind as a whole and, in particular, the special interests and needs of developing countries, whether coastal or landlocked". As noted above, article 148 of the Convention speaks about the promotion of the effective participation of developing States in activities in the Area. What is more important is that Annex III, article 9, paragraph 4, of the Convention specifically refers to the right of a developing State or any natural or juridical person sponsored by it and effectively controlled by it, to inform the Authority that it wishes to submit a plan of work with respect to a reserved area. These provisions have the effect of reserving half of the proposed contract areas in favour of the Authority and developing States. Together with those provisions mentioned in paragraph 157, they require effective implementation with a view to enabling the developing States to participate in deep seabed mining on an equal footing with developed States. Developing States should receive necessary assistance including training.
