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The Convention on Biological Diversity in a European perspective

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The Convention on Biological Diversity (CBD) is the response to the mounting concern about the global loss of biodiversity during the 1980's. During this period it became clear that existing environmental legislation, and conservation programmes, were not enough to address satisfactorily the complex range of issues relevant for maintaining life support systems on earth. New approaches were necessary to ensure the long term viability and conservation of genetic resources, species, habitats, and ecosystems. This included not only wildlife and wilderness but also crops, domestic animals and man-made or semi-natural ecosystems such as agro-ecosystems. The term biodiversity was therefore created to define the elements and interactions of a ''living planet''. Efforts to address these issues were taken up under the auspices of UNEP. The initial debate showed major differences between the approach of the United States and the views of the developing countries, where most of the biodiversity of the planet can be found. Real negotiations started in 1990 and the CBD was open for signature at the United Nations Conference on Environment and Development in Rio de Janeiro in 1992. It has subsequently been ratified by 175 parties (including the European Community and the 15 EU Member States) but not by the United States.

In short, the CBD is a legally binding international instrument. Many of its provisions are however of a procedural character. The Convention should therefore be seen as a process by which its Parties agree to take certain actions at the national level and to co-operate at international level. The three overriding objectives of the CBD are the conservation of biodiversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the use of genetic resources. The CBD is therefore much broader than a traditional ''nature conservation'' agreement. It also identifies the need to consider emerging issues such as the potential impacts of biotechnology. This includes, in particular, the need to consider the negotiation of a protocol on biosafety, recognising that living modified organisms derived from modern biotechnology (=living Genetically Modified Organisms that can reproduce) may have adverse affects on biodiversity.

The work of the 175 Parties is conducted at meetings of the Conference of the Parties (the decision-making body), and subsidiary bodies such as the Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA). This work is supported by a Secretariat, hosted by UNEP and placed in Montreal, Canada.

The EU plays a leading role in the implementation of the Convention and in driving the process forward. The EU priorities in this process include the development and implementation of National Biodiversity Strategies, the establishment of an adequate reporting process, the implementation of international work programmes (for example on agriculture, forests, inland waters, etc.), the development and consolidation of a mechanism for information exchange and facilitating scientific and technological co-operation, achieving progress on access and benefit sharing and the conclusion of the Biosafety Protocol.

Development and implementation of national biodiversity strategies

The CBD, as a parties-driven process, requires each Party to define how it intends to achieve the objectives of the Convention. The development and implementation of national biodiversity strategies is therefore an essential instrument. These strategies should not be seen as academic exercises but as policy making executive instruments.

The European Commission adopted in the beginning of 1998 a Communication to the Council and to the Parliament on a European Community Biodiversity Strategy. The Communication was endorsed by the Council and by the Parliament later the same year. This strategy defines the priority Community objectives for preserving biodiversity and announces the process and methodology that will be followed to attain these objectives.

Overall the strategy aims to anticipate, prevent and attack the causes of significant reduction or loss of biodiversity at the source. This should help both to reverse present trends in biodiversity reduction or losses and to

place species and ecosystems, which includes agro-ecosystems, at a satisfactory conservation status, both within and beyond the territory of the Union. The strategy defines a framework for actions in relevant Community policy areas to achieve integration of biodiversity concerns. This initiative can also be seen as a model for the integration of environmental policies in key areas of Union activity.

The implementation of the CBD by the Community calls for a two-step process. The adoption of the strategy containing the general policy orientations is the first step. The second is the development and implementation of action plans and other measures by the European Commission's services responsible for the policy areas concerned. These action plans are currently under development and should be ready during the second half of year 2000.

Consistent with this view, the EU is encouraging other Parties to develop and implement their own national strategies and supports developing countries on their efforts to do so.

Establishment of an adequate reporting process

It is important to assess the progress made towards the objectives of the Convention. This should allow for defining targets, reviewing the effectiveness of measures taken and identifying priorities for further action. The reporting process should therefore be closely linked to the implementation of national biodiversity strategies. The strategies should include clear tasks, targets and mechanisms to assess their performance. Indicators should enable an evaluation *ex ante* and *ex post* of the implementation of the strategies. Species and ecosystems likely to be affected by human activities, and for which action is needed to ensure their conservation and sustainable use, should be the basis for the establishment of indicators. Economic indicators should also be considered. Such indicators should constitute an important element of the reporting mechanism.

Implementation of international work programmes

Most of the underlying causes of biodiversity loss can be attributed to the way how different sectors of the economy operate. It includes how sectoral policies are defined and implemented and how relevant stakeholders conduct their business. In an increasingly globalised economy the roots for many of the threats and opportunities for biodiversity have common grounds. It is therefore essential to integrate biodiversity concerns into the definition and implementation of relevant sectoral policies at national level. Equally important is to build up collaborative approaches to work internationally and to involve relevant stakeholders. It is why it is so important to develop and implement global work programmes under the Convention (for example on agriculture, forests, inland waters). These work programmes should enhance international co-operation and provide for guidance to the Parties on main issues that should be addressed at global level.

Development and consolidation of a mechanism for information exchange and facilitating scientific and technological co-operation

Efficient action for biodiversity requires access to the best available information. The development and consolidation of the Clearing-House Mechanism would facilitate this access. This mechanism should, of course, be an important tool for the Parties but also for the general public who wants to know about biodiversity. Information and access to it is key for decision-making but also for education and public awareness, for enhancing research and for facilitating scientific and technological co-operation.

The Clearing-House Mechanism would therefore develop into a major instrument to enhance co-operation between developed and developing countries, to provide access to biodiversity related information to the general public, as an education and public awareness tool and as a policy making support tool.

The European Community will launch its own Clearing-House Mechanism in the first half of 2000 and is keen to support other countries in their efforts to develop their own clearing-house mechanisms.

Achieving progress on access and benefit sharing

The CBD endorses the sovereign right of states over their biological resources and the consequent authority of national governments to determine access to genetic resources. Such access shall be subject to Parties' prior informed consent, and on mutually agreed terms that promote the fair and equitable sharing of benefits. The convention strikes a balance between a state's authority to regulate access and its obligation to facilitate access to genetic resources for environmentally sound purposes by other parties.

The EU priorities on access and benefit sharing include raising awareness on the importance of genetic resources in developed and developing countries and promoting a transparent dialogue between providers and users as well as ''best practices''. It is necessary to support the review and implementation of policy, legislation and administrative procedures in order to create incentives to support the CBD objectives. This process demands a close interlinkage with other relevant international processes involving aspects relating to trade, to intellectual property rights, to agriculture and to the rights of indigenous peoples. A number of forums are involved. These are most importantly, the FAO, the WTO and the World Intellectual Property Organisation (WIPO). The EU needs to provide leadership on the basis of a coherent approach in all these forums. Two issues deserve special attention: the first issue concerns the relationship between

access to genetic resources and the establishment of private property rights over industrial goods developed on the basis of such genetic resources regulated *inter alia* in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS agreement). The question is how to create the necessary incentives for the effective implementation of access and benefit sharing arrangements. One possible way forward here is the disclosure of the origin of genetic resources in relation to application for intellectual property rights. The EU has here already taken an important step forward in its own Directive on biotechnological inventions by encouraging the disclosure of biological materials used in biotechnological inventions.

Secondly, the question of traditional knowledge needs to be highlighted. Traditional knowledge related to genetic resources is of great importance for their conservation and sustainable use. There is today an ongoing process within the World Intellectual Property Organisation (WIPO) focussing on how this kind of knowledge can be properly recognised and protected, for instance in the context of a *sui generis* system.

What has to be understood in these sometimes very polarised debates involving important economic and environmental interests is that the international obligations taken on by states have to be consistent. The international community therefore has to work coherently in the varying fora to ensure mutual supportiveness between the different sets of rules. Here the European Community has major role to play.

The Biosafety Protocol

The CBD states (Article 19.3) that the Parties shall consider the need for and modalities of a protocol setting out procedures in the field of safe transfer, handling and use of any living modified organism resulting from bio-technology that may have an adverse effect on biodiversity. The background to this provision and the EU's strong role in its implementation is that biotechnology is becoming an increasingly important element of modern society invoking both opportunities and risks. While the potential of biotechnology for economic growth and sustainable development are evident and should be harnessed, public and scientific concern is increasingly being voiced about the possible impacts of biotechnology on the environment in general and biodiversity in particular, as well as health. The EU has responded to these concerns by establishing a comprehensive regulatory framework for safety in biotechnology. On the international level, the EU has been playing a strong role in the process of negotiation of the Biosafety Protocol. EU's motivation behind pushing for a Protocol and its position as a bridge-builder in the negotiations has been geared not by a domestic need for more rules but by the fact that many developing countries do not have comprehensive systems on biosafety. At the same time they are home to the major share of global biodiversity.

The Parties to the CBD established a mandate for negotiations 1995 at a Conference in Jakarta. The aim was to give countries that currently lack the possibility to take a reasoned decision on the import of LMOs the means to do a proper risk assessment prior to cross-border movements of LMOs. The Protocol will represent an important element of international efforts for safety in biotechnology. From 1995 to 1998 the discussions took place in a subsidiary body and were carried over to a formal negotiation setting in Cartagena, Columbia in February 1999. The Cartagena meeting was supposed to adopt a full text of the Protocol but it ended without agreement despite intense efforts from the side of the EU to bridge the differences between the developing countries and the Miami Group.

The Cartagena meeting was followed by two informal consultations staged by the Chairman of the negotiations, Juan Mayr MALDONADO, the Minister for Environment of Columbia. The first consultation took place in Montreal in June 1999 and the second in Vienna in October 1999. These prepared the ground for the resumption of formal negotiations. In Vienna, all Parties reconfirmed their political will to reach agreement, made progress on some key concepts concerning the critical outstanding issues and decided that the final meeting of the negotiations will take place on 24-28 January 2000 in Montreal.

EU priorities on Biosafety include obviously concluding the Biosafety Protocol at the final negotiation setting in January 2000. Such a Protocol should be an expression of the precautionary principle in operational terms, give assistance to less developed countries, provide for information exchange and scientific risk assessment. It is essential that the world can agree on a Protocol in January. A failure to conclude could put the credibility of the CBD itself in danger. The international community needs to show that it takes the concerns of citizens seriously. A credible Protocol should also contribute to easing public concerns over biotechnology and provide for legal certainty and predictability for importers and exporters. The finalisation of these negotiations will be difficult in the light of strongly diverging interest, but it is in the interest of all parties concerned and therefore feasible.

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