

MULTILATERAL NEGOTIATIONS IN UNEP:

A CASE STUDY OF THE CONVENTION ON BIOLOGICAL
DIVERSITY

BY

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DECLARATION

This Dissertation is my original work and has not been presented for a degree in any other University.

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Signed:  Date: 09.11.2001

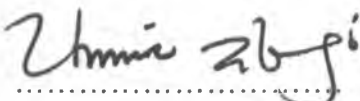
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DEDICATION

I dedicate my dissertation to my husband, Lovemore Matipira, my three daughters, Chipo, Chido and Mazvita, who bore the brunt of two-year absence and lack of maternal care while I pursued this project. Above all I value their support and steadfast love for me. Not least important is the encouragement and assistance, typing, editing and brain storming that came from my husband Lovemore.

I will not forget the moral, spiritual support I enjoyed from the ZIM-KEN a gathering of Zimbabwean ladies married in Kenya. Their support encouraged me to seek for admission at the University of Nairobi.

My sisters, Patronella, Pamela, and Patience, my brothers in-law Nicholas Nyagura, Tendai Chaitezvi, my brothers, Pearson, Paul, Patrick and Obrien Tavengwa, thank you for the support you all gave me.

Last but not least I owe my success to my parents through their encouragement I found strength to pursue the project to its conclusion.

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ABSTRACT

The purpose of this study is to assess the effectiveness of the Convention on Biological Diversity (CBD) as an international Framework Convention, setting out obligations for both North and South in respect of equitable sharing of benefits accrued from the commercial use of biological resources. The research also investigates the extent to which, the South stands to benefit from the Convention on Biological Diversity given its limited financial resources and technological bankruptcy. Specific objectives were to carry out a critical review of the Convention on Biological Diversity in order to show the dynamics of multilateral negotiations within the North-South context. The study also aims at giving a detailed analysis of the implications of the Convention on political and economic relations between developed and developing countries (North-South) in order to serve as guidelines to policy makers.

A theoretical and empirical study, which involved survey studies, was conducted. Interviews with UNEP Secretariat, Permanent Representatives accredited to UNEP from both North-South, experienced/inexperienced participants in CBD were carried out. The purpose of the interviews was to determine the views and attitude of the relevant participants towards the functioning of CBD in respect to North-South perspective. Stratified sampling method was used because of the huge size of participants involved in CBD deliberations.

The first hypothesis predicts that multilateral negotiations on the CBD between North-South leads to equitable sharing of benefits accrued from the utilisation of biological resources. This standpoint was the least supported by the views of the respondents. Multilateral negotiations on the CBD between the North and the South do not lead to equitable sharing of benefits accrued from the utilization of biological resources. was a standpoint which

respondents believed to be true. The second hypothesis, which predicts that the level of preparedness influences the degree of benefits derived from utilization of biological resources was also, confirmed by respondents.

Results of the study show that the premise that the CBD is a way forward of trying to enhance equitable sharing of benefits accrued from the utilization of biological resources only if fair play between North and South is put in place.

KEY TO ABBREVIATIONS

ACTS	African Centre for Technology Studies
CBD	Convention on Biological Diversity
COMESA	Common Market for Eastern and Southern Africa
COP	Conference of the Parties
EAC	Economic Commission for Africa
EC	European Commission
EU	European Union
FAO	Food Agricultural Organisation
G77	Group of 77
GEF	Global Environmental Facility
GMO	Genetic Modified Organisms
GPA	Global Plan of Action
GRULAC	Group of Latin American Countries
ICEL	International Council of Environmental Law
INC	Intergovernmental Negotiating Committee
IPR	Intellectual Property Rights
IUCN	International Union on the Conservation of Nature
LMO	Living Modified Organisms
MNCs	Multination Corporations
NAFTA	North American Free Trade Area
NGO	Non-Governmental Organisation
PIC	Prior Informed Consent
SA	South Africa
SADC	Southern African Development Community
SWOT	Strength, Weakness, Opportunity and Threat
TRIPS	Trade Related Intellectual Property Rights Agreement
UN	United Nations
UNDP	United Nations Development Programme
UNEP	United Nations Environmental Programme
UNGA	United Nations General Assembly

USA	United States of America
WEOG	Western Europe and Other Groups
WTO	World Trade Organisation

CHAPTER ONE

INTRODUCTION TO MULTILATERAL NEGOTIATION

1.0 INTRODUCTION

Numerous studies on negotiation have been done on bilateral negotiations while relatively very few social scientists have researched on multilateral negotiations. A small number of researchers have devoted their attention to the process and the outcome of multilateral negotiations. This has been due to a variety of factors that affect the nature, process and outcome of multilateral negotiations. Literature reviewed mostly centered on bilateral negotiations, their purposes, strategies and outcomes. The majority of literature on multilateral negotiations is attributed to those involved in such negotiations. These include Ambassadors, representatives of Non-Governmental Organizations (NGOs) and negotiators at different levels.

Kaufmann (1988) is renowned for his contribution to knowledge on multilateral negotiations. Despite this, limited material on the actual process of multilateral negotiations conducted under the aegis of the United Nations and its agencies is obtainable. Literature abounds on the outcome of such negotiations since the Treaty of Westphalia of 1648, which laid the foundation for multilateralism in international relations.

The Westphalia negotiations were held within the context of conference diplomacy, whose main international actors were nation states. The same applies to the Congress of Vienna between 1814-1815. However, in contemporary times multilateral negotiations are conducted under the auspices of intergovernmental organizations. These organisations allow a number of non-state actors, such as non-governmental bodies, regional, economic and political groups, *inter alia* to give their views as observers. The involvement of non-State actors is conducted as per the rules of the United Nations, which do not allow such actors to participate in private meetings of governments. NGOs and others make statements in the plenary sessions of the United Nations Environmental Programme (UNEP) only and hold separate meetings whose purpose is to influence the intergovernmental deliberations during UNEP conferences. The same procedure was

followed during the Convention on Biological Diversity (CBD) negotiations. Public decision making on the CBD remains a preserve for the sovereign states. In this regard, the concept of multilateralism is adopted to define the extensive number of participants involved, in a conference system.

As a means of solving global concerns in a pacific way, the prevalence of multilateral negotiations by conference today occurs nearly on a daily basis. This is so because of the broad and complex international issues that require collective solutions.

Diplomacy is a process within which these actors negotiate multilaterally in order to identify joint solutions that address common pressing problems. It is in this context that multilateral negotiations within UNEP led to the adoption of the Convention on Biological Diversity under review. The United Nations Environment Programme (UNEP) is the agency of the United Nations responsible for the environment. The goal of this study is therefore to investigate the negotiation process and provide an insight into the nature, prime movers and objectives of the Convention vis-a-vis the interests of the Parties to the Convention from a North-South perspective.

Conference diplomacy refers to the management of international relations by negotiation within the framework of periodic or *ad hoc* meetings of governmental representatives, serviced by a standing international secretariat or by an *ad hoc* secretariat. International and locally recruited staff conducts the day-to-day affairs of the secretariat according to rules of the United Nations. Conference diplomacy is characterized by its universal character. Membership is open to governments as the major international players. Multilateral negotiations within UNEP, which is the concern of this study, are part of conference diplomacy.

Protection and sustainable use of world resources are core issues that the CBD aimed to address. Forty-two articles were drafted to act as guidelines on the use and conservation of biological resources. Since most of the information on the process of negotiation can

only be obtained from those who participated in the process, the major source of information for this research are therefore respondents, who participated in the CBD as negotiators.

Negotiations involving small groups of actors ranging from states to individuals have been conducted since the creation of states for the purposes of joint decision making. The birth of multilateral negotiations can be traced back to the negotiations, which led to the Peace of Westphalia in 1648 and the Congress of Vienna held between 1814-1815 (Boisard 1991). The creation of the League of Nations in 1919 and the United Nations in 1945 after the first and the second World Wars was a manifestation of the general trend towards multilateralism in international decision making process.

Contemporary negotiations show improvements in multilateral negotiations as witnessed during the negotiation for the Convention on Biological Diversity (CBD) held between 1991 and 1992. The CBD conception was in response to the concerns of the global community over threats arising from human activities to biological diversity. The key objectives of the Convention on Biological Diversity were to ensure:

- i. Conservation of natural resources
- ii. Sustainable use of biological resources and equal access to genetic resources by both North and South
- iii. Equal sharing of benefits accrued from the commercialization of these resources between the users and the providers.

The South has for a long time been a non-beneficiary provider of biological diversity to the North, an issue that the convention aims to address among others. The success of the Convention largely depends on the commitment of the countries that are Parties to the Treaty. Part and parcel of the treaty is the Biosafety Protocol, which lays down rules and regulations on the application of the Convention on Biological Diversity. It also formulates rules that are specific on the trans-boundary movement of living organisms that are genetically modified and the transfer of technology from North to South.

The Biosafety Protocol was adopted in May 2000. It addressed the concerns of the South, with regard to dumping of products of biotechnology by the North. These products are perceived to be hazardous to human life as well as the environment and ecosystems. The European Community supported the protocol for reasons which were/are different from those of the South. For economic and scientific reasons countries in the North utilizing biotechnology related to food and agriculture are opposed to certain clauses in the Protocol. The reason behind is that it enforces liabilities and compensation for damages arising from application of biotechnology or its products by importing countries.

1.1. Historical background and the mandate of UNEP

The United Nations Environment Programme (UNEP) based in Nairobi, Kenya was created in 1972 as a United Nations agency to act as the global advocate of environmental concerns. It acts as one of the implementing agencies for the Convention on Biological Diversity through funding from the Global Environmental Facility (GEF).

As a non-funding body, UNEP frequently engages in resource mobilization to raise funds to support conferences, regional preparatory meetings and the meetings of the Intergovernmental Negotiating Committee (INC). The INC is the inter-sessional negotiation Committee set up by governments to prepare for the Conferences of the Parties. Member states, UN agencies such as United Nations Development Programme (UNDP), the GEF, private sector and the United Nations headquarters fund UNEP's activities related to the Convention on Biological Diversity. Negotiations on the funding mechanisms are always a source of conflict between the North and South. This is so because developed countries shoulder most of the expenditure throughout the negotiation process and beyond.

Within this context, UNEP, its Governing Council (GC) and the United Nations General Assembly (UNGA) were instrumental to the CBD negotiation process. UNEP drafted negotiation documents that formed the basis of preparatory meetings in consultation with

its member states. The meetings were attended by experts and diplomats accredited to UNEP, who amended the draft decisions as instructed by their governments. Besides this, UNEP played an advisory role on issues of substance and on rules of procedure that govern multilateral negotiations.

The UNGA, on approval of the draft documents mentioned in the paragraph above as the basis for negotiations for the CBD, authorized UNEP to set up an *ad-hoc* working group of experts and lawyers to assess the relevance of such an international instrument to promote the conservation of natural resources. Copies of the first draft on CBD from the International Union on the Conservation of Nature (IUCN) were circulated in 1987 to member states by the UNGA for their consideration and comments. This enabled UNEP to proceed with its new mandate of facilitating multilateral negotiations on the CBD. With the recommendations of the Working Group of experts, negotiation on the CBD proceeded under the umbrella of UNEP which, acted as the secretariat to the Convention. It was in 1994 that the CBD secretariat was put in place.

UNEP acted as both the secretariat and facilitator of multilateral negotiations on the Convention on Biological Diversity. These functions were taken up by UNEP, since it had capacity as the co-ordination agency for Environmental Conventions, which include the CBD.

UNEP provided secretariat services to all meetings of the Intergovernmental Negotiating Committee (INC) throughout the two years of formal negotiations. Numerous regional and sub regional preparatory meetings were sponsored by UNEP with assistance from major donor countries and financial institutions like the World Bank, UNDP and GEF among others. Their participation made the convention successful and hence the need for it to be studied.

1.2 The Research Problem

This study investigates the effectiveness of the Convention on Biological Diversity as an international instrument promoting equitable sharing of benefits accrued from the use and commercialization of biological diversity between the North and South. The conduct of multilateral negotiation as a vehicle through which relations between North and South are adjusted need to be analyzed. The extent to which the South, with its limited financial resources and technology stands to benefit from the Convention on Biological Diversity warrants investigation. This will identify the lessons learnt from the whole process and conclusions will be drawn based on them. Pertinent questions to be answered by the study include:

- i Does CBD lead to equal access to biodiversity resources between the North and the South?
- ii. What were the major weaknesses of the negotiation process?
- iii. To what extent were the negotiations conducted fairly?

1.3 Hypotheses

The entire study revolves around two hypotheses:

1. H_0 = Multilateral negotiations on the CBD leads to equitable sharing of benefits accrued from the utilization of biological resources between North and South.
 H_1 =Multilateral negotiations on the CBD do not lead to equitable sharing of benefits accrued from the utilization of biological resources between the North and South.
2. H_0 =The level of preparedness influences the degree of benefits derived from utilization of biological resources.
 H_1 =The level of preparedness does not influence the degree of benefits derived from utilization of biological resources

1.4 Research Objectives

- i To carry out a critical review of the Convention on Biological Diversity
- ii To show the dynamics of multilateral negotiations within the North –South context
- iii To establish the role of member states from the North, South and UNEP in the CBD process
- iv To add on the growing body of knowledge in the field of multilateral negotiations
- v To enhance public understanding of the Convention, which is perceived to bring opportunities as well as risks arising from the application of biotechnology by the Parties to the Convention, particularly the South

1.5 Literature Review

The foremost objective of this sub-section is to identify the nature and scope of multilateral negotiations between the North and the South in order to assess theories on the subject and what other scholars have accomplished on the topic. Secondly, it also defines the various concepts that have been used in multilateral negotiations.

Multilateral Negotiation, in its broader sense, refers to a process of mutual persuasion with a view to achieving agreement on texts of policy and/or actual recommendation after public and private deliberations about an issue of collective concern (Boisard and Chossudovsky: 1991).

While in its narrower sense negotiation refers to a process of mutual persuasion with a view to achieving agreement on the text of an international legal or quasi-legal instrument (for example a convention or a code of conduct)

There is a link between negotiation and diplomacy, since the latter is defined by Boisard (1991) as the management of international relations by negotiation: the methods by which international relations are adjusted and managed by ambassadors and envoys. Emphasis is placed on negotiation as the central function of diplomacy without denying the importance of other functions of diplomacy. Boisard (1991) defines negotiation as a process in which

explicit proposals are put forward for the purpose of reaching agreement on an exchange or on the realization of mutual interests, where conflicting interests are present.

Boisard. (1991) explains the way in which developed countries benefit from the process at the expense of the developing countries by changing the rules and norms of the game. The rules in question include those of sovereignty, which imply equality of the states. The outcome is the adoption of "regimes" biased towards policy results favoring the industrialized countries at such conferences. Conference diplomacy is considered by such scholars as a potential agent of change by legitimizing "the rules of the game" to ensure their adoption without coercion by any party involved.

Information from respondents who were involved in the negotiations on the CBD confirms that governments adopt decisions willingly. However, the willingness to adopt decisions that may not be compatible with national interests arise because negotiators may not be sincere and sometimes compromises are made in exchange with promises of rewards. This is common in North-South multilateral negotiations within UNEP. The vote on contentious issues forces the aggrieved party to adopt the result. This could explain why governments sometimes do not sign or ratify treaties they would have negotiated for. The CBD was not spared as the majority of countries ratified several years after the convention came into force.

Boyer (1998) and Ikle (1987) noted that the confrontation of explicit proposals distinguishes negotiation (as defined above) from bargaining and other forms of conflict behaviour. Boyer (1998), further clarifies understanding on negotiations when he mentions that negotiations play an important role in formalising turning points in international relations, and in clarifying change caused by negotiations. He further emphasises the principle of explicit agreements as only a part of the outcome of negotiations.

Holsti (1988) argues that the problem with this type of diplomacy (multilateral negotiations) is that it is a very messy affair, almost defying generalization. This is so

because of the multiple interactions and negotiations involving interstate actors, including domestic dimensions of negotiations, non-state actors, NGOs and conference secretariats among others. The contemporary picture brings in the private sector and individuals as powerful supporters in the implementation of decisions on multilateral negotiations.

The involvement of non-state actors is very recent. At least within the last ten years. The reason is that member states of the UN are failing to meet their financial contribution to the UN and its agencies. To enable UNEP carry out its mandate the UNGA authorized the agency to mobilize resources from the private sector. However, the UN is preparing guidelines on the participation of the private sector as a vital resource provider. The guidelines are to protect the sovereign status of member states as well as the intergovernmental nature of the UN. States remain the sole decision-makers at the international level.

Another useful definition that aim to enhance understanding of multilateral negotiations is multilateral diplomacy which is defined as the management of international relations by negotiation between and among three or more accredited ambassadors or increasingly direct contacts of governments and government departments (Boisard and Chossudousky 1991). Within the context of UNEP, member states accredit Permanent Representatives (PRs), at the Ambassadorial level to UNEP. They form the Committee of Permanent Representatives, which is the formal subsidiary body of the Governing Council (GC) of UNEP. Its mandate includes monitoring the implementation of the decisions of the GC. and in liaison with UNEP, prepares working documents for UNEP conferences such as the CBD

Although it is desirable that UNEP communicate with governments through the PRs, the secretariat maintains direct communication with officials in the environment departments across the world.

Negotiations allow the weak to confront the strong and still come out with something, which should not be possible if weakness and strength were all that mattered. Much depends on the definition, so that terms such as "weak and strong" have come to be used sloppily and inappropriately in discussion of negotiations. However, there is a general appreciation of the power positions of the parties, for example Europe versus Africa or the North against the South, which characterize negotiations between the strong and the weak respectively (Zartman 1982).

In the above circumstance, Zartman (1982) concedes that weaker parties tend to seek more formal negotiation forum and act collectively to strengthen their hand through organization. Thus the weak states' power lies in its ability to choose and exploit their terrain.

Zartman (1971) talks of coercive deficiency as a persuasive tactic of the weak. Weak parties are known to escalate demands rather than make concession in a tactic that would be seen as bullying and non-negotiatory if practiced by the strong. However, Zartman (1982) argues that it is in the interest of weaker states not to make concessions at all until they are convinced of the good faith of a stronger party through initial concessions.

Few examples from the negotiations on the CBD confirm the analysis by Zartman. There is nothing that may stop the South from refusing to accept unfavorable decisions during negotiations with the North. The South is able to reject decisions that compromise its interests only if it is united. The G77 is one of the formal groups that give a muscle to the South to stand up against the North. A few cases in point are the successful negotiations and adoption of the Biosafety Protocol as proposed by the South. The USA and its allies are opposed the protocol, which imposes specific measures on how the Convention should be implemented, arguing that regulating the Convention would impact negatively on the biotechnology industry. The South rejected the enforcement of the Trade Related Intellectual Property Rights Agreement (TRIPS) in the CBD. The South is now aware of the negative effects of this protocol to its development efforts. The USA in particular has

been urging the South to implement the Agreement within the CBD. Developing countries argue that the TRIPS and the patent laws should not apply to the Convention, since biological diversity is not invented. This is in relation to cases where the two agreements apply to plants and crop varieties acquired by the North from the South. The South negotiated for the ten years grace period before implementing decisions related to biotechnology. It was assumed that within ten years the South would have put in place measures to put it on an equal footing with the North on the technological front.

Fisher (1981) defines negotiations as a basic means of getting what one wants from others and involves back and forth communication designed to reach an agreement when the other side has some interests that are shared and others that are opposed. He argues that taking positions allows the parties to announce their goals, although arguments arising may drag negotiations and reduce attention to underlying concerns of the parties. The UN positional bargaining leads to creation of coalitions, which produce negotiations between North-South. Coalitions in Fisher's view make agreements difficult as the groups may find it harder to change positions. The North would play the hard game of positional bargaining whereby threats and unacceptable concessions are made.

Fisher's definition of negotiation applies to the CBD, as negotiators engaged in formal and informal consultations within the coalitions and between North and South in order to achieve consensus. At this stage the positions of the parties would be known. Dialogue would aim to reconcile conflicting interests.

Respondents familiar with the negotiations on the CBD claim that the formal coalitions such as G77 often collapsed because of disagreements as informal groups emerged. The like minded groups then came into being. These informal coalitions brought together countries with similar interests. For example Africa could agree on a position not necessarily shared by other regions because that particular issue would be unique only to Africa. On the other hand African countries could regroup at the sub-regional level because their interests could differ. This explains why East African countries made

decisions under the banner of the East African Community. Differences among countries from the same region arise because the natural resource endowment is diverse and different levels of economic development.

During the Fifth Conference of the Parties (COP) on the CBD, held in Nairobi in May 2000, the OAU opposed the importation of GMOs into Africa until such time that the continent is technologically competent to utilize these products safely. This position does not reflect what is on the ground because countries like South Africa, Egypt, Kenya and Zimbabwe though in principle are party to the OAU position, on the ground are conducting experiments on agricultural biotechnology. Research centers in these countries are receiving assistance from multinational companies from the USA, which is the major exporter of GMOs. Developments like these affect the effectiveness of coalitions.

The European Union and the European Commission although they have internal differences, never adopt different positions. Member countries negotiate among themselves until an acceptable compromise position is agreed. Whenever this occurred during the CBD, negotiations on affected issues would be postponed to create time for these groups to agree on a position. The EU would abstain from a vote if its members do not share the same views.

Coalitions are effective when all members agree. The South stands to benefit from coalitions because they bring together many delegations which share responsibilities, particularly when a number of meetings are being held simultaneously. Contact groups made up of countries with vested interests in specific issues negotiate controversial issues.

Zartman (1971) observes that although communication is an essential part of negotiation, the problems it poses in most negotiations primarily concern interpretations rather than trust. Expanding on this observation, experience with the CBD shows that a lot of time is spent by delegations on studying the conference documents in order to remove ambiguities in the literature. In fact documents are sometimes negotiated sentence by sentence so that

interpretation is acceptable to all negotiators. Meaning of concepts and words are clarified to the satisfaction of all parties. The Drafting Committee is formed to analyze and negotiate on the content as well as the literature in order to address problems of interpretation and meaning. Adoption of decisions is done on a paragraph by paragraph basis to ensure that all delegations agree with the final decisions.

Zartman (1982) posits that negotiations are appropriate when they deal with a new outcome that can only be created jointly. In this case, the goal is not unilaterally attainable and therefore requires the joint decision that is arrived at through negotiation. This joint allocation of benefits would tell each party whether its participation in creating the new outcome is worthy.

Sanchez and Juma eds. (1994) discuss the concept of biodiversity and defines it as referring to a variety of living organisms, which may be genetic, species and ecosystem diversity. According to them, biodiversity is the main source of raw materials used in agricultural, medical and some industrial innovations and therefore it is critically needed for sustainable development.

1.6 Justification of the Study

This is a case study on multilateral negotiations on the Convention on Biological Diversity investigating the implications of the convention on economic, social and political relations between the North and South.

The Convention on Biological Diversity has a bearing on the lives of humans, plants and animals hence necessitating the review to raise awareness on both its positive and negative sides. Its completion will add to the growing body of literature on multilateral negotiations, the CBD and in particular their implications to international relations. Since the CBD covers a wide variety of issues, ranging from environment, trade, science, technology, and diverse cultures which widen the gap between the North and South relations, it is important to investigate how these issues are addressed by the Convention.

The CBD plays an important role yet very little has been researched on it or investigated by researchers. It is within this context that the study provides a unique opportunity to the Parties to reverse their activities that damage the ecology. It is envisaged that this investigation on the negotiation of the CBD would yield new aspects in multilateral negotiations that are not yet documented.

At the policy level, the study is expected to contribute to the development of appropriate policies by Parties to the Convention. It will enhance the capacity of the South to effectively participate in multilateral negotiations held under the aegis of UNEP.

1.7 Theoretical Framework

The aim of theoretical literature is to trace the genesis of ideas, thoughts and theories that contributed to the study of negotiations in general. Different scholars have identified multiple definitions of negotiation process and what follows below is a brief genesis of the negotiation process.

The study of negotiation in general began with Zartman (1971) who used the game theory to the analysis of joint decision-making under conditions of partial formations. The political study of international negotiation has adopted insights from other disciplines.

Zartman (1978) brought together concepts from related studies in economics and sociology along with international relations literature to analyze diplomatic behavior both as a process of choice and as a typology of outcome.

According to Zartman (1978) negotiations ought to be seen as a process involving dual and mostly conflicting motivations, characterized by the individual (competitive) desire to maximize one's own utility and the collective (co-operation) desire to reach a fair agreement. Negotiations proceed smoothly only as long as they are guided by the

collective desires for fairness. It is defined as processes whereby parties reach a compromise where interests are in conflict.

Multilateral negotiations on the CBD were characterized by conflicting motivations because of the many differences that exist between the North and South. Both Parties demonstrated a competitive desire to maximize their utilities. For example the USA did not ratify the Convention although it signed in 1993, and is not party to the Biosafety Protocol adopted in 2000, for fear of putting its biotechnology industry into jeopardy. On the other hand, the South strongly opposed the implementation of the Convention before the Biosafety Protocol was in place. The controversy surrounding the TRIPS Agreement and patenting of life forms demonstrate inflexibility on the part of negotiators.

Zartman (1978) proposes a simple theoretical model for negotiation and noted that men strive to create and maintain the condition of justice. He observed that fair agreements in many bargaining situations should split the difference and let the parties agree on the point that lies midway between the two sides. To this simple model framework, opening concession is quite important in any negotiation process. These concessions in his view should be fair in order for the conflicting parties to reach a compromise. This should be so because men will find nasty solutions fair and will strive to bring their effects (Zartman 1978:25).

Justice and fairness are concepts not obvious in the negotiations for the CBD. Fairness could mean giving up something in order to satisfy the needs of the other part. This theory is contrary to the conflict and normative theories that this study seeks to adopt. North and South negotiations on the CBD deal with conflicting interests involving unequal distribution of resources, and technology. Both sides aim to achieve their goals even at the expense of the other. The satisfaction of national interest is a priority for both North and South. Therefore the theories of fairness and justice are not relevant to the study of multilateral negotiations. If fairness exists then negotiations for the CBD would not have been protracted. Nearly ten years after the CBD came into force, issues central to the Convention are still being negotiated by the Conference of the Parties (COP). These issues

include benefit sharing, incentive measures and transfer of technology from North to South. These issues are not resolved because of selfish reasons.

Concessions should also be made in small portions to avoid being exploited by the opponent. Conflicting parties in this model should have a certain degree of trust and have to be flexible or perceptive to distinguish true unfairness from one that is only apparent (Zartman 1978:27)

Zartman (1978:87-99) argues that a good negotiator is a bargainer and a representative. Negotiators should monitor the other side for evidence of movement and monitoring one's own side for evidence of preferences (Zartman 1978:109). The process of negotiation is interactive and is geared towards overcoming different conceptualizations of issues as held by different parties (Zartman 1978:159). But for this to be possible, agreement on a formula to be used must always precede negotiation on details.

Coalition formation is given as a natural phenomenon in multilateral negotiations that emerge among states sharing common interests to form bargaining groups. This is done in order to uphold and strengthen their common negotiating positions. CBD negotiations are based on consensus decision-making coalitions. These simplify decision-making if there is agreement and complicate the process if they do not share common positions. Some of the theories include the game theory and coalition theory, which attempt to explain multilateral negotiations. Great Numbers of participants in multilateral negotiations contribute to their complex nature owing to the more values, perceptions and interests to be accommodated.

Not a single theory of negotiation could encompass and explain the entire process, but there are a number of well-developed theoretical approaches that both open the way for and require much more testing and debate. Theories and experiments from a number of such approaches have been drawn up, relating to timing, trust, concession rates, threats, side payments, perception justice and communication among others. It is argued by

Zartman (1982) that any of these holds the key to the process, although they give the necessary insights into the determination of outcomes.

The game theory is sometimes said to be static and rationalistic in nature, which makes it inadequate to shedding light on the understanding of the negotiation process. A cognitive approach is given preference as a means of opening the way for understanding irreconcilable value systems, misconceptions and miscalculations which can negatively impact on the negotiation process. This approach is significant since it focuses upon the analysis of information processing and learning processes during negotiation.

Unitar (1999) proposed that two more theories could be applied for a clear understanding of multilateral negotiations from a social dimension. First, there is the prescriptive theory, which takes into account ordinary human behavior, such as Marxist and *Laisser-faire* capitalism (at the national level). To understand human motives there is need for understanding the problem before applying the normative theory of utility to explain the satisfaction of personal goals. Some of these goals are altruistic while others are purely selfish and conflict with the interests of others.

However, utility theory in the form of utilitarianism has been applied as a normative theory. It is a moral theory that treats all individuals as equally important despite of their goals. To explain the true character of multilateral negotiations within the North - South context, the application of normative theory for social dilemmas would discuss only selfish goals. Because it may be true that the inequality factor between North and South is a contributory factor to the existence of social dilemmas and to the gap in their relations.

The theory of co-operation (as opposed to the theory of self-interest) can be applied only if all people concerned were thoughtful of the interests of others and thus were prepared to sacrifice some of their interest. Since this is not evident in multilateral negotiations on the CBD, the theory of self-interest appears to have the upper hand as these negotiations are about self-protection, preservation and maximizing utility for personal gain at all costs.

Since the theoretical background is not well grounded in the study of multilateral negotiation, the game theory seems to have an upper hand. It should be borne in mind that the use of force or threats to withhold financial support contradicts normative theories on altruism and co-operation. This is so because the stronger partner force the weaker partner by other means to accept outcomes that run contrary to their self-well being and this happens to be the reality regarding multilateral negotiations among unequal negotiators. Reports from confirm that the North, particularly the USA, played a dominant role during the negotiations on the CBD. Therefore the North influenced the negotiation process to its advantage. It is claimed that the USA pledged money to support conservation as a way to force the South to make concessions on the conservation of forests. These forests would provide carbon sinks for he USA. Negotiators on the Biosafety protocol faced pressure from the USA on issues related to liabilities and compensation for damages arising from technology transferred from the North to the South. The language to the effect in the protocol was amended to put in consideration the concerns of the USA. The South in deed was forced to agree with an outcome, which it had not envisaged.

Negotiation theory comes in two forms, namely the game theory explained by means of participant's preference orderings in situational negotiations and prospective issues. The heuristic value of this theory is uncontested, but because of its static and rationalistic character, it is inadequate in explaining the negotiation process. Despite this, it opens up avenues for understanding irreconcilable values, social dilemmas, misperceptions and miscalculations that often hinder progress in multilateral negotiations. The cognitive theory focuses on information processes during negotiations, which enhances communication. From personal experience gained during the fifth Conference of the Parties to the CBD, the North certainly had an advantage in terms of access to relevant information because it has the resources to conduct research, has adequately skilled personnel on all agenda items. Information frequently flows from the UNEP Secretariat to the North because it can afford to second personnel to the agency, which very few

countries from the South can afford. On the other hand the South relies on the North for most of the information it need during negotiations. Such information is made available to some delegations that only promote the interests of the North. The way information is processed during multilateral negotiations certainly has an impact on the outcome.

The functionalist theory postulates that the real obstacle to international co-operation is the division of the world into sovereign states, which are exclusive and jealous of their independence. This theory applies to the CBD, which recognize the sovereign rights of states over their biological diversity. The Convention gives states the right to decide how these natural resources should be exchanged and how they should be utilized in a sustainable manner. To a greater extent sovereignty has and will remain a major obstacle to the implementation of the CBD, due to the absence of an enforcement mechanism at the international level.

The conflict theory as seen by scholars perceives international organizations as arenas for class struggle that reflect power relations at the international level. These organizations could serve as useful framework for conflict and accommodation as long as the values and demands of the adversary are not transformed into values and demands of the organization itself. Given the current trends in international system where the North calls the shots and micro manage international organizations, there exists a thin dividing line between the values of organizations and values of the North vis-a-vis those of the South. With regard to the CBD, UNEP finds itself in a catch 22 situation in which it must be perceived to be neutral. However, since the North provides most of the resources used, its interests override those of the South. Fairness is sometimes achieved through the South's insistence on the rules of procedure or refusal to cooperate. This is possible through coalitions. The conflict theory will be adopted in this study.

The theories discussed above depending on the objectives of the negotiators could apply to multilateral negotiations in general and the CBD in particular. However, it is important

to note that national interests and how they are to be achieved determined how the negotiations are to be conducted.

A theory that is likely to weaken a particular position is totally avoided. Since multilateral negotiations are multifaceted it is not easy to theoretically explain how they are conducted.

1.7.1 Conceptual Definitions

The major concepts used in the study that need clarification include the following:

North

Industrialized countries located in the Northern Hemisphere.

South

Developing countries in the Southern Hemisphere.

Mobilise

Fund-raising through formal request for assistance made by UNEP to governments and the private sector.

Commercialise

Trade in scientifically processed biodiversity with a determined monetary value.

Utilise

The use of biodiversity either in its raw or processed form, such as medicine, food and fuel.

Ratify

Act of committing a government through signing a legally binding instrument. Countries that ratified the CBD are bound by its decisions.

Sustainability

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.

Patent

Laws protecting the ownership of invention under copyright on biotechnology, with a long lease of life (20 years).

Parties

Refers to contracting countries to the CBD.

.Inter-session

Refers to the two-year period when the Governing Council is not in session.

1.8 Research Methodology

The research was carried out through a desk study case/survey study and through interviewing of key informants. Interviews and discussions with the UNEP Secretariat and resident Permanent Representatives accredited to UNEP from North and South brought to bear crucial information for this research project. Highly experienced UNEP Secretariat personnel, medium experienced and relatively inexperienced personnel were all interviewed. The purpose of this was to identify their views on the functions and relevance with some parts of the CBD process. The case study method was greatly aided by my own personal experience with the whole CBD process, which included the fifth conference of the parties to the CBD held in 1999 in Nairobi, Kenya.

Secondary data that was used in this study included books, magazines and UN publications on North/South negotiations. Negotiators from the host government and non-governmental institutions were consulted on topics they were well versed with. Contacts with the Convention Secretariat, based in Montreal (Canada) as well as UNEP staff dealing with conventions, were vital for the research. Organizations dealing with biological diversity issues such as the African Center for Technology Studies (ACTS) and others provided valuable insights to the study.

Survey questionnaires were administered to a sampled population. Stratified sampling method was used because of the huge size of the population involved in CBD. The whole population of North-South was broken down into stratum. The stratum constituted the sampling frame. Five questionnaires were distributed to each stratum randomly. This

distribution method was selected in order to avoid bias. Qualitative technique method of data analysis was adopted. This involves content analysis of the data derived from key informants. The purpose for this analysis was to determine inherent facts and meaning emerging from the collected data.

There are several possible response formats or scaling methods for questionnaire analysis. These scaling methods include Thurstone's method of equal-appearing intervals (Thurstone 1929), Guttman's scalogram approach (Guttman 1950), and the Likert scaling method (Likert 1932), to name a few. Scales developed using the Likert method yield higher reliability coefficients with fewer items than scales developed using the Thurstone method (Edwards and Kennedy 1946).

The checklist format was more suitable for analyzing question number eight (8) of the questionnaire. In this context, the number of positive things said about it can quantify the quality of a service or product. The more positive things said about a service (or the fewer negative things said about it) the better the service. Question 8 in the questionnaire asked the respondents to respond "yes" if the satisfaction of the item reflects equitable sharing of benefits between North and South and "no" if the item does not reflect equitable sharing of benefits between North and South. The benefit of the checklist method is the ease with which respondents can respond to an item. Respondents can easily indicate whether or not the item describes the service.

1.8.1 Likert-Type Format

The quality of the service or product can be indexed by the strength of response toward each satisfaction item. The Likert-type format is designed to allow respondents to respond in varying degrees to each item that describes the service, product or experience. Although two respondents may say that the item describes the service, one respondent may want to indicate the item especially when it describes the service more so than does the other respondent. A Likert-type response format is an appropriate approach to use on respondents whose degrees vary from each other.

Likert (1932) developed a scaling procedure in which the scale represents a bipolar continuum. The lower end represents a negative response while the higher end represents a positive response. Satisfactory items are declarative items that reflect specific good or bad aspects of the service or product. The response scale, therefore, should reflect whether the satisfaction an item brings describes the service. Respondents answer each item in terms of how well that particular item describes the service they received.

With the quality dimension represented in the questionnaire, the Likert-Type format allowed respondents to express the degree of their opinion in the service or product they received rather than restricting them to a "yes" or "no" answer. From a statistical perspective, scales with two response options have less reliability than scales with five response options (Lissitz and Green 1975). In addition, reliability levels off after five scale points and this suggests minimal incremental utility of using more than five scale points. Using the Likert-type format allows one to determine the percentage of positive and negative responses to a given item.

Since it was practically difficult to formulate a tractable model, which incorporates all the survey questionnaire questions, a 5-point "Likert Scale Model" was adopted. It was implicitly anchored at the end and presented in matrix form with scale points ranging from 1-5, where the lower case of the matrix represented a strongly disagreed upon attitude and the upper case represented a strongly agreed upon feeling. This demonstrates a two-point strong perception of the respondents in regard to their experience with the CBD.

1.8.2 Scope and Limitations of the Study

There are several limiting factors in this study as summarized below:

- 1 The main limitation of the study arose from the use of cross-sectional data, which is collected with respect to variables under consideration at one point in time. This data has an inherent problem in that it is difficult to model differences in behavior across individuals.

- ii. Use of time series across sectional data would have been more appropriate but this was hindered by the nature of the research on CBD, which is fairly new.
- iii. The other limitation relates to non-response and data inaccuracy which are characteristic of questionnaire-based surveys.
- iv. The type of specification and estimation method used also threatened the validity of results.
- v. Lack of funding, resulted into limited sampling of identified respondents.
- vi. Since very little has been written on the subject of multilateral negotiations *per se*, one expects theory limitations. For the sake of simplicity and utility, data analysis is limited to the two approaches: the checklist format and the Likert-type format

Despite all the limitations, the results from the survey provided interesting insights into Multilateral Negotiations on Convention on Biological Diversity within the North-South perspective.

CHAPTER TWO

PROFILE OF THE CONVENTION ON BIOLOGICAL DIVERSITY

2.0 INTRODUCTION

Negotiation on the CBD aims to achieve objectives outlined below:

- i. Conservation of biological diversity or genetic resources
- ii. Sustainable use of the world's resources
- iii. Equal access to genetic resources
- iv. International equity regarding the sharing of benefits arising from the utilization of genetic resources by those who provide (South) and those who use them (North). Developing countries are the providers while the multinational corporations in the North are the major users and developers of genetic resources.

Multilateral negotiations normally involve many states and other stakeholders. The negotiations may address issues such as international watercourses and lakes, protection of marine environment, atmospheric interference and air pollution, protection of flora and fauna, all of which constitute natural resources.

2.1 Events and treaties before the CBD

Conservation and use of biodiversity and genetic resources are the issues that the CBD addresses. Yet the people who own them, basically the farming communities, do not have the rights of conserving and utilizing these resources traditionally. But even though the products of biotechnology from genetic engineering are seen to be of superior quality, they are not better than the indigenous varieties from the South which are regarded as "primitive" since they all give yields that are resistant to droughts and pests. Sanchez and Juma, eds. (1994:116) argue that they are called primitive because they do not respond favorably to chemical inputs as do the so-called "miracle seeds" of the Green Revolution which are inaccurately called "high yielding" but are merely high response varieties.

Use of chemicals damages the ecological system and causes health hazards and yet people in the Third World countries continue using them. This is because these countries are still backward in research, which could assess the impacts of the use of chemicals afterwards. They can not know the impacts of the chemicals until the resources have been acquired, used and the damage caused.

Sanchez and Juma, eds. (1994:117) content that research systems in the Third World countries are dynamic only in so far as they are integrated with the needs of the society (especially the poor and the powerless) and work for social objectives as opposed to profit. Sanchez and Juma, eds. (1994:117) note that Third World farmers must be recognized as major sources of knowledge of biodiversity and its sustainable use. Epistemologically, the Third World farmer, the Third World scientist and the industrialized country scientist working for a corporation have to be recognized as having equal capacities and rights to maintain the principles of democracy in knowledge generation.

Sanchez and Juma, eds. (1994:163) define technology transfer as the process by which technology, knowledge and information developed in an organization, in a given area, or for a particular purpose is applied and utilized in a different setting or context. The transfer may be in the form of capital goods, services, skills, knowledge and expertise for managing technical change. As a form of direct foreign investment inn Third World countries, it is a transactional business done without trade agreements. This leaves it open for the exploitation of the parties from the South.

From the viewpoint of the recipient country, foreign investment brings in venture capital in the form of foreign exchange and the security of the foreign partner's long-term commitment. However, according to (Sanchez and Juma, eds. 1994:165), the supplier may thwart local improvement of the imported technology quite deliberately. Such a situation calls for the creation of the patent license transfer. This transfer will then give the recipient country exclusive rights of the patent although this is normally an expensive

venture for the parties from the South. It is also seen as a restriction imposed indirectly on technology transfer by parties from the North to hinder the South from developing technologically.

The natural flora and fauna are used as food, apparel, shelter, health, mobility and recreation. Their extensive exploitation has caused extensive damage to the environment. According to Sanchez and Juma, eds. (1994:289), biodiversity includes a variety of living organisms existing at the levels of genetic diversity, species diversity and ecosystem diversity. In this case such elements of the biodiversity interact in a complex manner in the environment. They co-exist symbiotically and influence the general environment. In doing this, they determine the kind of resources that humankind may have access to on a continuing basis, and are the main source of raw materials used in agricultural, medicinal, and industrial innovation (Sanchez and Juma, eds. 1994:290).

The destruction of vast biodiversity in the South continue unabated through , habitat fragmentation, introduction of exotic species, climate change, pollution, unsustainable economic activities, and the spread of monoculture crops or forests.

Sanchez and Juma, eds. (1994:290) argue that there are nine-score multilateral treaties and other international agreements that have been designed for the protection of natural environment in which biodiversity is included. According to him, this is a clear indication of the global concern about accelerating rates of environmental degradation, about the international nature of the crisis and about the imperatives of co-operation in the tasks of environmental conservation. These treaties were intended to protect, manage and control the natural environment particularly the biodiversity.

Table 1 below shows the treaties that had been signed and adopted to manage and protect biodiversity and the environment in general and had been adopted before the 1992 CBD by governments. The treaties below were limited in scope and were not able to address the global problems that threaten biodiversity conservation. Moreover the CBD addresses new

issues in international relations such as science, trade and development that threaten sustainability of world resources. The CBD draws from all the treaties in the table below, which enabled it to bring global consensus which was not possible with the existence of the treaties below.

Table 1 Global Treaties before 1992: A sample

	Treaty/Agreement	Place Signed	Date Adopted
1	Convention Relative to the Preservation of Fauna and Flora in their Natural State	London	8/11/1933
2	International Convention for the Regulation of Whaling	Washington DC	2/12/1946
3	International Convention for the Protection of Birds	Paris	18/10/1950
4	International Plant Protection Convention	Rome	6/12/1951
5	Convention of Fishing and Conservation of the Living Resources of the High Seas	Geneva	28/4/1958
6	Convention on the High Seas	Geneva	29/4/1958
7	Convention of Wetlands of International Importance Especially as of Water-Flow Habitat	Ramsar	2/2/1971
8	Convention for the Conservation of Antarctic Seals	London	1/6/1972
9	Convention Concerning the Protection of the World Cultural and Natural Heritage	Paris	11/6/1972
10	Convention on International Trade in Endangered Species of World Flora and Fauna (CITES)	Washington DC	3/3/1973
11	Convention on the Conservation of Migratory Species of Wild Animals	Bonn	23/6/1979
12	United Nations Convention on the Law of the Sea	Montego Bay	10/12/1982
13	International Tropical Timber Agreement	Geneva	18/11/1983

Source: Sanchez and Juma, eds. (1994:291)

Most of the above biodiversity resources are found in the South, particularly in Africa, Asia and South America. The above treaties according to Sanchez and Juma, eds. (1994:291) are the ones that led to the establishment of national parks in Africa and other measures, which were adopted to protect the natural environment in general. All these

treaties were aimed at establishing international agreements probably through the CBD to protect the natural environment particularly in developing countries.

The treaties above aimed to protect specified natural resources since 1949 to 1983. Consensus emerged in favor of an all-encompassing treaty to enforce the conservation of world resources in their various forms. Hence the negotiation and subsequent adoption of the CBD in 1992 in Brazil. The CBD proved to be a popular Convention on global efforts to protect biodiversity from depletion as witnessed by the large number of countries that are party to the treaty.

22 An Overview of the Convention on Biological Diversity

International environmental law grew into two phases. According to Sanchez and Juma, eds. (1994:199) the first phase dealt mainly with "first generation issues": pollution of water, air and soil resulting from industrial activities, poverty and underdevelopment. The second phase dealt with the "second generation" environmental issues: global warming, acid rain, and depletion of the stratospheric ozone layer, loss of biodiversity and sustainable development.

The CBD falls among the family of international agreements adopted at the Rio de Janeiro, Brazil Earth Summit held in 1992. It includes Agenda 21 (also called agreed principles for development in the 21st century), the Global Plan of Action (GPA) for the environment, desertification, drought and Prior Informed Consent (PIC). These agreements influence the Convention on Biological Diversity since they all share the same goal of protecting the environment and its biological diversity. Like the CBD, these agreements are non-binding guiding principles on matters related to environment and development. Despite this, the CBD draws most of its principles from these agreements.

The International Union for the Conservation of Nature and Natural Resources (IUCN) started raising concern over inadequate legal instruments, which could engender the conservation of natural environment since the early 1970s. Legislation only existed for

pollution control but not for natural environment as a whole. From these humble beginning stemmed the origin of the CBD which has established a new international regime for governing the utilization and conservation of biological diversity in a unified manner.

Agricultural biological diversity concerns links the CBD with the World Trade Organization (WTO) from which it borrows the controversial Trade Related Intellectual Property Rights (TRIPS) Agreement and its associated patent laws. The patent laws and the TRIPS Agreement are heavily contested by developing countries. It is in such cases that the Convention that deals with issues related to science, trade and development and protection of the environment was enacted.

Forty-two articles make up the Convention on Biological Diversity. They cover diverse issues ranging from trade and development, rights of local communities, food security, biotechnology and its appropriate transfer from developed to developing countries, TRIPS and patents, to traditional knowledge. For more information on the articles, refer to *Appendix 2*.

The application of the Convention has a strong bearing on political, cultural and socio-economic aspects of international relations. An instrument such as this attempts to address different interests of the stakeholders, who include nation states, local communities in developing countries, industry, non-governmental bodies, scientists, lawyers, farmers and international financial institutions.

The Convention was adopted by the Governing Council of UNEP in Nairobi, Kenya in May 1992, and opened for signature in June 1992, at the Rio Earth Summit in Brazil. A World record of 156 countries appended their signatures. It came into force on 29th of December 1993, following its ratification by 30 contracting parties. Out of the 177 Parties, 168 are signatories to the Convention. This clearly shows the significance of the CBD, which enjoys international acceptance.

Table 2 overleaf provides a summary and review of the member countries that appended their signatures to the Convention when it was opened for signature at Rio de Janeiro, Brazil. Regional economic integration organisations, which appended their signatures from 5th to 14th of June 1992, and thereafter (but before 4th of June 1993) at the United Nations Headquarters in New York until 4 June 1993 are also, included.

Table 2: Ratification List. Rio de Janeiro, 5th –14th June 1992 and New York, United Nations Headquarters, 15th June 1992 to 4th June 1993.

Participant Country	Date of Signature	Ratification Date of Accession (a), Acceptance (A), and Approval (AA)
Afghanistan	12 June 1992	
Albania	5 January 1994	a
Algeria	13 June 1992	14 August 1995
Angola	12 June 1992	1 April 1998
Antigua and Barbuda	5 June 1992	9 March 1993
Argentina	12 June 1992	22 November 1994
Armenia	13 June 1992	14 May 1993 A
Australia	5 June 1992	13 June 1993
Austria	13 June 1992	18 August 1994
Azerbaijan	12 June 1992	3 August 2000 AA
Bahamas	12 June 1992	2 September 1993
Bahrain	9 June 1992	2 September 1993
Bangladesh	5 June 1992	3 May 1994
Barbados	12 June 1992	10 December 1993
Belarus	11 June 1992	8 September 1993
Belgium	5 June 1992	22 November 1996
Belize	13 June 1992	30 December 1993
Benin	13 June 1992	30 June 1994
Bhutan	11 June 1992	25 August 1995
Bolivia	13 June 1992	3 October 1994
Botswana	8 June 1992	12 October 1995
Brazil	5 June 1992	28 February 1994

Bulgaria	12 June 1992	17 April 1996
Burkina Faso	12 June 1992	2 September 1993
Burundi	11 June 1992	15 April 1997
Cambodia		9 February 1995 a
Cameroon	14 June 1992	19 October 1994
Canada	11 June 1992	4 December 1992
Cape Verde	12 June 1992	29 March 1995
Central African Republic	13 June 1992	15 March 1995
Chad	12 June 1992	7 June 1994
Chile	13 June 1992	9 September 1994
China	11 June 1992	5 January 1993
Colombia	12 June 1992	28 November 1994
Comoros	11 June 1992	29 September 1994
Congo	11 June 1992	1 August 1996
Cook Islands	12 June 1992	20 April 1993
Costa Rica	13 June 1992	26 August 1994
Cote d'Ivoire	10 June 1992	29 November 1994
Croatia	11 June 1992	7 October 1996
Cuba	12 June 1992	8 March 1994 AA
Cyprus	12 June 1992	10 June 1996
Czech Republic	4 June 1993	3 December 1993 AA
Democratic People's Republic of Korea	11 June 1992	26 October 1994 AA
Democratic Republic of the Congo	11 June 1992	3 December 1994
Denmark	12 June 1992	21 December 1993
Djibouti	13 June 1992	1 September 1994
Dominica		6 April 1994 a
Dominican Republic	13 June 1992	25 November 1996

Ecuador	9 June 1992	23 February 1993
Egypt	9 June 1992	2 June 1994
El Salvador	13 June 1992	8 September 1994
Equatorial Guinea		6 December 1994 a
Eritrea		21 March 1996
Estonia	12 June 1992	27 July 1994
Ethiopia	10 June 1992	5 April 1994
European Community	13 June 1992	21 December 1993 AA
Fiji	9 October 1992	25 February 1993
Finland	5 June 1992	27 July 1994 A
Former Yugoslav Rep. of Macedonia		2 December 1997 a
France	13 June 1992	1 July 1994
Gabon	12 June 1992	14 March 1997
Gambia	12 June 1992	10 June 1994
Georgia		2 June 1994 a
Germany	12 June 1992	21 December 1993
Ghana	12 June 1992	29 August 1994
Greece	12 June 1992	4 August 1994
Grenada	3 December 1992	11 August 1994
Guatemala	13 June 1992	10 July 1995
Guinea	12 June 1992	7 May 1993
Guinea-Bissau	12 June 1992	27 October 1995
Guyana	13 June 1992	29 August 1994
Haiti	13 June 1992	25 September 1996
Honduras	13 June 1992	31 July 1995
Hungary	13 June 1992	24 February 1994
Iceland	10 June 1992	12 September 1994
India	5 June 1992	18 February 1994

Indonesia	5 June 1992	23 August 1994
Iran (Islamic Republic of)	14 June 1992	6 August 1996
Ireland	13 June 1992	22 March 1996
Israel	11 June 1992	7 August 1995
Italy	5 June 1992	15 April 1994
Jamaica	11 June 1992	6 January 1995
Japan	13 June 1992	28 May 1993 A
Jordan	11 June 1992	12 November 1993
Kazakstan	9 June 1992	6 September 1994
Kenya	11 June 1992	26 July 1994
Kiribati		16 August 1994 a
Kuwait	9 June 1992	
Kazargystan		6 August 1996 a
Lao People's Democratic Republic		20 September 1996 a
Latvia	11 June 1992	14 December 1995
Lebanon	12 June 1992	15 December 1994
Lesotho	11 June 1992	10 January 1995
Liberia	12 June 1992	
Libyan Arab Jamahiriya	29 June 1992	
Liechtenstein	5 June 1992	19 November 1997
Lithuania	11 June 1992	1 February 1996
Luxembourg	9 June 1992	9 May 1994
Madagascar	8 June 1992	4 March 1996
Malawi	10 June 1992	2 February 1994
Malaysia	12 June 1992	24 June 1994
Maldives	12 June 1992	9 November 1992
Mali	30 September 1992	29 March 1995
Malta	12 June 1992	

Marshall Islands	12 June 1992	8 October 1992
Mauritania	12 June 1992	16 August 1996
Mauritius	10 June 1992	4 September 1992
Mexico	13 June 1992	11 March 1993
Micronesia (Federated States of)	12 June 1992	20 June 1994
Monaco	11 June 1992	20 November 1994
Mongolia	12 June 1992	30 September 1993
Morocco	13 June 1992	21 August 1995
Mozambique	12 June 1992	25 August 1995
Myanmar	11 June 1992	25 November 1994
Namibia	12 June 1992	16 May 1997
Nauru	5 June 1992	11 November 1993
Nepal	12 June 1992	23 November 1993
The Netherlands	5 June 1992	12 July 1994 A
New Zealand	12 June 1992	16 September 1993
Nicaragua	13 June 1992	20 November 1995
Niue		28 February 1996 a
Niger	11 June 1992	25 July 1995
Nigeria	13 June 1992	29 August 1994
Norway	9 June 1992	9 July 1993
Oman	10 June 1992	8 February 1995
Pakistan	5 June 1992	26 July 1994
Palau		6 January 1999
Panama	13 June 1992	17 January 1995
Papua New Guinea	13 June 1992	16 March 1993
Paraguay	12 June 1992	24 February 1994
Peru	12 June 1992	7 June 1993
Philippines	12 June 1992	8 October 1993

Poland	5 June 1992	18 January 1996
Portugal	13 June 1992	21 December 1993
Qatar	11 June 1992	21 August 1996
Republic of Korea	13 June 1992	3 October 1994
Republic of Moldavia	5 June 1992	20 October 1995
Romania	5 June 1992	17 August 1994
Russian Federation	13 June 1992	5 April 1995
Rwanda	10 June 1992	29 May 1996
Saint Kitts and Nevis	12 June 1992	7 January 1993
Saint Lucia		28 July 1993 a
Saint Vincent and the Grenadines		3 June 1996 a
Samoa	12 June 1992	9 February 1994
San Marino	10 June 1992	28 October 1994
Sao Tome and Principe	12 June 1992	29 September 1999
Senegal	13 June 1992	17 October 1994
Seychelles	10 June 1992	22 September 1992
Sierra Leone		12 December 1994 a
Singapore	10 March 1993	21 December 1995
Slovakia	19 May 1993	25 August 1994 AA
Slovenia	13 June 1992	9 July 1996
Solomon Islands	13 June 1992	3 October 1995
South Africa	4 June 1993	2 November 1995
Spain	13 June 1992	21 December 1993
Sri Lanka	10 June 1992	23 March 1994
Sudan	9 June 1992	30 October 1995
Suriname	13 June 1992	12 January 1996
Swaziland	12 June 1992	9 November 1994
Sweden	8 June 1992	16 December 1993

Switzerland	12 June 1992	21 November 1994
Syrian Arab Republic	3 May 1993	4 January 1996
Tajikistan		29 October 1997 a
Thailand	12 June 1992	
Togo	12 June 1992	4 October 1995 A
Tonga		19 May 1998 a
Trinidad and Tobago	11 June 1992	1 August 1996
Tunisia	13 June 1992	15 July 1993
Turkey	11 June 1992	14 February 1997
Turkmenistan		18 September 1996 a
Tuvalu	8 June 1992	
Uganda	12 June 1992	8 September 1993
Ukraine	1 June 1992	7 February 1995
United Arab Emirates	11 June 1992	10 February 2000
United Kingdom	12 June 1992	3 June 1994
United Rep. of Tanzania	12 June 1992	8 March 1996
United States of America	4 June 1993	
Uruguay	9 June 1992	5 November 1993
Uzbekistan		19 July 1995 a
Vanuatu	9 June 1992	25 March 1993
Venezuela	12 June 1992	13 September 1994
Viet Nam	28 May 1993	16 November 1994
Yemen	12 June 1992	21 February 1996
Yugoslavia	8 June 1992	
Zambia	11 June 1992	28 May 1993
Zimbabwe	12 June 1992	11 November 1994

Source: UNEP, 14 August 2000, *General Distribution on CBD*.

Table 2 above show countries by name, and provide date(s) when they appended signature and ratified the CBD. The information is included because it is not easily accessible in public libraries. It is shown that all contracting parties signed the Convention in June 1992. While the dates for ratification spread 1992 to 1997.

Nearly the majority of parties took their time to ratify the treaty for two reasons. The first reason is that since the act of ratification is legally binding to contracting parties, it is necessary for countries to scrutinize the treaty at the domestic level before committing themselves. This is one of the reasons why USA has not yet ratified the Convention since it believes that the convention poses constraints to its biotechnology industry.

The second reason is that in most countries parliamentary approval is a prerequisite before ratifying international treaties. The parliamentary process is a time consuming procedure, hence the delays in the parties ratification of the CBD.

The importance of the CBD is demonstrated by the number of countries that are signatory to it. So far the Convention received the highest number of ratification in the history of international conventions. Contracting Parties realized the important role played by biological diversity in human development and as a source of livelihood. Loss of biological diversity is a global concern and has great potential to impoverish human life and could adversely affect the course of human development. Highest levels of biological diversity are found in forests, marine and fresh water ecosystems. Forests provide us with a number of important products like food, commercial commodities such a medicines. Multinational corporations are the largest exploiters of these resources found in tropical countries for their own advantages.

2.3 The Biosafety Protocol

The Biosafety Protocol adopted in May 2000 sets out regulations for the implementation of the convention. The Protocol sets time frame and deadlines and also regulates movement of Living Modified Organisms (LMOs) from developed to developing countries

through the application of Prior Informed Consent procedures (PIC). As a new principle in international environmental law, PIC procedures forms the basis for the formulation of national policies that enable the contracting countries to monitor and assess the impact of Genetically Modified Organisms (GMOs) on human health and the environment.

Developing countries initiated the Biosafety protocol.

They pushed for its negotiation and final adoption on the basis of the disadvantages they face as technologically weak countries. More specifically, the protocol regulates trans-boundary movement of risk ridden GMOs such as maize seed, food, plants, and other living organisms, from the North to the South. In spite of this, the protocol allows countries to choose whether or not to import GMOs.

2.4 Some Significant Articles of the CBD

This sub-section examines and highlights some important articles of the Convention on Biological Diversity (1988) which are annexed in the appendix. These include:

- *Article 8(j)*, states that “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 encouragement the equitable sharing of benefits arising from the utilization of such knowledge, innovations and practices. The article is significant because it recognizes the role of indigenous communities in developing, conserving and sustainable use of the biological resources on their land and territories.
- *Article 13*, calls on Parties to “promote and encourage understanding of the importance of, and the measures required for the conservation of biological resources.

as well as its propagation through media, and the inclusion of these topics in educational programmes. Inter-state co-operation is encouraged as well”.

- *Article 15* on access to genetic resources “recognizes the sovereign right of states over their natural resources and that authority to determine access to such resources rests with the national governments and is subject to national legislation. Access according to the Convention should be subject to Prior Informed Consent (PIC), enforceable through the Biosafety Protocol. The principles of equal access is tied to equitable sharing of the results of the research and development and the benefits arising from the commercial and other utilization of genetic resources with the contracting party providing the resources.
- *Article 16* is important for promoting the transfer of technology including biotechnology or the attainment of the objectives of the CBD.” The transfer of technology to developing countries shall be provided or facilitated under fair and most favorable terms, including Concessions and preferential terms where agreed to, and where necessary.
- *Article 20*, on financial resources provides that” Parties shall take administrative or policy measures, as appropriate, to provide for the effective participation in biotechnological research activities especially by developing parties, which provide the genetic resources for such research, and where feasible in such contracting Parties.
- *Article 27*, on settlement of disputes arising from interpretation or application of the convention, the Parties concerned shall seek solution by negotiation, Good offices may be utilized if parties fail to reach agreement This article is not seen as being forceful enough because it lacks punitive measures in cases of breach of aspects of the Convention.

The articles cited above and others annexed are the cornerstone of this research. They shed light on the process of negotiation. There is no consensus on the question of benefit

sharing even though it has been mentioned in the articles. The Sixth Conference of the parties in 2002 is expected to negotiate further on the issue. Previous negotiations focused more on the definition of benefits. For instance, the delegation from Japan and EU prepared discussion papers on the topic during the Fifth Conference of the parties in 2000. Both sides argued against the view that benefits that should be shared should be monetary. They rather noted that there should be joint research projects between the North and the South to technologically empower the latter. This is because of the fact that there are higher chances for the North to disendfranchise the South especially when benefits are only expressed in monetary terms.

An important observation to make here is that governments from the South do not have laboratories in which they could practice their skills and this, to them is a major weakness during the negotiations with scientists from the North.

Article 16 pertains to access and transfer of technology. The borne of contention on this Article between the North and the South is the TRIPS agreement and the Patent laws that restrict the transfer of appropriate technologies and biotechnology products from the North to the South. The North protects its inventions at all costs in order to maintain a monopoly of the markets in the South.

These articles though important leave a lot at the discretion of each contracting party. Majority of the parties have not made progress in implementation for various reasons which could be economic, political, underdevelopment and conflicting interests among and within states. For more details on the articles on the Convention on Biological Diversity refer to *appendix 2*. The appendix gives a summary of all the articles on the CBD. The justification of this appendix is that it provides a reader with a clear-cut detailed information on each article.

CHAPTER THREE

MULTILATERAL NEGOTIATION ON THE CONVENTION ON BIOLOGICAL DIVERSITY

3.0 INTRODUCTION

This chapter describes in detail the CBD negotiation process, the defining characteristics and effect of key variables on the negotiation process. Negotiations are prevalent owing to the increasing conflicts/disputes between people, firms, institutions, countries, and regions. Although there are several ways (such as seeking legal redress in courts, rules and regulations, relying on the market mechanism or traditional practices) through which disputes can be resolved, multilateral negotiations have gained widespread prominence in the world today.

The apparent shift to negotiations as a means of settling disputes has been given impetus by the realisation that some of the international problems require solutions that can not be devised by states or government as individual entities. The environment poses trans-boundary problems that require collective decision-making. Societal conflicts have expanded in scope to include conflicts between development agents and environmentalists, international lawyers, researchers and communities. Such are the issues that the CBD deals with. Others may include protection and sustainable utilisation of the world resources. Issues discussed in this chapter are derived from the views of participants in the negotiations as outlined above. The governments of various countries negotiated for two years (1991-1992) to produce the forty two articles that provide guidelines on the use of natural resources by all countries which are signatories to the CBD.

The objectives of the negotiation draws significantly from Agenda 21 which laid down guidelines for sustainable development in the 21st century. These guidelines include issues related to the environment and sustainable development. Negotiation methods are reviewed as they relate to critical articles of the CBD.

3.1 Pre-Negotiation Phase and Preparation Process on Multilateral Negotiation for the CBD

According to Saunders (1985) the pre-negotiation phase serves two functional needs, defining the problem and developing a commitment to negotiate on part of the parties, which are followed by a third stage, arranging the negotiations. The two needs create a political commitment to solve a problem. A pre-negotiation process was evident with regard to the CBD as the UNGA and its member states at first did not perceive the necessity of an international convention to enforce conservation and sustainable use of the earth's resources. Some countries in the West felt that these issues were better handled at the national level (McConnell 1995).

Lawyers dealing with environmental problems and the International Union for the Conservation of Nature and Natural Resources (IUCN IN 1990 proposed the creation of the CBD. A draft convention was prepared by the same organisations and at a later stage, presented to the United Nations General Assembly (UNGA), which authorised UNEP to establish the relevance of such a convention and judging from its findings, facilitate negotiations for a framework convention to protect the world's biological diversity. Subsequently UN member states agreed to negotiate.

Pre-negotiation on the CBD involved parties acknowledging the importance of the Convention before agreeing to negotiate for its creation. Gross (1989) considered the pre-negotiation stages as the time when one or more parties consider to negotiate as a policy option. This assumes that the problem to be negotiated was recognised by the parties concerned. The problem was the unabated depletion of biological diversity through unsustainable human activities.

The Preparation Process

The preparatory process started in 1990 when UNEP through its Governing Council (GC), established an *ad hoc* working group made up of technical experts to review the

draft Convention, there by laying the ground' work for multilateral negotiations on the CBD. The agenda and other working documents were drafted by UNEP in consultation with member states. At a later date the working group was transformed into the Intergovernmental Negotiating Committee (INC), composed of experts drawn from participating governments. University lecturers, the private sector researchers and scientists played a role within the Scientific Committee that negotiated technology related issues including biotechnology.

Other preparations involved seminars and workshops initiated by UNEP, to enable countries as individuals and groups to identify their priorities and gather as much information as possible on the issues to be negotiated. The preparation phase is critical for the success of the negotiations. This phase provides adequate time to discuss and review issues thoroughly before negotiating on the CBD in order to incorporate national, regional and international interests. Positions are taken as governments, regions, and coalitions. Negotiation strategies are laid out This is the most significant part of the negotiations as the concerned parties consider in detail the agenda, defines positions and identifies what they hope to achieve from the negotiations.

The preparation enabled countries from the South to gather under sub regional groups in order to consolidate their positions and put up strategies on how to deal with issues upon which they may not share common positions. Regional and sub-regional economic groups are the EC, EU OAU, G77 and the EAC, SADC and ECOWAS to name a few. These regional blocs participated through out the negotiation process. Their main concern are trans-boundary environmental issues arising from shared biodiversity. The groups acted as formal coalitions during negotiations on the CBD

Lack of adequate resources in the South, certainly affected the quality of its preparatory process. Research, information processing, technological constraints and sometimes lack of experienced and trained personnel and negotiators weakened the preparations.

Respondents from the South argue that because of availability of resources, the North has the capacity to engage the services of experts from various fields to conduct research on the agenda, involve the private sector, and access vital technology. All these give the North a leverage over the South. Moreover, the North could afford to support large delegations, unlike small delegations from the South whose participation depends on assistance from the North.

Negotiators at this stage have an idea of what they aim to achieve. If their views prevail have a fall-back position is handy in case either side fails to convince the other side on the value of their viewpoint. A fall back position enable the parties to compromise or give Concessions to resolve conflicting interests.

Since the CBD deals with cross-cutting issues (interrelated issues) which require experts in technology, science, biology, ecology, science, agriculture, community related issues, law, and the civil society. Participating countries with foresight utilised their diverse human resources to achieve their desired objectives during the negotiation process.

At the domestic level, it is not easy for the South to conduct inter-ministerial consultations because of lack of coordination between departments and constraints on resources among other reasons. The North has at its disposal abundant resources to enable it to conduct research on the issues to be negotiated on the CBD.

3.2 Negotiation Methods

This subsection reviews methods used in the negotiation process, on the CBD. Articles that have a bearing on the research problem and the hypotheses are highlighted. Since the study adopted the theory of conflict as the most applicable formula to explain the nature of negotiations between the North and South. The game theory and bargaining the principles of concession and coalition equally apply. Since the CBD deal with interrelated issues it is possible that methods could be used interchangeably depending on the issue.

Coalition formation is the first method to be used in multilateral negotiation on the CBD. At this stage the negotiators discuss the agenda to identify priority areas and agree how to proceed. As a negotiation strategy coalitions are effective if they achieve consensus on issues of interest. In such instances the other side would bargain or offer concessions if there is a desire to reach agreement.

The South formed a strong coalition under the G77 during negotiation on article 15 on equal access to genetic resources found in the South by countries in need of them. The North which has not been endowed with these resources negotiated for the adoption of equal access to biodiversity. The procedures put in place regulating access to resources could have been a result of a compromise to persuade the reluctant South to avail its resources to the North. Since accessing resources is in the interest of the North usually at the disadvantage of the South. The North could have convinced the South that it is willing to share with the South any benefit accrued from the utilisation of resources from the South. Concerns of the South were genuine because the North was collecting resources from the South almost for free in the past. Threats from the North could not have worked because the South could only transfer its biodiversity to the North in exchange for benefit which could be used to support conservation programmes at the community level. On the part of the South agreement was reached on the trust that the North would allow benefit to trickle to its local communities for conservation purposes.

Article 11 on Incentive Measures is closely related to article 15 on access to genetic resources and article 19 on sharing of benefits, which are areas of conflict between North and South. The point of contention is that the South insists that the North should provide incentives to the custodians of biodiversity in the South as the major beneficiary of genetic resources. Basing its argument on the question of sovereignty over biodiversity by the countries of the South, the North insists that the South should provide incentives from domestic resources. The South has no choice except to hike its demand to the North. Developing countries vulnerable to bargaining by the North. This way, both parties would lose something in order to gain something.

For instance, the USA used financial aid as a bargaining tool to encourage countries in the South to make commitment to conserve and use their forest resources in a sustainable manner during the CBD negotiations. Brazil adopted the forest conservation strategy in return for debt forgiveness by the USA. In return the USA use the forests in Brazil as carbon sinks. Brazil benefited from conserving its forest resources the USA acquired carbon sinks for its industrial wastes. The North also bargained with pledges to transfer technology and establish joint research in exchange for unlimited access to resources in the South.

However, apportioning responsibilities is a controversial issue, because it brings problems of inequality in terms of resources, and development between North and South. All resource intensive responsibilities became a burden for the North and an excuse, (sometimes genuine) for the South. The South would not want responsibilities that it can not afford to support financially. On the other hand pressure is mounting for the North to provide resources for the conservation of world resources. The demand is made because the North is the major producer of industrial wastes that are destroying the environment.

The game theory and bargaining methods were useful negotiation tools utilised by the North to force the South to agree to undesirable agreement on the financial mechanism for the CBD. After long and painful negotiation on the methods of funding the South finally but reluctantly agreed with the North to mandate the GEF as the financing institution for the CBD. The South lost the argument for the creation of a revolving fund to support its conservation strategy.

Another issue that the South could not influence to its advantage, relates to article 9 on Ex-Situ Conservation which put emphasis on management, research and conservation of Ex Situ biodiversity. Ex-situ biodiversity refer to resources outside their natural habitats.

The initial position of the South on the issue was that the CBD should enforce measures to enable the South to claim payment from the benefits accrued from these resources. This

means that providers of such resources which are now stored in gene-banks, museums and botanical gardens in countries in the North should be compensated. This should also apply to those resources collected before the CBD recommendations come into force. The North argue that not all collected resources prove valuable after processing and development. The overhead cost for research and development of ex-situ resources are expensive and time consuming, which makes follow-up difficult. Scientists from the South agree with this view, but still insist that with good will, benefits could still be shared.

The South is aware that the North has databases, which could be easily used to identify the providers of the resources in their gene-banks and museums. The inequality in resource distribution and technological advances between North and South disadvantage the latter. While scientist from the North are key negotiators on such issues, the South through its inexperienced scientists does not have capacity to verify the position of the North on scientific matters. Most research stations are in the North and the South has no means of monitoring the research process.

Article 9 show that the North did not give up anything during negotiations. The South because of underdevelopment, made concession on allowing equal access to biodiversity before putting in place monitoring and follow up measures to ensure it benefits from the process. Concession were made by the South on conservation issues following assurance from the North that resources would be provided to help South conserve ex-situ resources. A promise to support local communities to develop and implement conservation of biodiversity was also made.

The CBD has proved that developed countries pressure developing countries to accept outcomes that may not benefit them. Threats of denial of future assistance are an effective tool at the disposal of the rich countries. Bilateral negotiations also account for the North's substantial gain at the disadvantage of the South. Individual (competitive) desire to maximize one's own utility very high during these negotiations. While the collectivist

(cooperative) desire to reach a fair solution is completely absent. Negotiations proceed smoothly as long as they are guided by the collectivist desire to promote national interests.

In this respect, it is important to note that one major component of the negotiation process is bargaining where the parties involved usually agree to split the difference and agree on a point that lies mid-way between the two sides (Barston, 1988). This is possible if a compromise is achieved. Note also that there could be several issues which are interrelated making negotiations difficult. Based on this approach, the motives of negotiation have to do with a need/desire to achieve a certain objective/outcome, utility or an incentive (Barston, 1988).

Going by this approach, then negotiation is seen as a contest between two rivals, such as the North and the South both of whom intent to win (Barston, 1988). The behaviour of the parties involved may not truly reflect their motives. Kaufmann, (1988) discusses the tactic of "hide and seek" in which arguments are hidden in rhetoric and ambiguity. This technique could be employed by both North and South to avoid being led down legally on difficult questions or aspects of the CBD that touches on national interests. This was confirmed by a respondent who said that, "The negotiations have many hidden agendas, ambiguities and undefined aspects that negotiators from North and South choose to ignore in order to protect their sovereign rights over the resources or to avoid cumbersome legal or financial implications.

The multiplicity of issues within the CBD led to the deferment of many agendas. The effect of this is that some articles were not conclusively discussed during negotiations for the CBD. Benefit sharing is one example of such issue in which negotiations have to be carried out repetitively by the COP. This may require parties to be serious and more careful in observance of agreement clauses because past records could influence the pace and outcome of future negotiations.

Negotiations on the CBD must not be reviewed in isolation from other issues surrounding their agenda. For example, conservation of the environment affects the interest of companies that contribute to pollution and depletion of natural resources through unsustainable trade practices, science and technology, biotechnology and agriculture.

It has been observed that multilateral negotiations are a complex process that requires a lot of skill and training. They are not as simple as many people tend to think. The CBD is not an exception. In fact, a lot of literature expounding on many of these issues has come up since the late 1950s and early 1960s. The main theme of these studies is that multilateral negotiations are multi-faceted and multi-dimensional and touch virtually every other discipline, especially humanities and social sciences. The field (of negotiation) encompasses aspects/issues of strategy design, tactics, bargaining, intelligence of actors/participants and concessions.

Channels of communication, such as informal meetings on the wings of the negotiations or during the breaks, usually through lobbying are an essential part of negotiations. Compromises are sometimes reached during these informal consultations. The calibre and personalities of the chief negotiators also contribute to the process as they should be humorous, persuasive and tolerant towards the other party. There must be a desire to accommodate the needs of the counter-party. Rigidity could sometimes lead to failure due to the absence of compromise.

3.3 Negotiation Procedure for the CBD

As is the norm during United Nations meetings, the negotiations for the CBD under United Nations Environmental Programme followed laid down rules of procedure that govern the negotiation process. Part of this involved rules and regulations that govern participation, voting, proposing of decisions and delegating functions to various subsidiary bodies and committees that deal with specific issues under discussion. The transformation of the expert group into a formalised Inter-governmental Negotiating Committee (INC)

that recommended the need to institute negotiations for the Convention on Biological Diversity made it easier for the negotiations. All these conformed to the United Nations procedures. Depending on the nature of the issue to be negotiated, the INC draws participants from governments or designated representatives to negotiate during the period when the Governing Council of United Nations Environment Programme is in session as part of the preparatory process. Although INC prepares conference documents, the duty of their preparation is sometimes negotiated.

3.4 Formation of Coalitions

Depending on interests and level of development, coalitions are formed on both temporary and permanent basis between North and South to form negotiation blocs. Permanent blocs are G77, SADC, EAC, EU, EC, NAFTA, GRULAC, Africa, Asia, WEOG and the EEG. Temporary coalitions commonly referred to as "like-minded groups" are formed by countries sharing positions across the North / South divide. As an example South Africa joined the USA led Miami group on matters of science and biotechnology leaving the rest of Africa to fight it out alone. On other issues the same country (S A) joined the SADC countries to safeguard its core interests there. Negotiations are thus conducted on these lines.

Africa broke ranks with G77 on the matter of TRIPS, and importation of Genetically Modified Organisms into Africa including the patenting of life forms as this threaten its sovereign right to its own biological diversity. The cross cutting nature of issues negotiated such as forests and agricultural bio-diversity ruffled the features of many negotiation parties. Decisions made are arrived at without coercion although in terms of development, the playing field is not level. For the developed countries coercion was replaced by cunning.

Sometimes there is pressure for the South to water down aspects of its position to accommodate concerns of the North. The Biosafety Protocol is a case in point. One scientist interviewed said that CBD negotiations are akin to those between an elder and

younger brothers where because of his age and power over the younger brother, the older brother emerges the benefactor and captures the whole process. Such is the same with the negotiations on CBD, the South made substantive gains, although the North had an upper hand in terms of skilled negotiators, experience and knowledge in major concepts of the convention.

The bargaining method is employed by both sides to score victories. The North's economic capability and willingness to reward obviously worked in its favour and ensured that the South accepts its proposals on access to genetic resources, their sustainable use and conservation. Developed countries pledged to support programmes and projects that conformed to the CBD principles. This was an incentive to the developing countries intended to make them not to object the proposal by citing lack of capital and technological innovation as impediments.

The South rejected most proposals that were aimed at subordinating their goals for development, preservation of traditional knowledge and recognition and involvement of indigenous communities and patents over their resources. This led the North to a concession over the transfer of technological information, exchange of resources and materials previously collected, development of research projects, monetary rewards and sharing benefits with local communities.

Responsibilities are assigned and budget approximated during CBD negotiations. However, one weakness arising from this is that developing countries committed themselves to the principles based on pledges of support from the developed countries, an issue affected the capacity to abide by the convention.

The South has no clear idea of what type of benefits it is looking for. This demonstrated the nature of negotiations, which cover the issue comprehensively. The reason is that the South is not well prepared to formulate issues based on substance or content due to lack of knowledge. The North is cunning because it stands to benefit from loopholes such as

what has already been mentioned. While the South is genuinely ignorant, the North is fully aware of all relevant details and gives them a blind eye to protect its interests.

3.4 Preparedness of the North and the South

Respondents confirmed that the North was well prepared for the negotiation as its negotiators knew what they wanted to achieve from the process. Negotiators from the North are well trained in various fields besides the advantages arising from economic and political superiority as well as familiarity with the concepts for negotiation. Such a degree of preparedness allows them to give alternative positions derived from well thought out strategies. This supports the second hypothesis that associated the degree of preparedness to the benefits derived from the negotiations.

On the other hand respondents noted that developing countries may not have been well prepared to negotiate the CBD. This was due to insufficient knowledge on the agenda, ill trained and inexperienced negotiators, small delegations, lack of co-ordination at national and regional levels. It emerged from interviews held that few countries within the Group of 77 worked around the clock to ensure that the developing world emerged from the process with something. The advantage of the numbers of G77 members may not have been utilised fully as many members had different views and interest. Difference in development, interests and the diversity of resource endowments contributed to the divergent views among the countries of the South.

Experts from few developing countries however engaged in serious scientific studies to assess the effects of biotechnology on the environment. One example is Dr Tewolde of Ethiopia whose dedication and expertise benefited both Africa and the G77. Divisions to a larger extent undermined capacity to negotiate. Countries align and realign across the North and South divide in accordance with the level of development and shared interests.

Negotiation for the Biosafety Protocol, on the other hand is testimony that the South is capable of protecting its interests. The South is also sufficiently knowledgeable of

scientific innovation despite the limited number of states involved. Despite this, the South needs to develop human resources since most of the scientists are not experienced. Developing countries should devote substantial resources towards research and development of its negotiators for best results in future.

The CBD and the Biosafety Protocol have demonstrated an unusual awakening for negotiators from the South. A new breed of negotiators, well versed with the agenda and articulate are now emerging in the South and particularly from Africa. It is not surprising therefore that Africa the least developed continent, for the first time unilaterally rejected unfavourable decisions to safe guard the rights and livelihood of its peoples. It is unfortunate that these dedicated negotiators are likely not to receive support from other negotiators from their region including their own superiors who might decide to pursue short- term gains. This explains why the implementation of the CBD has been painstakingly slow.

Issues that parties from the South (particularly from Africa) have rejected relate to the TRIPs Agreement and premature importation of GMOs into the continent. Africa unanimously spoke with one voice on issues of concern. Such an action indicated the reawakening of the continent, whose vast population is threatened by globalisation and technology advancement.

The power of developing countries to deny legitimacy to unfavourable decisions constitutes a major source of negotiating strength for those countries. This has been the case with regard to the Convention on Biological Diversity. Thus there is need for the developing countries to strike a balance between the protection of national interests and the opening up for the diffusion of innovations from the outside.

Policy option for developing countries cited above is not always fully utilised because agreement on contentious issues more often than not is coerced through economic means.

Though not party to the Convention on Biological Diversity, the United States of America compromised the South on the Biosafety Protocol in order to protect its industries.

The following paragraphs respond to questions raised in the research problem on whether or not the CBD would lead to equal distribution of biological resources between North and South, what are the major weaknesses of the negotiation process? and to what extent of fairness were the negotiations conducted?

Responding to the first question the negotiation process on the CBD led to equal distribution of biodiversity between North and South even though the guidelines on sharing of benefits are not concluded. The CBD put in place the Prior Informed Consent (PIC) procedure to discourage biopiracy. While access by the North is through contractual agreement to enable the resource provider to equally benefit from the utilisation of biodiversity. However, these objectives can only be put into practice through domestic laws in concerned countries.

Major weaknesses of the negotiation process arise because the parties are unequal economically. The South engage the North from a disadvantaged position because it lacks resources to adequately prepare for the negotiations and is not always united. Multilateral negotiation on the CBD leaves no doubt that the North has access to biodiversity in the South even though the guidelines on sharing of benefits is still not concluded.

Major weaknesses in the negotiation process arise because the South is a weaker partner. Lack of resources negatively affects its preparation for negotiations. Sometimes there is no co-ordination among the countries from the South. These short falls are exploited by the North. Lastly the South agrees to be party to decisions that are contrary to its interests, and both North and South are allocated equal responsibility some of which the South has no capacity to implement. Although the principle of sovereignty treats the North and South as equal partners, the negotiation process show that the North manipulates the process.

The strength and weaknesses revealed on multilateral negotiation on the CBD enhances understanding on the Convention and the process that led to its adoption. It also leads to the recommendations and proposed policy option for policy makers in this field. There are measures that the South should implement before it could equally benefit from the utilisation of its biological diversity.

This study rejected the principle of fairness in the negotiations for the CBD because the theory of conflict was adopted. The out come of the negotiations has nothing to do with fair play. The ultimate objective for both sides was to promote national interests although in the process the South might have received a raw deal. Fairness is possible when both parties are mindful of the needs of the other party. This was not the case during the negotiations for the CBD.

CHAPTER FOUR

FINDINGS AND ANALYSIS OF DATA

4.0 INTRODUCTION

During the research, 40 questionnaires were given to the respondents. Each respondent received a structured questionnaire. Out of questionnaires distributed, 30 of them were received back duly completed. This represented 75% response. Table 3 shows the distribution of respondents by gender, age, profession and number of CBD meetings each of them attended.

The models of estimations led to the conclusion that multilateral negotiations on the CBD between North and South do not lead to equitable sharing of benefits accrued from the utilization of biological resources. Thus, the overall impression of the outcome of this research demonstrates that the CBD as a framework convention does not lead to equitable sharing of benefits accrued from utilization of biological resources. Respondents gave many reasons as to why they think equity can not be achieved under the current international political and economic environment. The second hypothesis is also confirmed since it is linked to the preparedness of the South, which should formulate and implement policies to regulate and govern the North's access to its biodiversity. In this regard, respondents acknowledged the fact that the South should create a database for all its resources, monitor how they should be used, and educate the public on their economic value. This will serve to ensure that biodiversity resources are not given away freely. The South should enforce the Biosafety Protocol, which regulates trade in GMOs and sets standards for the North's access to biodiversity resources through PIC procedures.

The findings reveal that the South does not have resources to protect its biological resources from biopiracy nor the economic strength to compete with the affluent North. The findings also reveal the reasons why the sharing of benefits can not be equitable and

concludes that benefit sharing is still unresolved and will still form the agenda for the Sixth COP negotiations.

4.1 FINDINGS AND ANALYSIS OF DATA

This sub-section present data and results acquired from the research, the checklist and the Likert Scale. Tables 3 and 4 summarize the estimations of the models.

4.2 Distribution of Respondents by Gender, Age, Profession and Number of Meetings attended:

Table 3

Respondents	Male	Female	Age Group (yr.)	Profession	No. Meetings
1		+	41-50	Biotechnologist	3
2		+	31-40	Researcher	3
3	+		31-40	Engineer	6
4	+	+	31-40	Ecologist	6
5	+		24-30	State Counsel	1
6	+		41-50	Ecologist	3
7	+		31-40	Forester	6
8	+		51-60	Forester	10
9	+		31-40	Researcher	10
10	+		41-50	Research Scientist	6
11		+	31-40	Civil Servant	1
12	+		31-40	Social Scientist	6
13		+	51-60	Conservationist	3
14		+	31-40	Environmental Scientist	6
15	+		51-60	Ecologist	3
16	+		24-30	Researcher	4
17	+		41-50	Lawyer	1

18	+		24-30	Agriculture-property rights	1
19	+		41-50	Agricultural Economist	3
20	+		24-30	Biodiversity Researcher	1
21		+	31-40	Research Scientist	10
22		+	41-50	Forester	1
23	+		41-50	Professor Economics	0
24	+		31-40	Forester	1
25		+	31-40	Ecologist	6
26	+		41-50	Scientist	1
27		+	31-40	Environmentalist	3
28	+		31-40	Researcher	3
29		+	31-40	Forester	3
30	+		41-50	Scientist	6

Source: *Survey Data*

Table 3 above shows details of the sample of respondents who participated in the CBD negotiations in terms of their areas of qualification and specialty. The table also reflects the multiplicity of issues discussed, particularly in terms of the composition of those who participated in the convention. The distribution of respondents in terms of gender indicates that women are less represented in the negotiations than men are. This is due to the fact that the large population may not be employed in the professions indicated in the table or professions requiring them to participate in the CBD negotiations. Most of the respondents had also attended the conventions that had been held previously and this is

important for the continuity of the earlier discussions. The age groups are also spread out in order to capture the views of the people across different ages since their views vary from one age group to the other.

4.3 Question 4

Using your experience do you think the CBD is?

- 1 bad (B)
- 2 fair (F)
- 3 good (G)
- 4 reduced Poverty –Very Good (VG)
- 5 result in equitable distribution of benefits –Excellent (Ex)

(Circle the appropriate number using the scale below)

Question 4 of the questionnaire required respondents to give their perceptions on CBD in regard with their experience. In order to identify their reaction to the CBD, each was given a questionnaire and was asked to rate question 4. Their satisfaction was measured by combining the responses they gave to the 5 items. Response to each item was then measured using a 5-point “Likert Scale”. The 5 items and the scale of responses are shown in Table 4.

Table 4: Respondent’s Opinion on CBD

Respondent s	B	F	G	VG	Ex
1	1	2	÷	4	5
2	1	2	÷	4	5
3	1	2	÷	4	5
4	1	2	÷	4	5
5	1	2	÷	4	5

6	1	2	3	4	≡
7	1	2	÷	4	5
8	1	2	÷	4	5
9	1	2	÷	4	5
10	1	2	÷	4	5
11	1	2	3	4	≡
12	1	2	3	4	≡
13	1	2	÷	4	5
14	1	2	3	4	≡
15	1	2	3	4	≡
16	1	2	3	4	≡
17	1	•	3	4	5
18	1	2	÷	4	5
19	1	2	÷	4	5
20	1	2	÷	4	5
21	1	2	÷	4	5
22	1	2	÷	4	5
23	\hat{c}	2	3	4	5
24	\hat{c}	2	3	4	5
25	\hat{c}	2	3	4	5
26	\hat{c}	2	3	4	5
27	1	2	÷	4	5
28	\hat{c}	2	3	4	5
29	1	2	÷	4	5
30	1	2	3	=	5

Source: Survey Data

The least-favorable response and the most-favorable response were “anchored” on the scale at its ends. Responses to the 5 items were summed up to obtain a composite score for each respondent. A minimum composite score possible was 1 and the maximum composite score possible was 5. 30 composite scores were obtained and are given in Table 3. These scores range from 1 to 5. Most respondents in the selected stratum during the one-month period of the study rated CBD with composite scores from 1 to 5. Furthermore, since 24 out of the 30 composite scores are at least 2.5, the proportion of sampled respondents can be estimated to give a composite score of at least 2.5 to the CBD. That is:

$$24/30 = 0.8$$

It is estimated that 80% of the respondents gave CBD a composite score of at least 2.5, which when rounded up to the nearest tenth equals to 3. The composite score of 2.5 is the arithmetic mean derived from the score of 5. The overall impression of this outcome suggests that out of the total sampled population, 80% judged CBD as a good initiative although the majority of the respondents were of the view that it does not benefit parties from the South. The remaining 20% felt somehow different and they still judge CBD as a bad initiative. This leads to the conclusion that the survey results based on question 4 alone does not support the first hypothesis which state that multilateral negotiations on the CBD between the North and the South leads to equitable sharing of benefits accrued from the utilization of biological resources.

4.4 Question 5

Table 5: Survey Opinion on Equity in Benefit Sharing

Respondents	Survey Opinion on Equity in Benefit Sharing
1	<ul style="list-style-type: none"> ❖ Define benefits ❖ Define monetary beneficiaries ❖ Elaborate on pathways for benefit sharing ❖ Elaborate on national regulations ❖ Involve ordinary people
2	<ul style="list-style-type: none"> ❖ Commercial values of natural (unprocessed) products and processed ❖ Products should be rational and comparable ❖ Debt owed to the North by South should be canceled ❖ North should share the cost of conserving biodiversity with the South ❖ South should form regional blocks to enhance trade, tourism and conservation of natural resources
3	<ul style="list-style-type: none"> ❖ Technology transfer with no strings attached ❖ Parties in the North should be committed to the Convention ❖ More funds to be allocated to sponsor delegates from South to attend negotiations ❖ The question of right of ownership to genetic material be well addressed since genetic origin is mostly from the South whereas the technology is from the North
4	<ul style="list-style-type: none"> ❖ Knowledge of all CBD provisions, by both North and South ❖ Trust among the negotiators ❖ Commitment followed by action
5	<ul style="list-style-type: none"> ❖ Resources from either North or South to be treated as equally important

	<ul style="list-style-type: none"> ❖ Writes for commitments in South to be recognized in the management of resources
6	<ul style="list-style-type: none"> ❖ North should facilitate technology transfer ❖ The South should be compensated for the exploitation of their natural resources ❖ The South should be empowered to manage their own economies and resources by the North without strings attached
7	<ul style="list-style-type: none"> ❖ The North need to reveal the Biotic materials collected during colonial times especially in the tropics ❖ They also need to reveal all their research findings and share wealth accrued with the South ❖ Genetically modified organisms should be handled with a lot of care ❖ Useful research findings should be implemented in countries of genetic origin
8	<ul style="list-style-type: none"> ❖ Equitable staff representation at CBD headquarters ❖ Introduction of a revolving fund ❖ Technology transfer ❖ Support to the developing countries (financial) from the developed countries ❖ Merging all biological related conventions into the CBD
9	<ul style="list-style-type: none"> ❖ North should be committed ❖ The North should be willing to open up for discussions over materials transferred before the advent of CBD ❖ North should be able to cancel some debts owed by the South as compensation for the genetic materials from the South
10	<ul style="list-style-type: none"> ❖ There is need to develop national legislation and policies or benefit sharing ❖ Parties need to develop national frameworks for benefit sharing including access to genetic resources

11	<ul style="list-style-type: none"> ❖ The North needs to respect the needs of the South ❖ The North needs to be more transparent ❖ Information and technology needs to be shared
12	<ul style="list-style-type: none"> ❖ To involve the expertise from developing countries and to be honest and sincere in ones dealings
13	<ul style="list-style-type: none"> ❖ Development of regulations governing access in developing countries and their implementation and enforcement ❖ Installation of cross-sectoral mechanism for evaluation, management and sustainable use of biological resources ❖ Improvement of awareness
14	<ul style="list-style-type: none"> ❖ The word benefit itself shows that there is a loser. Therefore equitable benefit is misstatement, when both North and South benefit the environment will lose
15	<ul style="list-style-type: none"> ❖ Transparent negotiations ❖ Fair and even expectations ❖ Realistic targets by both North and South ❖ Focus on win-win solutions rather than victimization and retribution ❖ Long term evaluation and focus, rather than short term benefits ❖ Increased participation by all stakeholders ❖ Broad thinking
16	<ul style="list-style-type: none"> ❖ Encouragement of fair trade ❖ Equip the South with the tools to do so ❖ Remove barriers that exists under different clauses ❖ Resources should be made available for development through debt relief ❖ Step-up education levels in the South (literal levels are dismal) ❖ Reduce complexity of proposal writing to access funds for projects ❖ Increase levels of technology transfer ❖ Grass roots campaigns step-up and make sure they benefit
17	<ul style="list-style-type: none"> ❖ Access to genetic resources of the South by North should be on

	<p>mutually agreed terms and subject to the provisions of article 15 and 20 of the CBD</p> <ul style="list-style-type: none"> ❖ The South should designate national focal points or competent authority with a clear mandate to determine matters related to access and benefit sharing ❖ Access legislation and other measures should fully incorporate effective protection of the traditional knowledge of indigenous and local communities as mandated by Article 8 (j) of the Convention
18	<ul style="list-style-type: none"> ❖ Effectively implement CBD articles that will ensure equitable benefit sharing ❖ Awareness about value of biological diversity to all stakeholders
19	<ul style="list-style-type: none"> ❖ Paying for the future cost (accumulated cost) of the natural inhabitant base ❖ Pay communities for their the biodiversity
20	<ul style="list-style-type: none"> ❖ Development of a national access legislation ❖ Develop an access determination process to handle requests for access to genetic resources e.g. Prior Informed Consent (PIC) ❖ Development of export restrictions and tracking such as export permits and biosecurity controls for quarantine ❖ Tracking genetic resource use after export to ensure equitable benefit sharing ❖ Civil remedies and criminal penalties should be provided to assist in the enforcement ❖ Identification and monitoring of genetic resources will assist in negotiating mutually agreed terms for benefit sharing ❖ Governments should independently determine the potential uses for genetic resources under their jurisdiction and how a potential user might use or value a particular resource
21	<ul style="list-style-type: none"> ❖ Drafting legislation for access to genetic resources ❖ Drafting of material transfer agreement between parties informed

	<ul style="list-style-type: none"> ❖ Parties to be encouraged to be transparent on the issues relating to the mission of material collection ❖ Creating awareness to the local communities involved
22	<ul style="list-style-type: none"> ❖ Promote primacy of CBD provisions over TRIPS in particular, article 27, 3 (b) ❖ Strengthen CBD principles and objectives which can enable developing countries receive tangible support for programmes addressing conservation protection and sustainable use of agricultural biodiversity ❖ Scale up and finalize negotiations on the FAO International undertaking in order to support farmers' rights and hence ensure equitable access and benefit sharing of biological diversity ❖ Specify clearly that any exploitation of genetic resources from the South must be based on contractual arrangements that ensure tangible benefits to the South to starve off biopiracy ❖ Ensure that the principle of the Biosafety protocol are made an important part of the CBD e.g. as a protocol of CBD
23	<ul style="list-style-type: none"> ❖ The North should seek permission to have the resources ❖ Establish patency laws ❖ Funds availability for more research on taxonomy ❖ The North should be made to pay for the resources ❖ Regulation of movement and laws enacted to see that there is no smuggling of resources from South to North
24	<ul style="list-style-type: none"> ❖ Develop agreements and protocols ❖ Recognize sources of genetic materials ❖ The North should transfer some resources back to the South ❖ Recognize indigenous knowledge
25	<ul style="list-style-type: none"> ❖ Stakeholders awareness about what is available ❖ Resource counting ❖ Stop globalisation of trade

	<ul style="list-style-type: none"> ❖ North to pay for resource exploitation ❖ Let South process its timber and sell at competitive prices ❖ Push for Biosafety Protocol
26	<ul style="list-style-type: none"> ❖ Participation of indigenous peoples without discrimination ❖ Transfer of technology that matter ❖ Exchange of relevant information ❖ Access by developing countries to the ex-situ collections ❖ Enforcement of liability and compensation regimes ❖ Empowering of decision making and administrative organs of developing countries
27	<ul style="list-style-type: none"> ❖ Frank and transparent interaction ❖ Stop Bioprospecting by the North ❖ Return materials collected by North to South ❖ Assist in taxonomic skills development in the South ❖ Provide funding for capacity building in the South ❖ Fairly exchange materials between North and South ❖ Respect the concept of prior informed consent (PIC) by all parties
28	<ul style="list-style-type: none"> ❖ Sustainable negotiations between North and South
29	<ul style="list-style-type: none"> ❖ Support the development of legal mechanisms for benefit sharing ❖ The need to develop capacity of stakeholders in the South to participate in bioprospecting
30	<ul style="list-style-type: none"> ❖ Resources from both North and South should be treated as equally important ❖ Rights of communities in the South to be recognized in the management of resources

Source: *Survey Data*

The findings based on question number 5, pertained to the equity on benefit sharing. They show that the aspect of the CBD does not need to be concluded since negotiations over it

are still going on. Respondents believed that both the North and South have a lot to do in order to achieve equal distribution of benefits realized from the commercialization of genetic resources.

Respondents expressed views on the need to define the term benefits and their form whether monetary, material, services or joint research. It is felt that the North should show good will by assisting the South where necessary to enable it realize benefits from its biological resources through:

- i. Transfer of technology
- ii. Creation national focal points to deal with access and benefit sharing issues
- iii. Making research findings accessible to the South
- iv. Removing trade barriers
- v. Promoting transparency in the collection of genetic resources and in their development.
- vi. Most respondents were of the opinion that the North should compensate for the genetic material collected from the South before the CBD came into force as an act of good will.
- vii. Benefit sharing to others could be achieved through debt canceling.

Measures that the South needs to address include:

- i. Formulation of national legislation Prior Informed Consent (PIC) on access and benefit sharing
- ii. Develop their capacity to manage and conserve their natural resources
- iii. Establish national focal points.
- iv. Push for the transfer of appropriate technology
- v. Involve local communities in decision making on the use of their natural resources
- vi. Monitor and track genetic resource use after export and create incentives that benefit the custodians of the genetic resources.
- vii. It is important for the South to be involved in the evaluation of their resources.

viii. A material transfer agreement at the bilateral level is necessary for them to facilitate follow up and keeping records.

Both sides should co-operate to fight against bio-prospecting and bio-piracy. Parties to the CBD should enforce civil remedies and criminal penalties in cases of violations. Co-operation between the North and South could lead to fair exchange of information, trade and the involvement of the South in research and development.

Majority of the respondents thought that equal access and benefit sharing might never be achieved under the current international order. This may be due to imbalances in terms of development, status, needs and standards of living between the North and the South. The international order is biased in favor of the developed countries even though the WTO and international treaties were meant to ensure equity in access to resources. To the contrary these instruments create barriers on fair trade and monopoly of economies in the South by the Northern based companies.

A country like USA, which is a major exporter of genetic resources, has not ratified the CBD. But because of its status, it influences developments in the CBD, often at the expense of the developing countries. On the other hand, most of the CBD objectives seem not to be priorities for many countries in the South. This has led to the insincere deals with the North meant for short term economic gains and these are to the detriment of the indigenous people who provide the resources.

4.5 Question 8:

Question 8 required respondents to judge the CBD in terms of whether it leads to equitable sharing of benefits between North and South. "Yes" was the response if the statement described the respondent's experience or "No" if the statement did not.

Table 6: Checklist Table

Respondents	No	Yes
1		+
2		
3	+	
4	+	
5	+	
6		+
7		+
8	+	
9		+
10	+	
11		
12	+	
13	+	
14		+
15		+
16	+	
17	+	
18	+	
19	+	
20		
21	+	
22		+
23	+	
24	+	
25		+
26	+	

27		+
28	+	
29	+	
30	+	

Source: *Survey Data*

The checklist format was more suitable for analyzing question 8. Positive things said about it can quantify the quality of service or product. The more positive things are said about a service or the fewer negative things said about it, the better the service. For question 8 on the questionnaire, respondents were allowed to choose either "Yes" or "No". They were asked to choose "Yes" if the satisfaction item reflects equitable sharing of benefits between the North and South and "No" if the item does not reflect it. Table 4 above shows the outcome of the respondent's feelings and attitude to the CBD.

Out of the 30 questionnaires that were received 18 respondents thought that CBD would not lead to equitable sharing of benefits between the North and South while 9 did not think so. Three respondents refused to share their opinion. The outcome of this investigation support the second hypothesis which states that multilateral negotiations on the CBD between the North and the South do not lead to equitable sharing of benefits accrued from the utilization of biological resources.

Basing on the outcome of this investigation, a conclusion that CBD is a non-binding instrument to contracting parties from both North and the South can be made. Through multilateral negotiations on the CBD between the North and the South, an enabling environment that would lead to equitable sharing of benefits accrued from the utilization of biological resources can not be realized.

4.6 SWOT analysis of CBD as perceived by respondents

Table 7: SWOT analysis of CBD as perceived by respondents

Respondent	Strengths	Opportunities	Weaknesses	Threats
1	<ul style="list-style-type: none"> ❖ Sovereignty of states over their resources ❖ It is a binding instrument 	<ul style="list-style-type: none"> ❖ Co-operation of South-North ❖ Funding ❖ Trade 	<ul style="list-style-type: none"> ❖ Does not provide guidelines on how states should implement the CBD 	
2	<ul style="list-style-type: none"> ❖ Creation of exchange programmes between parties and others 	<ul style="list-style-type: none"> ❖ Provisions for parties and others to examine their Biodiversity issues and take specific actions like strategies and action plans 	<ul style="list-style-type: none"> ❖ Article 4 by limiting application to area of jurisdiction sovereignty by each contracting party especially with regard to processes and activities. 	
3	<ul style="list-style-type: none"> ❖ Genetic diversity as source of food and industry 	<ul style="list-style-type: none"> ❖ Commercialization of medicine/rare animal breeds 	<ul style="list-style-type: none"> ❖ Lack of government policy support ❖ Low/no public awareness. 	<ul style="list-style-type: none"> ❖ Extinction bio-prospection
4	<ul style="list-style-type: none"> ❖ Article 3 and 15 	<ul style="list-style-type: none"> ❖ Article on capacity building 		<ul style="list-style-type: none"> ❖ Ex-situ collection concerns
5	<ul style="list-style-type: none"> ❖ Development of national strategies for CBD 	<ul style="list-style-type: none"> ❖ Equitable sharing of resources 	<ul style="list-style-type: none"> ❖ Indigenous knowledge not fully utilized ❖ Poor implementation of 	<ul style="list-style-type: none"> ❖ Lack incentives encourage operation

			the CBD	
6	<ul style="list-style-type: none"> ❖ Article 8 (j) ❖ Article on benefit sharing ❖ Identification of genetic components ❖ GEF as a funding mechanism 	<ul style="list-style-type: none"> ❖ Global collaboration ❖ Tracking International threats ❖ Benefit sharing 	<ul style="list-style-type: none"> ❖ Difficult enforcing regulations in ❖ Seriously under-funded 	<ul style="list-style-type: none"> ❖ Resource from 3rd world there is no acknowledgment of genetic materials collected before CBD ❖ Resource depletion through unclear sustainable use
7	<ul style="list-style-type: none"> ❖ Increase in revenue through research e.g. insect pest management 		<ul style="list-style-type: none"> ❖ Laxity on efforts to monitor resources 	<ul style="list-style-type: none"> ❖ Quarantine flora and fauna should be collected
8	<ul style="list-style-type: none"> ❖ Biosafety protocol provisions on compensation and liability redress as regards GMO and LMO's 	<ul style="list-style-type: none"> ❖ Article 8 (j) on community rights as a good window to assert the rights of communities over their biodiversity 	<ul style="list-style-type: none"> ❖ Lack of clear emphasis on capacity building support for developing countries in articulating and promoting its 	<ul style="list-style-type: none"> ❖ Weak enforcement mechanism the CBD instance compared to TRIPS agreement which

			provisions through appropriate programmes on biodiversity conservation and sustainable use.	enforcement strong
9	❖ CBD objectives and implementation	❖ Benefit can be shared equitably through negotiations	❖ It takes long for funds to be released for implementation of project	❖ /CBD
10	❖ Regulation of access to genetic resources	❖ Benefit sharing		❖ Other international agreements t clash with CE e.g. WT TRIPS, etc.
11	❖ Global agreement policy		❖ Non/poor involvement of the South	❖ WTO/GMO's
12	❖ Party membership	❖ Attendance of conventions and exposure	❖ Pre-congress information dissemination biased i.e. different communication levels for each party	❖ Divide betw North-South economic. intellectual. etc
13	❖ Article 8 (j)		❖ Funding mechanisms are weak and extremely inadequate ❖ Institutions handling	

			CBD affairs need streamlining	
14	❖ Real assets and resources	❖ Technology, scientific and social economic development	❖ Inadequate and accurate flow of information to the custodians of Biodiversity	❖ Loss of conservation and utilization resources
15	❖ Highest political will for combining ecological social and economic aspects	❖ Sustainable development	❖ Inability to translate high sounding phrases and consequent policies to impact grass root actions	❖ Political divisions and defensive positions based on short term benefits
16	❖ Universality of its mandate	❖ Human acceptance that they are no greater than plants ❖ Grant a forum for which humanity can recognize that the rights of humans are the rights of plants, animals, air, fauna and aqua.	❖ UN or CBD has no policing agency- not enforceable	❖ Genetic engineering
17				
18	❖ The acknowledgments	❖ GEF	❖ Too many areas to be tackled at one go	❖ Access to genetic resources

	t of the need to protect indigenous knowledge			
19	❖ Recognition of sovereignty of parties over resources	❖ Scientific and technical co-operation and transfer of technology	❖ Lack of enforcement mechanism	
20	❖ Binding to members who have ratification and signed the convention	❖ Increased global collaboration in biodiversity conservation		❖ Inadequate capacities for South implement convention
21	❖ Parties have sovereign rights of their genetic resources	❖ Based on strength, parties can put in place legislative measures to ensure equitable sharing	❖ CBD is very silent on the genetic resources transferred before it came into force	❖ The North their wealth control the p (South) hence fair negotiation
22	❖ Negotiations	❖ Financial backup from CBD Secretariat	❖ Poor financial balance between North-South, too many related conventions ❖ Most of the staff/employees came from the North	❖ The termina technology, genetic engineering

23	❖ Emphasis on conservation of resources	❖ Sharing of information on world biota resources	❖ Not all countries are signatories. Hence some countries are exploiting their resources while others are conserving	❖ The North already developed and are trying to emphasize conservation at the expense of the South
24	❖ Development of programmes and the negotiation mechanisms (e.g. conference of parties and ad hoc groups)	❖ Implementation of CBD decisions	❖ Lack of capacities- human, capital and financial to implement decisions	❖ Liberalization of economies
25	❖ Liberalized trade	❖ Can improve through TRIPS	❖ Not properly addressed by North especially protection of life faunas (plant genetic resources)	❖ Protection of indigenous knowledge
26	❖ CBD objectives and principles	❖ Sharing of benefits	❖ The financial clause does not guarantee adequate resources	❖ No system that binding transfer of benefits arising from resources and technology
27	❖ Benefit sharing	❖ Technology transfer		❖ Patent of genetic materials/technology

28	❖ Articles 22, 19, 14, 9, 8, 6	❖ Articles 13, 29, 25, 23, 15, 11, 5	❖ Articles 18, 20, 21, 39, 10	❖ Articles 19, 16 ❖ The Global funding mechanism creates bottlenecks
29	❖ Its administration	❖ Working groups and committees	❖ Lack of undertaking by resource users	❖ Concentration expert scientific community
30	❖ The Articles of the convention, SBSTTA and the conference of the parties and the convention offers opportunities to put their case forward	❖ Access to funds for Biodiversity conservation, technical information, capacity building and technology transfer	❖ Lack of broad internationally binding agreements except the Biosafety Protocol to provide for conflict resolution between members ❖ Lack of harmony between CBD and the IPR-related International trade administered under WTO in the face of the very serious threat of global/ecological collapse	❖ Lack of development international code of conduct to provide guidelines best practice concerning access to genetic resources equitable benefit sharing where stakeholders invited participant.

Source: Survey Data

The SWOT analysis was aimed at identifying the strengths, opportunities and weaknesses of the CBD. Row number 26 and 30 demonstrate the fact that there is a proper system of sharing benefits arising from the utilization of biodiversity resources. This is related to the first hypothesis, which states that the CBD do not lead to equitable sharing of benefits between the North and the South. It also confirms the second hypothesis, which states that the level of preparedness determines the kind of desired benefits that parties intend to reap from the CBD. Weaknesses identify problem areas that affect the implementation of the CBD, which also includes benefit sharing. Opportunities identified if put in place could also support the hypothesis. The strengths on the other hand indicate the positive ideals of the CBD. This part is also relevant to the research problem since it gives information on the views of the people involved in the CBD negotiations to enhance understanding on issues surrounding multilateral negotiations.

Table 5, is therefore a summary which brings out wide range of views on the strengths, weaknesses, opportunities and threats of the CBD. Nearly all the respondents had a shared knowledge on the CBD. This made codification of data to be easy. The findings are analyzed by item below:

4.7. Strengths

The strength of the Convention on Biological Diversity represents its objectives and principles on global conservation strategy and sustainable use of biological diversity. The universality, global appeal and the collaboration of the North and South under the CBD are symbols of strength. The Biosafety Protocol, is an important aspect of the CBD that regulates the trans-boundary movement of GMOs and LMOs from North to South. It recognizes the sovereign right of the states over their genetic resources. The Conference of Parties to the CBD provides a vital platform for further negotiations, exchange of information, and a forum to discuss problems of implementation. The CBD offers Parties a rare opportunity to negotiate issues that have never been tackled multilaterally within the United Nations. These include issues relating to the farmers and community rights,

incentive measures and benefit sharing. The Convention brings together stakeholders from all walks of life.

4.71 Weaknesses

As an international instrument, the CBD has a long list of shortcomings that the study has identified. Its major weaknesses include:

- i. The non binding nature of the Convention negatively hinders its effective implementation
- ii. Lack of a specific time frame for implementation
- iii. Inability of the parties to translate the CBD principles into policies that would influence things at the grass root level
- iv. Lack of an enforcement mechanism
- v. Broadness of issues make implementation difficult
- vi. The imbalance in development between North and South is a hindrance to effective co-operation and fruitful interdependency
- vii. Inadequate flow of resources for conservation efforts and benefits to the custodian
- viii. Failure by the South to domesticate the principles of the CBD through national policies is a set back. Effective implementation involves both international treaties and bilateral agreements, which are difficult to realize.
- ix. By leaving Parties to determine how, when and to whom resources are to be exchanged leaves loopholes for corruption and politics for short-term gains to prevail.

It was generally agreed that both the North and South are responsible for these weaknesses. Poor public awareness and enforcement of the CBD decisions contributed immensely to the ignorance of the CBD by the vast population of the South. Most local communities are not aware of the economic value of their genetic resources. They give them away cheaply to the researchers from the North.

Poverty, technological bankruptcy, lack of capacity to monitor and count its resource endowment makes the South a weak partner under the Convention. Lack of public

awareness provides the North with an opportunity to export GMOs and LMOs to unsuspecting populations of the South. The USA insisted that GMOs should not be labeled and that the exporting party should not be obliged to reveal the quantity. However since the Biosafety Protocol is very clear on this issue, it is upon the South to enforce it in order to avoid exploitation.

The clause pertaining to the funding of the South by GEF does not guarantee adequate resources to them. In addition, most of the countries from the South fail to prepare project proposals within the required time frame. The other limitation in accessing to funding arise from the condition that for projects to qualify, they should be internationally important or trans-boundary such as pollution of rivers or air. This condition stems from the fact that conservation of biodiversity should be supported through incomes acquired from the sale of domestic resources. This explains why national resource depletion continues unabated in the South for economic and social reasons. Without incentive measures to promote conservation, competition between the need to conserve, trade and land for agriculture and residential space will not end. The absence of harmony between the CBD and other Convention as the WTO, TRIPS Agreement, IPRs and Patent Laws leads to exploitation of genetic resources through over harvesting by profit making Multinational Corporations from the North. The disparity in intent and interests between developed and developing countries has its own difficulties. Differences that exist are a draw back to the CBD principles.

4.7.2 Opportunities

The CBD creates opportunities for transfer of appropriate technology, scientific and socio-economic development if the South plays its game well. Funding from GEF could be made available to pro-active Parties that prepare action plans on time and have commitment to attach domestic resources for conservation. Parties are then encouraged to put in place national strategies for the implementation of the decisions of the Convention.

Most respondents noted that opportunities created by the CBD could be realized if the North and the South show good will and share the ideals of the CBD. Opportunities that the Convention provides includes: involving local communities in the process and awareness programmes which promote consumer rights relating to imported genetically engineered food and maize seeds. This ensures the maintenance of high standards of production and works against dumping of toxic commodities in the South.

4.8 Critical Reflections on the CBD

The Convention on Biological Diversity provides a platform for dialogue on issues that have never before been considered multilaterally. Its aim is to promote the interests of both developed and developing countries, acknowledge indigenous communities and their role in the protection of biological resources, equitable sharing of benefits, and appreciate the rights of the farmers and the local communities that have never before been considered in international negotiations. The CBD is affiliated to other UN Conventions, particularly the WTO and FAO due to the broadness of topics it covers.

Since the common man does not know the Convention, this study expresses views of only those in governments, NGOs, academicians and scientist who at various levels were involved in the negotiation process. There is no doubt in the minds of these people that equitable sharing of benefits is almost impossible for numerous reasons. The most obvious being that those who provide biological resources do not know their economic potential value. The users may or may not know the real value of undeveloped biological resources. If they do, they would not give that information to the providers of the resources in order to maximize gains. Some think it is an arduous task to estimate the potential value of a product before it is developed for its real worth to be identified.

Although, the Convention stipulates procedures on access to biological resources by the concerned, a lot of resources are collected informally by tourists, researchers, and student scientists from ill-informed members of the local communities. These are later used in

laboratories and research institutions in the West. In most cases, exchange of resources is conducted through verbal agreements without putting in place follow-up arrangements.

Even if the reverse is true, development of collected biological resources takes years to complete, bringing in the question of systematic exchange of information, which is costly and unaffordable for the South.

Sharing of benefits depends once again on the good will and honesty of the users as they are in a position to know the value of resources they acquire from the South. A respondent from a Zimbabwean delegation indicated that it is easy for the North to allocate resources to their respective providers. A key negotiator from Kenya also shared this view. All resources collected are kept in museums, gene banks and records, all of which are maintained by the North.

The potential for the South to benefit is real but only if governments (not the private sector or members of local communities) enter into contracts with foreign organisations willing to access resources in their territories. They should therefore struggle to monitor and regulate access to resources by the North. Local communities would also benefit if governments could channel benefits accrued to support conservation and sustainable use of biological resources.

The Biosafety Protocol, which is the backbone of the CBD, regulates the movement of genetically modified organisms from the rich to poor countries. Countries are free to import or refuse to do so if they have any concerns relating to the commodities. Refusal to import by-products of biotechnology is not a breach of the Protocols. Availability of resources in all forms would enhance the development efforts of poor countries.

Lack of appropriate infrastructure, preparedness, and capacity in policies, human resources and biotechnology backwardness work against the South. Haphazard use of GMOs in the South could also be devastating. Fears have been expressed over the

capacity of GMOs to cause biological diversity loss, risks to human health and destruction of the environment and its ecosystems. The capacity to monitor and assess these products is a priority for the South. Pressure is mounting from producers that the South should just import such commodities without taking precaution for fear of losing the vital market. Some scientists in developing countries have even gone ahead to argue that it is better to fight a monster which one knows than the one which is unknown. There are others who adopt a hard-line view of the GMOs arguing that the South lacks the capacity to utilize products of biotechnology.

The ten years grace period stipulated by the Convention gives the South ample time to develop technologies and formulate policy frameworks for the successful utilization of genetically modified organisms. In the short term, there is no justification for the application of these products in the absence of an enabling domestic environment. There is real danger that, the loss of biological diversity is bound to continue due to lack of incentives for the local communities to promote their conservation.

The application of the TRIPS Agreement and its related patent laws poses threats and challenges to the developing world as it creates barriers against ownership of components of their own genetic resources, blocks transfer of technology and sustains monopoly to benefit industries from the North. Developing countries would not benefit from enacting patent laws alone without developing technology, which make patents beneficial. Challenges in the form of capacity development are necessary to level the playing field. Such an exercise is capital intensive, which is in short supply in the South.

The scientific component of the Convention brings with it both threats and challenges to the South. Biotechnology as science related to food production is risk ridden and lacks guarantees on its effects on both human beings and biological diversity. LMOs are associated with loss of biological diversity and are a threat to food security through the destruction of traditional seed banks and the terminator gene in maize seed. Health hazards are not yet determined scientifically. Threats arise due to the North's desire to

export LMOs without any regulation at all for the sake of profit at the expense of human life and the environment. Challenges range from the need to develop consumer rights, public awareness and capacity to assess, monitor and control importation of these commodities. The European Union's rejection of the GMOs poses a threat to trade as the South might also ban trade on these commodities.

The Global Environment Facility's (GEF) decision to support programmes of global significance is likely to deny some Parties the support they require. The criteria designating programmes as having national or global importance are neither explicit nor agreed upon by the concerned Parties. This poses danger since viable projects might be denied funding on basis of bias or lack of interest.

Political interference and differences over conservation, sustainable use of genetic resources, and the dominance of the North over the South during negotiations and international trade threatens the South and the sustainability of genetic resources. At the scientific level, the terminator gene technology is a major threat to the development and food security situation to the South.

Parties are compelled to harmonize the Convention with their own municipal laws to pave way for its implementation. Allied to this, is the fact that national focal points need to be established and assigned responsibilities in order to satisfy the objectives of the Convention on capacity building and guard against unauthorized bio-prospecting, bio-piracy.

The CBD deals more with trade and development than with conservation of biodiversity since member countries have sovereign rights over their resources and as such, determines how the resources are to be accessed, utilized and conserved. It is also concerned with biotechnology and genetic resources as tradable items than what meets the eye.

Recognizing the commercial value of their natural resources, developing countries should demand a greater share of the benefits arising from their use by industrialized countries. Transfer of appropriate technology should also be done in a way that enables them to develop genetic resources most effectively for their own benefit.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.0 Conclusion

The Convention on Biological Diversity has sensitized the Northern Hemisphere, the international community and the developing world to conservation of biological and other natural resources. The fact that the North and South jointly felt the need for the Convention serves as evidence for the joint decision making in the resolution of global problems. This is the time for the South to assert itself as a global player in international relations. Whether the South is involved or not, it is bound to experience the effects of human activities on biological resources as major suppliers and consumers of biological diversity from the North. The Convention on Biological Diversity is a challenge to those countries or parties that are least developed in the scientific and technological innovations with regard to biotechnology.

The disparity in economic and political capabilities between North and South has affected the obligations to be borne by each. The South's ability to fulfill its obligations is dependent on the good will from the Northern developed countries. The latter provide financial and technical resources to the former for the conservation efforts. Failure to do this would mean that the objectives of the Convention on Biological Diversity have no impact.

The EC is opposed to trade in genetically modified organisms from the USA because it does not want to remain an importer of these products and also that the USA is very far away from them. The other reason for this is that of the potential hazards of GMO's. It is developing its own biotechnology to catch up with the USA in this respect. This is what the South should also endeavour to do.

The different motives, interests and interpretations of various aspects of the Convention on Biological Diversity, are based on gainful human interactions, which are at the expense of what the Convention stands for. Economic interests of the North are achieved through their multinational corporations (MNCs). MNCs are pitted against developing countries that supply biological resources with very little benefits.

Those advocating for benefit sharing are bound to achieve less since there is mechanism that has been put in place to ensure that both sides benefit. The priority of the developing world should therefore be to identify who is to benefit from these interactions and specify what form the benefits are to be realized whether monetary, training or capacity development, provision of infrastructure and research facilities, joint research projects and transfer of appropriate technology.

The CBD touches on cultural, spiritual, and traditional economic values of biological diversity. These values vary from country to country and from people to people. Differences arise when providers and users address issues of equitable sharing of benefits.

Users of biological resources spend large amounts of money to process them into finished products. This enables them to quantify the economic value attached to biological resources. There is no light at the end of the tunnel regarding this dimension. The status quo will prevail for a long time in the future as change does not happen instantly but gradually.

The strategy of the EU is to work hard in developing biotechnology in order to reach the levels of the USA. However, there is a general apprehension that American scientists have gone too far in research.

The impact on global food security arising from the utilization of the Living Genetically Modified Organisms such as seeds and plants could potentially be devastating on natural plants and threaten ecosystems, which might also harm people.

Besides the scientific aspect of the CBD, the protocol puts into limelight economic relations as far as the commercialization of biological diversity is concerned. MNCs from the North are making money on the biological diversity from the South at the expense of this hemisphere. This is exploitation by MNCs supported by governments from the North.

The North always distort quantification of economic values attached to biological diversity. What is acquired for almost no cost from the illiterate farmers and local communities in the South, is developed scientifically to escalate the prices of the commodities that are produced and exported to the South

The sovereignty over resources is undermined by the fact that there is no concrete mechanism to monitor the transactions of MNCs since they enter into agreement with individuals who are ill informed on their rights. MNCs are also not party to the CBD and may not abide by it. States are parties yet they do not always engage in the processes at all.

Most countries in the South especially from Africa do not have appropriate legislation to cover contracts on access to genetic material. Industrialized countries know this and many of them are undertaking major expeditions to Africa to collect genetic resources before the legislation to enforce sovereign rights are put in place.

Some respondents believe that the pre-legislation era is characterized by unfair exchange of genetic resources through hurried and concluded bilateral agreements. Developed countries in this context would influence the outcome of bilateral contracts to their favour most likely through promises of rewards and assistance, which are sometimes never fulfilled.

Research findings show that the CBD though not supported by survey opinion can be a fair instrument whose benefits could be realized if its recommendations were implemented.

The success of the CBD is largely dependent on the commitment of the Parties to abide by the principles of the Convention.

There are conflicts of interest between the South and the North to the objectives of the Convention. Negotiators from the North and South come to the CBD negotiating table with different goals and objectives because of differences in culture, development, and political, economic and scientific capabilities.

The North comes with new concepts like biotechnology and GMO's, which the South is expected to embrace without raising questions. The loopholes created thus give room for the fulfillment of hidden agenda under cover of the Convention. For example the so called transfer of technology could be used as a vehicle to export products of biotechnology such as the terminator technology which threaten food security in the South, and has the potential to worsen poverty through creating dependence on imported goods and services. The North is interested in the creation of perpetual markets in the South for it exports such as pharmaceuticals, foodstuffs which are developed from biological resources from the South.

The South feels that there is need to protect and conserve biological diversity through traditional methods. Developed countries on the other hand, reject traditional knowledge and innovations that have been applied by Southerners for centuries to achieve sustainable utilization and conservation. The reason for this is that such methods do not conform to the scientific principles. Biological diversity for the South is a vital source of life in its natural form, as opposed to the North which views biological resources in terms of biotechnology, international trade and as raw materials that require further development to reach its potential and for its real value to be known.

The Trade Related Intellectual Property Rights Agreement (TRIPs) and its related patent regime which aim to protect the rights of inventors of technology and subsequently create barriers to transfer of technology are some of the areas where the North and South do not

agree. A regime like this promotes industrial interests of the North at the expense of the South. The patenting of plants or parts of plants is being contested by developing countries, which argue that these plants belong to them and that natural resources are not subjects of invention. Any such parts or genes are discovered not invented.

The South entered negotiations at a time it was struggling to understand the agenda and how the recommendations of the CBD were to be implemented. The North is miles ahead of the South because the agenda centered on issues and concepts that is part of its life. Knowledge on the issues, a high degree of preparedness, an exact idea of the outcome, its implications and benefits, gives the North an enormous leverage against the South.

On the other hand the South depends on resources provided by the North to engage in regional preparatory negotiations. Such preparations have been proven worthy while, yet most countries in the South are not involved or may be represented by officials that are ill versed with the issues.

Negotiations on the CBD show that unity can not even empower the South because of the differences in goals and levels of economic development among the members of the group. Out of the three regions in the South, Africa, the least developed region has learnt to stand firm on its position in order to avoid being exploited and marginalized further. The North is nursing the desire to export the by-products of biotechnology to the South in utter disregard of the fact that the South is not technologically prepared to utilize particularly the agro-based end products.

5.1 Recommendations

Negotiators from the South and North should therefore make an effort to grasp the issues and prepare well before any multilateral convention. They should train their negotiators adequately in this tricky game of wits which, require calculated moves in order to take/make timely decision or give concessions, bargain and compromise. Negotiation skills

enable negotiators to judge when to stick to their position and when to give concession or simply object.

The South could benefit if their governments are able to mobilize resources for forest exploration, bio-prospecting and protection of biological diversity. Local communities could also benefit acquired from resources in their environment are ploughed back for conservation or as incentives for their sustainable use.

It is difficult for providers to know the outcome of the research on their resources conducted in Europe or elsewhere unless these providers are part of the research process. There is need to improve on the communication between the North and the South.

Development of genetic resources take many years and some resources collected may not prove valuable at a later stage. The South should also strive to reduce this time and reverse the whole situation of the utility of biological resources.

There is need for awareness campaigns in order to educate all people to guard against biopiracy and cheating. Students, scientists and tourists, all alike collect all sorts of biological resources from unsuspecting local communities who think that these resources do not have value and therefore charge very little money since they do not know their real or potential economic value.

Benefit sharing should also be subject to natural legislation to persuade the North to share accrued to the exploitation and trade on biodiversity. For example, the South could insist that research activities on genetic resources should be held in the country that is providing them to help build its capacity. However this may require huge sums of money to establish research stations, necessary infrastructure and transfer of technology which would not be appealing to the North. Therefore, legislation promoting interests of the South are a pre-requisite to the CBD for the realization of the benefits accrued to biodiversity.

Developing countries should aim at promoting community rather than individual rights, as it is the community that owns knowledge and conserves biological diversity.

The disparity in economic and political capacity warrants concern, as the CBD should be equally and legally binding for all contracting parties. The technologically bankrupt South still depends on the North for support to develop its capacity to use biotechnology and its by-products. Certainly the playing field ensures that the South would remain the exploited provider of raw materials or biological diversity.

Interdependence still remains the corner stone of the international community. This is used as an effective tool for implementation of the CBD. The North and South need to support each other for the future well being of humanity. The role of non-state actors is clearly defined by the CBD. Although states remain major international actors, economic groups such as the EC, NAFTA, EAC, SADC greatly influenced the out come of the negotiations on CBD owing to the magnitude of the issues that were addressed.

Sometimes when necessary, parties from the South may also accommodate some of the genuine objectives of the parties from the North, but this accommodation should only be in small portions. This makes negotiators flexible while addressing issues that do not augur well with the parties from the North.

A framework of checks and balances should be put in place jointly by parties from the North and the South to guard and ensure the implementation of the agreements reached.

The South should engage in extensive consultations with all possible stakeholders, to develop their position early on the conflicting issue at hand. They should not let their bureaucratic structures and red tape measures to influence the negotiation process.

Parties from the South should ensure that the technology transferred is the appropriate one. The indicators of the appropriate technology include environmental friendliness;

compatibility with the recipient's country's development goal sustainable by the recipient country and the conditions attached to their transfer.

Developing countries should intensify research and relate their research findings to development, accelerate diversification of skills and knowledge and decentralize their research capacities through establishing research networks and institutions. These networks and institutions will be mechanisms that link scientists whose intentions are to reduce research gaps between the North and the South through sharing information and working together as a team.

○

Successful negotiations are based on whether the parties in conflict have adequate information about their opponents. Parties from the South should therefore gather adequate information about the parties from the North and should also strive to know their positions on debatable issues. They should then use the information gathered to bolster their positions, develop their objectives and adjust their strategies, which they had put in place for the negotiation process. This information can only be obtained from the research done by competent and trustworthy research consultants.

To ensure the success of multilateral negotiations, the stakeholders to be involved need to be well prepared. The negotiating team needs to identify those to be involved and even select their team leader. Coughlin (1989:3) argues that governments, international organisations and transnational companies frequently select a negotiating team with a leader to conduct negotiations. In complex cases this permits the use of different people with different skills and technical backgrounds who can detect mis-representation of facts during negotiations.

The preparation process fosters joint decision-making and collective judgment on issues, which might divide the members of the same team or party. This is achieved through brainstorming on such issues and it is at this stage that issues, which have implications on the policies of conflicting parties, are identified. The preparation process involve initial

contact, then moves to a face-to-face meeting which results in the identification of the opening position. It is at this stage that the negotiating team starts discussing issues that are raising conflicts.

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APPENDIX 1

Research Questionnaire on Multilateral Negotiations on Convention on Biological Diversity: A North-South Perspective.

Instructions

Please read the instructions below and complete relevant sections.

1. My age group is:

- 18-23
- 24-30
- 31-40
- 41-50
- 51-60
- 60 and above.

1. Sex:

- Male
- Female

1. My professional designation is.....

2. Please indicate number of CBD negotiation meetings you attended

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3. Using your experience what do you think about CBD?

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4. From your experience do you think the CBD will lead to equitable sharing of benefits between North and South?

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5. In your opinion what do you think needs to be done to ensure equitable benefit sharing between North and South?

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6. What is your analysis of CBD in terms of strengths, weaknesses, opportunities and threats (SWOT analysis)?

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7. Please use the space provided below if you have any further comments.

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Thank you for your kind support.

APPENDIX 2

Convention on Biological Diversity

United Nations Environment Programme (UNEP)
Na.92-7807 (5 JUNE 1992)

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

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.

1. 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

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.

1. 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.
2. 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.
3. Access, where granted, shall be on mutually agreed terms and subject to the provisions of this Article.
4. Access to genetic resources shall be subject to prior informed consent of the Contracting Party providing such resources, unless otherwise determined by that Party.
5. 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.
6. 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

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.

1. 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.
2. 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.
3. 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.
4. 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

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.

1. 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.
2. 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.
3. 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.
4. 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

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.

1. 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.
2. 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.
3. Each Contracting Party shall, directly or by requiring any natural or legal person under its jurisdiction providing the organisms referred 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

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.

1. 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.
2. 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.
3. 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.
4. 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.
5. 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.
6. 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

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.

1. 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.
2. 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.
3. 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

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.

1. 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

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.

1. 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.
2. 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.
 3. 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
 - (i) 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.
 4. 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.

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.

1. 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.
2. 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.
3. 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.
4. 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.
5. 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.
6. 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.

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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.

1. 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.
2. 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.
3. The Contracting Parties shall consider strengthening existing financial institutions to provide financial resources for the conservation and sustainable use of biological diversity.

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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.

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1. 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.
2. 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.
 3. 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
 - (i) 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.
 4. 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

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.
1. 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

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.

1. If the parties concerned cannot reach agreement by negotiation, they may jointly seek the good offices of, or request mediation by, a third party.
2. 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 Depositary 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 1 of Annex II;
 - (b) Submission of the dispute to the International Court of Justice.
3. 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.
4. 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

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

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

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

2. 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 30. Adoption and Amendment of Annexes

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.

1. 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.
2. 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.
3. 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

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

1. 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

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.

1. 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

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.

1. 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.

2. 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

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.

1. 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, has been deposited.
2. 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.
3. 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.
4. 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

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.

1. 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.
2. 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.

Annex I

IDENTIFICATION AND MONITORING

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:

1. 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
2. Described genomes and genes of social, scientific or economic importance.

Annex II - Part 1

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.

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.