



# Earth Negotiations Bulletin

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## **CBD COP-3 HIGHLIGHTS TUESDAY, 12 NOVEMBER 1996**

Delegates to COP-3 met in the Committee of the Whole during the morning and evening to consider draft decisions for adoption, and negotiated text for the decisions in numerous working and drafting groups throughout the day.

### **COMMITTEE OF THE WHOLE**

The draft decision on the Clearing-House Mechanism (CHM) (CRP.17) was adopted with amendments calling for: assistance from governments, bilateral and multilateral institutions; endorsement of the CHM newsletter; and CHM provision of information linkages to national focal points.

The draft decision concerning the implementation of Articles 6 and 8 of the CBD (conservation and *in situ* conservation) (CRP.12) was adopted with few amendments. The NETHERLANDS noted that given the late date of COP-4, national reports should be submitted by January 1998. The additional time should provide opportunity for the preparation of more and higher quality reports.

On the draft decision on Identification, Monitoring and Assessment (CRP.13), the EU said capacity-building for taxonomy should be restricted to relevant field activities. MALAWI's proposal, on behalf of the African Group, for a paragraph endorsing SBSTTA Recommendation II/2 on capacity-building for taxonomy was adopted, as was the decision.

The draft decision on Terrestrial Biodiversity (CRP.10) was adopted without amendment. A number of minor amendments were made to the draft decision on the Future Programme of Work for Terrestrial Biodiversity (CRP.25), and a preambular paragraph was added, reading "the conservation and sustainable use of forests cannot be isolated from the conservation of biodiversity." The draft decision was adopted.

The draft decision on Incentive Measures (CRP.19) was altered substantially during the morning. Proposed amendments included recognition of economic and social development and poverty eradication as overriding priorities in developing countries and the role of local and indigenous communities and the private sector in the designation of incentives. During the evening COW, following consultations, delegates considered the revised text (CRP.29) and agreed to delete the two remaining bracketed preambular paragraphs (recalling decision I/2 of the

COP and recognizing development and implementation of incentive measures as the responsibility of national governments and the international community). The G-77/CHINA supported deleting the brackets around the paragraph requesting the GEF to include incentive measures among priority activities. The US said the brackets were appropriate. The paragraph was referred to the Working Group on financial issues.

On the draft decision regarding Implementation of Article 8(j) (CRP.24), the EU suggested adding a paragraph recognizing as legitimate the request of indigenous and local communities to the equitable sharing of benefits arising from the utilization of knowledge, innovation and practices of these communities. SENEGAL called for a reformulation of the paragraph on the recognition of rights, stating that rights must be given to people or communities. Text on this agenda item was not adopted.

The draft decision on the Statement to the Special Session of the UNGA (CRP.23) incorporated amendments from a working group that based its work on CRP.7. Proposed amendments included one by the EU to include a specific description of GEF biodiversity activities, and another by the G-77/China to drop a reference to biodiversity destruction by "human activities." The groups opposed each other's proposal. Both proposals were withdrawn and the text was adopted.

The draft decision on Access to Genetic Resources (CRP.31) was adopted with minor changes.

Delegates adopted the draft decision on Additional Financial Resources (CRP.28). On the draft decision regarding the Review of the Effectiveness of the Financial Mechanism (CRP.32), the G-77/CHINA, SWITZERLAND and AUSTRALIA supported the bracketed option for a steering panel, comprising two representatives from each regional group, to monitor and guide the review process. The EU, supported by RUSSIA, proposed deleting both that option and the option for monitoring and guidance by the Bureau plus one member from each regional group. The group adopted all of the text except for the two bracketed options, which were referred to further consultations. The Chair of the Working Group on financial issues, Mohammed Reza Salamat (Iran), began to introduce changes to the draft decision regarding the Memorandum of Understanding (MOU), which included some bracketed text. The COW Chair Currat suggested waiting until an updated draft is available and asked the Working Group to complete its work.

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The Chair noted that the two outstanding issues in the draft decision on Agricultural Biological Diversity (CRP.15) had been referred for consultations to the relevant groups (Access to Genetic Resources and IPR), and the draft decision was adopted in the COW.

The draft decision on the relationship of the Convention with the CSD and Other Biodiversity-Related Conventions (CRP.26) was supplemented by EU amendments (CRP.27). The G-77/CHINA consulted with the EU regarding these proposals and the text was adopted with, among other amendments: a phrase encouraging cooperative arrangements with the Scientific Council on the Convention on Migratory Species of Wild Animals; a new paragraph urging UNEP to undertake decision II/14 of the COP (intergovernmental workshop on cooperation with other conventions); and deletion of the request to investigate an integrated database on wetlands.

The Final Report of the COW (UNEP/CBD/COP/3/L.2) was adopted with minor changes.

### **WORKING AND DRAFTING GROUPS**

**FINANCIAL ISSUES:** The Working Group forwarded texts regarding additional financial resources and review of the financial mechanism to the COW. On the latter, text was added regarding the application of the criteria of agreed full incremental costs keeping in mind the provision of new and additional resources by developed country Parties. The section on procedure for the review notes: the Secretariat is to prepare background documentation and, if necessary shall appoint a consultant; and [the Bureau plus regional representatives][a steering panel composed of two representatives from each regional group] will monitor and guide on a continuous basis the review. The MOU was also forwarded to the COW. Delegates maintained brackets on text noting that: if COP considers a GEF Council project decision does not comply with COP guidelines, it “may ask for a reconsideration of that decision;” and COP will review funding requirements after each replenishment. Text noting that the GEF will operate the financial mechanism “on an interim basis” was removed from brackets. Delegates removed text calling for the reasons that the amount of new and additional funding was considered to be new and additional. Delegates postponed evaluation of additional guidance for the GEF so they could evaluate the COP-3 draft decisions before incorporating elements from them into their decision.

**AGRICULTURAL BIODIVERSITY:** The Open-ended Working Group on Agricultural Biodiversity met throughout the morning in order to finalize their draft decision and address unresolved issues. The reference to the World Food Summit’s language regarding the role of the WTO CTE on the relationship between trade and agricultural biodiversity was resolved through informal consultations. Several delegations expressed substantive difficulties with the paragraph pertaining to the interim financial mechanism and argued that the matter should be resolved on the basis of the decision from the Working Group on Finance. However, BRAZIL noted that this paragraph was part of a “package deal” along with the text put forward by AUSTRALIA regarding the legal status of a revised International Undertaking on PGRFA and the Global Plan of Action. The brackets were removed on the condition that the decision reflected similar language from the COP-2 decision on Marine and Coastal Biodiversity. The Working Group completed its work with two issues outstanding: the status of *ex situ* collections acquired prior to the entry into force of the CBD and intellectual property rights, both of which were referred to the relevant drafting groups on Access to Genetic Resources and IPR.

**ACCESS TO GENETIC RESOURCES:** The drafting group on Access to Genetic Resources met to negotiate a draft decision.

Disagreement focused on a preambular paragraph recognizing that classes of genetic resources may require “distinctive solutions,” and an operative paragraph urging that Article 15 is “duly reflected” in implementation of relevant articles of TRIPs. Revisions to the former paragraph recognized a variety of approaches to managing access based on the diversity of genetic resources and other considerations. Revisions to the latter paragraph requested the Secretariat to cooperate closely with the CTE to “explore the extent to which there may be linkages” between Article 15 and TRIPs.

**INTELLECTUAL PROPERTY RIGHTS:** The drafting group on IPR, chaired by Diego Malpede (Argentina), completed a draft decision after prolonged discussion. Three of the most difficult issues included a reference to a proposal before WIPO to allow copyright protection for databases, the relation between the COP and TRIPs, and the impact of IPR to genetically modified organisms (GMOs) on the CBD. The agreed draft decision: calls for an open and transparent assessment of database copyrighting vis-a-vis the CBD; encourages exchange of information between the COP and the WTO over TRIPs; and does not refer to GMOs and the impacts of IPR to GMOs.

**INCENTIVE MEASURES:** Delegates convened to discuss a Secretariat’s draft text on incentive measures. The group agreed that incentive measures should be incorporated as appropriate into the COP agenda. Delegates replaced language calling for removal of perverse incentives with taking appropriate action on incentives that threaten biodiversity, and added language on promoting positive incentives. The group agreed on language requesting the Executive Secretary to prepare a background document on design and implementation of incentive measures. Delegates bracketed a preambular paragraph recognizing national and international responsibility for developing and implementing incentive measures, but it was deleted in later negotiations in the COW. Some delegations called for re-insertion of a paragraph from an earlier draft requesting the GEF to include incentive measures among its priority activities for funding, and the group agreed to include it in brackets, provided that a related preambular paragraph recalling Decision I/2 (incentive measures as a programme priority for access to financial resources) also be bracketed. The latter was deleted in the negotiations conducted in the COW, while the former was referred to the Working Group on Financial Issues.

### **IN THE CORRIDORS**

Delegates and observers differed on whether the forest biodiversity decision adopted Tuesday represents progress or a missed opportunity. Many concur that the establishment of a work programme is a significant step, but disagree on whether the programme’s draft status and specific priorities undermine its value. They also point to the decision’s instructions on common priorities with and advice to the IPF, but diverge on whether those provisions strengthen or equivocate the CBD’s voice in the international dialogue on forests. A third difference relates to the political and ecological urgency of the decision, with some pointing to its reference to “some” forests as a realistic political compromise and others decrying it as a denial of a worsening trend in worldwide forest degradation.

### **THINGS TO LOOK FOR TODAY**

**MINISTERIAL SEGMENT:** The Ministerial Segment will begin at 9:00 am. Over 100 statements are expected during the two-day segment. Argentine President Menem is expected to speak at 6:00 pm.

**WORKING GROUPS:** The Working Group on financial issues is expected to meet during the morning.