

# CONVENTION ON BIOLOGICAL DIVERSITY

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Mr. PELL, from the Committee on Foreign Relations,  
submitted the following

## REPORT

together with

## MINORITY VIEWS

[To accompany Treaty Doc. 103-20]

The Committee on Foreign Relations to which was referred the Convention on Biological Diversity, with Annexes, done at Rio de Janeiro June 5, 1992, and signed by the United States in New York on June 4, 1993, having considered the same reports favorably thereon without amendment and recommends that the Senate give its advice and consent to ratification thereof, subject to the seven understandings as set forth in this report and the accompanying resolution of ratification.

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## I. PURPOSE

The purpose of the Convention is to establish a global framework for the conservation, sustainable use, and fair and equitable sharing arising out of the utilization of genetic resources.

## II. BACKGROUND

Biological diversity, frequently referred to as "biodiversity", is the variability of life in all its forms, levels, and combinations. It can be organized into three broad levels: ecosystem diversity, referring to the variety and frequency of various types of ecosystems; species diversity, referring to the variety and frequency of various species; and genetic diversity, referring to the variety and frequency of genes.

Estimates of the total number of species in the world range from 10 to 100 million, of which only approximately 1.5 million have been cataloged. The vast majority of these species are believed to be in tropical rainforests. For example, a survey of 1 acre plots in the rainforests of Peru found an average 300 distinct tree species per acre; by contrast, the entire continent of North America has approximately 700 native tree species.

Rainforests are, however, not the only biologically rich areas and indeed other areas may be richer in particular classes of species. Coral reefs, for example, are home to thousands of nautical species, while much of the biodiversity used for agricultural purposes (described below) is found in temperate regions.

Increasingly, biologically rich areas are being disturbed or destroyed as a result of unsustainable economic development patterns. This has accelerated the loss of biological diversity far above natural levels that result from evolutionary change. Recent estimates put the rate of global rainforest loss at roughly 142,000 hectares per year, or roughly the area of one football field every second.

A 1987 Office of Technology Assessment report, "Technologies To Maintain Biological Diversity", stated:

Since life began, extinction has always been a part of evolution. Mass extinctions occurred during a few periods, apparently the results of relatively abrupt geological or climatic changes. \* \* \* But now \* \* \* there is evidence that the world may be entering another period of massive reduction in diversity. This time, humans are the cause, and it appears that the consequence will be loss of a substantial share of the Earth's valuable resources.

The precise implications of biodiversity loss are difficult to assess, in large measure because nothing is known about the vast majority of species believed to exist, much less many of those that are being lost. Nonetheless, a brief review of just a few examples of the importance of biological diversity provides a notional reference point for considering the potential consequences of its loss.

At the genetic level, diversity is essential to the maintenance of healthy, viable species that can adapt to changing environments. In agriculture, for example, specific genes may be introduced into crops to reduce their vulnerability to pathogens. In the case of to-

matoes, the OTA reports that resistance to 15 serious diseases has been bred into domesticated varieties from their wild relatives.

Genetic manipulation can also be used to increase crop yield. According to the OTA report, yields per unit area of rice, barley, and soybeans in the United States doubled between 1930 and 1980; during the same period, corn, sorghum, and potato yields more than quadrupled. At least half of these increases can be attributed to plant breeders' use of genetic diversity.

At the species level, loss or depletion of a single species can have significant adverse effects on entire ecosystems (such species are frequently referred to as "keystone species"). In the Antarctic for instance, krill form the basis of the food chain that supports virtually all higher life forms in the region. Depletion or loss of krill due to ozone depletion or overfishing would, thus, damage the entire Antarctic ecosystem.

At the ecosystem level, loss of diversity can significantly impair ecological processes of environmental and economic benefit. For example, wetlands play a key role in the breeding, feeding and migration of numerous waterfowl; they also support commercial fishing. According to the OTA report cited earlier, "about two-thirds of the major U.S. commercial fish, crustacean, and mollusk species depend on estuaries and salt marshes for spawning and nursery habitat."

Loss of biological diversity can have important medical consequences. Loss of species may result in the loss of valuable medical models in the development of treatments or cures for human diseases. Sharks, for example, appear to be virtually immune to cancers and infections. Armadillos, on the other hand, are one of only two animal species known to contract leprosy. Both can serve as research models in the development of cures.

At another level, species extinction may result in the loss of potential new medicines. By one estimate, at least 25 percent of the prescriptions dispensed in the United States from 1959 to 1980 contained active ingredients extracted from plants. Purified extracts from the tropical rosy periwinkle, for example, are now used in the treatment of breast cancer, Hodgkin's disease, and acute childhood leukemia. Nonetheless, deforestation in Madagascar threatens the existence of the rosy periwinkle in the wild and it is now grown on plantations.

Taxol is another example of an anticancer drug derived from plants. Taxol is derived from the bark of the Pacific yew tree and is the most effective current treatment for ovarian cancer. Deforestation in the Pacific Northwest, however, has significantly reduced the supply of yew trees.

A third, and far more commonplace, drug derived from plants is aspirin. The active ingredient in aspirin was originally derived from a substance in the bark of the willow tree.

These are just a few examples of the importance of biological diversity.

### III. ORIGINS OF THE CONVENTION

In the early and mid-1980's, as awareness about the implications of biodiversity loss grew, a variety of proposals were put forward to strengthen international efforts to protect biological diversity.

Some proposals focused, for example, on conservation, while others focused on sustainable use, while still others dealt only with in situ conservation. Gradually, support for these proposals coalesced into support for a global convention that would address biological diversity in a comprehensive manner. This is reflected in the Convention's three objectives discussed later in this report.

Formal negotiation of the Convention began in February 1991 with the goal of completing negotiations in time for the United Nations Conference on Environment and Development in June 1992.

Like the negotiations that were taking place concurrently on the United Nations Framework Convention on Climate Change, the negotiations on the Convention on Biological Diversity were highly contentious and plagued by tensions between developed and developing nations. Developing nations were generally reluctant to assume broad new obligations to conserve their biological diversity without the provision of financial resources to support those obligations. These nations also wanted greater control over the financial institution(s) to provide those resources than they had in the Bretton Woods institutions.

In addition, developing nations wanted the Convention to focus not only on the conservation of resources, but also their use and access to the benefits of that use. In particular, some developing nations saw the Convention as a tool to gain access to technologies and processes for the use and manipulation of genetic resources. These efforts sounded alarm bells for many U.S. pharmaceutical and biotechnology companies. Many of these companies had struggled in the mid- and late-1980's to strengthen international standards for the protection of intellectual property rights through discussions in the Uruguay round at the General Agreement on Tariffs and Trade.

Despite these tensions, the biodiversity negotiations received considerably less political and media attention than the Climate Convention in which the stakes in the outcome were generally viewed to be far higher for the developed nations in general and the United States in particular. As a result, high-level U.S. policymakers did not focus extensively on the Convention before the final negotiating round in May 1992. During those negotiations, the United States gained substantial ground, but was unable to obtain all the changes in the text that it had sought. As a result, the United States issued a declaration at the conclusion of the negotiations identifying a number of areas in which the Convention was unsatisfactory, including its treatment of intellectual property rights, finances, and technology transfer.

Several weeks later at the Earth Summit, the administration announced that it would not sign the Convention, triggering widespread condemnation from some quarters and applause from others.

The Clinton administration shared the Bush administration's concerns about ambiguities in the Convention's text. Upon taking office, it initiated a review of U.S. options with respect to the Convention. Working with a group of individuals from the pharmaceutical and biotechnology industries as well as representatives from various environmental groups, the administration developed a series of understandings relating to the Convention's treatment of

intellectual property rights and finances in particular that were generally agreeable to the participants. The United States signed the Convention on June 4, 1993, in New York.

#### IV. MAJOR PROVISIONS

The Convention that emerged from these discussions is a framework document that contains general obligations and allows broad national discretion in its implementation. The Convention has three objectives: the preservation and conservation of biological diversity and the equitable sharing of benefits arising from its use.

The Convention establishes a series of obligations to achieve these objectives. The early articles in the Convention (articles 5-11, and 14) deal primarily with the preservation and conservation of biological diversity. They obligate Parties to take steps to identify and monitor biological diversity, promote in situ and ex situ conservation, promote public education on the benefits and uses thereof, and establish procedures for environmental impact assessment. In most instances, these obligations are qualified, obligating Parties to undertake such measures "as far as possible and as appropriate."

Articles 15, 16, and 19 address the issues of access to genetic resources, access to and transfer of technology, and the handling of biotechnology and distribution of its benefits respectively. The latter two provisions were particularly controversial. Concern was expressed that portions of article 16 could undercut intellectual property rights protections while portions of article 19 could be interpreted to compel transfer of technology. The administration proposed to address these concerns through a series of understandings to be included in the accompanying resolution of ratification. These issues are discussed in greater detail in the section-by-section analysis.

Articles 20 and 21 address financing for developing countries to implement their obligations under the Convention. These provisions too were controversial. Developed nations were concerned that the Convention could be read to cede control of the Convention's financing mechanism to developing countries. The administration proposed to address these concerns through an understanding to article 20 and two understandings to article 21. These are described in greater detail in the section-by-section analysis.

Articles 23-25 establish the Convention's various institutions. Article 23 establishes the Conference of the Parties which will serve as the governing body for the Convention. A number of issues that will be important to the Convention's operation are not contained in the treaty itself, but are deferred to the Conference of the Parties, including that body's rules of procedure.

Article 24 establishes a Secretariat to support the Conference of the Parties. Article 25 establishes a Subsidiary Body on Scientific, Technical and Technological Advice to provide advice to the Conference of the Parties.

Article 27 establishes the Convention's dispute settlement procedures.

## V. SECTION-BY-SECTION ANALYSIS

Article 1 states the Convention's three objectives: "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 and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding."

Article 2 contains definitions. Notably, qualifying terms and phrases that appear frequently in the Convention—such as "appropriate", "fair and equitable", and "as far as possible and appropriate"—are not defined.

Article 3 repeats verbatim a principle from the Declaration of the 1972 United Nations Conference on the Human Environment. It says that states have the sovereign right to exploit their own resources pursuant to their own policies as well as the responsibility to ensure that activities within their jurisdiction do not damage the environment of other states or the global commons.

### *Article 3 Understanding*

The Department of State recommends that the following understanding be included in the United States instrument of ratification with respect to article 3:

The Government of the United States of America understands that Article 3 references a principle to be taken into account in the implementation of the Convention.

Article 4 provides that the jurisdictional scope of the Convention is the area within the limits of a Party's national jurisdiction, and any area within or beyond a Party's territorial limits with respect to processes and activities under the jurisdiction or control of a Party.

Article 5 obligates Parties to cooperate with each other, or with appropriate international organizations, in conserving and providing for the sustainable use of biological diversity in areas beyond national jurisdiction.

Articles 6-14 address national measures for the conservation and sustainable use of biological diversity. Article 6 obligates Parties to develop national plans, strategies, or programs to this end. Article 7 obligates Parties to identify and monitor biological diversity and to identify processes and activities likely to have significant adverse impact on biological diversity. Article 8 obligates Parties to support in situ conservation of biological diversity, for example through the establishment of protected areas and the rehabilitation and restoration of degraded ecosystems. Article 9 obligates Parties to support ex situ conservation of biological diversity. Article 10 obligates Parties to promote the sustainable use of components of biological diversity, for example by integrating this objective in national decisionmaking processes, and by encouraging cooperation between government and private sector institutions in developing methods for sustainable use of biological diversity. Article 11 obligates Parties to adopt economic and socially sound measures that act as incentives for the conservation and sustainable use of the components of biological diversity. Article 12 obligates Parties to promote research and training that promotes that conservation and

sustainable use of biological diversity. Article 13 obligates Parties to promote better understanding of biological diversity, its importance, and its uses.

Article 14 relates to environmental impact assessment and mitigation procedures. Paragraphs (1) (a) and (b) obligate Parties to introduce procedures to ensure that the impacts on biological diversity of activities carried out by the Party are considered with a view to minimizing any adverse impacts. Paragraphs (1) (c) and (d) relate to notification of nations likely to be affected by the transboundary impacts on biological diversity of a Party's activities. Paragraph (1)(e) obligates Parties to promote national and encourage international cooperation in contingency planning in the event of emergencies that present a grave and imminent danger to biological diversity. Article 14.2 obligates Parties to examine "the issue of liability and redress" after completion of studies.

Article 15 sets forth rights and obligations with respect to access to genetic resources. Paragraph (1) recognizes Parties' sovereign rights to determine access to genetic resources within their jurisdiction.

Paragraph (2) establishes two obligations. First, Parties are obligated to "create conditions to facilitate access to genetic resources for environmentally sound uses by other Contracting Parties." This appears to create an incentive for countries to become Parties to the Convention in order to gain access to genetic resources for environmentally sound uses, but the Convention does not define what those uses are, nor does it define what conditions should be created. Further, Parties are obligated not to impose restrictions that run counter to the objectives of the Convention.

Paragraph (3) establishes that articles 15, 16 (access to and transfer of technology), and 19 (handling of biotechnology and distribution of its benefits) apply only to genetic resources obtained legally after the convention's entry into force.

Paragraph (4) provides that access to genetic resources shall be "on mutually agreed terms and subject to the provisions of this Article." Paragraph (5) provides that access to genetic resources shall be subject to prior informed consent, unless otherwise determined.

Paragraph (6) obligates Parties to try to involve countries providing genetic resources in the research based on those resources, and where possible to conduct such research in the source country. This provision appears to apply to federally supported research of a Party, while a subsequent Article applies to all research.

Paragraph (7) obligates Parties to take appropriate steps, "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." The Convention further stipulates that, "(s)uch sharing shall be upon mutually agreed terms."

Article 16—access to and transfer of technology—is one of the most controversial provisions in the Convention. The circular cross referencing in the Article's subsections reflects the move and counter-move of developed and developing countries during the negotiations. The United States and some other developed countries were anxious to ensure that the Convention neither contained compulsory technology transfer provisions, nor undercut efforts to en-

hance intellectual property rights protections under discussion in the Uruguay Round of the General Agreement on Tariffs and Trade. Conversely, many developing countries sought to ensure that the Convention contained precisely such provisions. As a result, it is likely that the precise meaning of article 16 will be established through precedents created during the Convention's implementation, to be debated and argued at the meetings of the Conference of the Parties (COP) to the Convention. (The Convention's provisions on the COP are discussed later.)

Article 16.1 obligates Parties, subject to the remainder of article 16, to "provide and/or facilitate access for and transfer to other Contracting Parties" of technologies relevant to the conservation and sustainable use of biological diversity or which make use of genetic resources provided that such technologies do not cause significant damage to the environment.

Paragraph 2 establishes the general terms under which technology transfer referred to in paragraph 1 should take place. Paragraph 2 provides that such transfers "shall be provided and/or facilitated under fair and most favorable 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." As noted earlier, the Convention does not define the phrase "fair and most favorable." As described below, the Administration proposes that an understanding be incorporated in the U.S. resolution of ratification clarifying the U.S. interpretation of this phrase.

Paragraph 2 further states, "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 reference to "adequate and effective" was inserted at the insistence of the United States to tie this provision to negotiations on Trade-Related Aspects of Intellectual Property Rights (TRIPs) in the GATT round and to establish standards to which the United States would hold Parties even absent the GATT TRIPs agreement.

To add further confusion, the next sentence in paragraph 2 of article 16 qualifies this seeming endorsement of intellectual property rights protection: "The application of this paragraph shall be consistent with paragraphs 3, 4, and 5 below." As will be discussed below, paragraph 5 could be interpreted to undermine protection of intellectual property rights.

Paragraph 3 obligates Parties to take measures with the aim that Parties providing genetic resources are provided access to, and transfer of, technology making use of those resources on mutually agreed terms, where necessary through the Convention's financial mechanism, and consistent with international law and paragraphs 4 and 5 of the Convention. In essence, this provision obligates Parties to create a framework to facilitate such technology transfer, but does not require such transfers.

Paragraph 4 obligates Parties to take measures aimed at facilitating developing country access to joint development and transfer of technology referred to in paragraph 1. As with the previous paragraph, this paragraph does not require technology transfer,



but rather obligates Parties to establish a framework under which it could take place. The administration looks to this paragraph to establish the U.S. Government's obligations on technology transfer vis-a-vis the private sector.

Paragraph 5 states that the Parties recognize that intellectual property rights may have an influence on the implementation of the Convention and that they shall cooperate on this issue subject to national legislation and international law with the aim of ensuring that such rights "are supportive of and do not run counter to its objectives." This could be interpreted to subordinate protection of intellectual property rights to fulfillment of the Convention's objectives which include providing "fair and equitable sharing of the benefits arising out of the utilization of genetic resources."

*Article 16 Understanding: Access to and transfer of technology*

In order to clarify the U.S. interpretation of article 16, the administration has recommended that the following understanding be included in the U.S. instrument of ratification:

It is the understanding of the Government of the United States of America with respect to provisions addressing access to and transfer of technology that:

- a. "fair and most favorable terms" in article 16(2) means terms that are voluntarily agreed to by all parties to the transaction;
- b. with respect to technology subject to patents and other intellectual property rights, Parties must ensure that any access to or transfer of technology that occurs recognizes and is consistent with the adequate and effective protection of intellectual property rights, and that article 16(5) does not alter this obligation.

Article 17 obligates Parties to facilitate the exchange of information from publicly available sources. In addition, it provides a nonexclusive list of types of information to be exchanged.

Article 18 obligates Parties to promote international scientific and technical cooperation in the field of conservation and sustainable use of biological resources. Article 18 provides for the Conference of Parties to determine, at its first meeting, how a clearing-house to support this cooperation should be established.

Article 19—handling of biotechnology and distribution of its benefits—is another of the more controversial and opaque articles in the Convention. As with article 16, the practical implications of the Article will have to be defined over time by the actions of the Conference of the Parties, for the Convention itself is vague.

The first paragraph obligates Parties to take appropriate legislative, administrative or policy measures "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." Unlike Article 15(6), the paragraph applies to both public and privately funded research.

*Article 19 Understanding: Conduct and location of research based on genetic resources*

In order to clarify the United States' interpretation of this paragraph, as well as article 15(6), the Administration recommends that the following understanding be included in the United States instrument of ratification:

It is the understanding of the Government of the United States of America with respect to provisions addressing the conduct and location of research based on genetic resources that:

a. Article 15(6) applies only to scientific research conducted by a Party, while article 19(1) addresses measures taken by Parties regarding scientific research conducted by either public or private entities.

b. Article 19(1) cannot serve as a basis for any Party to unilaterally change the terms of existing agreements involving public or private U.S. entities.

Paragraph 2 of article 19 obligates Parties to take all practicable measures to promote and advance priority access on a fair and equitable basis by Contracting Parties to the results and benefits arising from biotechnologies based upon genetic resources provided by those Contracting Parties. The provision of these results and benefits is qualified to be on mutually agreed terms. This paragraph, again, reflects the conflicting negotiating objectives of developed and developing countries.

Paragraph 3 provides that the Parties shall consider the need for and modalities of a protocol on the safe transfer, handling, and use of living modified organisms. The biotechnology industry opposes negotiation of such a protocol.

In its letter to the Committee, the Biotechnology Industry Organization (BIO) stated, "(w)e urge the Senate to obtain a second assurance, i.e., that the United States will not seek, and will in fact oppose, the development of a biosafety protocol under the convention." In its Letter of Submittal accompanying the Convention, the Department of State noted:

\* \* \*, the United States does not believe that a protocol on biosafety under this Convention is warranted. However, should discussions on this issue proceed, the United States, in close cooperation that the U.S. biotechnology industry, will work to ensure that any biosafety regime that may arise from the Convention is scientifically based and analytically sound.

Paragraph 4 obligates Parties to provide information on their national measures related to biosafety as well as information on the potential adverse impact of specific organisms.

Articles 20, 21, and 39 relate to financial issues and were some of the most hotly disputed sections in the negotiation of the Convention. Developing countries sought the establishment of a financial institution independent of the Bretton Woods institutions and under the sole authority of the Conference of the Parties to the Convention where they would likely enjoy a majority. Developed countries, by contrast, wanted the Global Environment Facility

(GEF) to be the Convention's funding institution. The GEF is jointly operated by the World Bank, the United Nations Development Programme, and the United Nations Environment Programme and operates with a significantly greater degree of control by the developed countries. Recently the Parties to the GEF completed negotiations to restructure the facility.

Article 20, paragraph 1 obligates Parties to provide financial support and incentives to carry out activities in support of the Convention.

Paragraph 2 requires developed country parties to provide new and additional funding to cover the "agreed full incremental costs" of developing country efforts to meet their obligations under the Convention. The phrase "new and additional" refers to resources above and beyond existing bilateral and multilateral assistance. These resources will be provided for assistance programs that have been agreed upon between the developing country party and the institutional structure established to provide such assistance.

Paragraph 2 requires further that such assistance be provided "in accordance with policy, strategy, programme priorities and eligibility criteria and an indicative list of incremental costs established by the Conference of the parties."

Paragraph 2 provides further that the first meeting of the Conference of the Parties shall establish the list of developed country donor nations as well as such other nations that voluntarily assume the financial obligations of the developed countries; this is an oblique reference to Eastern European nations and the new independent states. The Convention provides for the periodic review of this list by the Conference of the Parties, but offers not criteria within the Convention itself for categorizing countries as "developed" or developing."

Finally, paragraph 2 provides that implementation of the 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."

#### *Article 20 Understanding: Costs*

In order to clarify the United States understanding that both the costs and the proposed assistance program must be agreed to, the Administration recommends that the following understanding be included in the United States instrument of ratification:

It is the understanding of the Government of the United States of America that, with respect to Article 20(2), the financial resources provided by developed country Parties are to enable developing country parties to meet the agreed full incremental costs to them of implementing measures that fulfill the obligations of the Convention and to benefit from its provisions and that are agreed between a developing country Party and the Institutional structure referred to in article 21.

Paragraph 3 provides that developed country Parties may also provide financial resources to implement the Convention through bilateral and regional channels as well as multilateral channels outside the financial mechanism established in the Convention.

Paragraph 4 simply states that the extent to which developing countries can implement their obligations under the Convention will depend on the availability of financial resources for this purpose. The paragraph notes further that for developing countries, economic and social development and the eradication of poverty are "overriding" priorities.

Paragraphs 5-7 note the particular needs of least developed countries, small island states, and environmentally vulnerable countries. These provisions could be used by these countries to argue for preferential treatment; however, it is unclear how the Conference of the Parties will interpret these provisions, particularly since many developing countries themselves appear to be opposed to preferential treatment for the classes of countries referenced in these paragraphs.

Article 21 establishes the financial mechanism to provide assistance under the Convention. Paragraph 1 was particularly controversial. It provides that assistance through the financial mechanism shall be on a grant or concessional basis and that the mechanism "shall function under the authority and guidance of, and be accountable to, the Conference of the Parties for the purposes of this Convention."

This provision introduces the potential for significant tension between the Conference of the Parties and the governing body of the GEF over their respective roles and authorities. As noted earlier, an agreement to restructure the GEF was concluded recently. That agreement requires that decisions requiring a formal vote shall be taken by a double weighted majority, requiring an affirmative vote representing both a 60 percent majority of the total number of Participants and a 60 percent majority of the total contributions.

*Article 21 Understanding: Interpretation of the term "authority"*

The Administration recommends that an understanding be included in the resolution of ratification to clarify the United States interpretation of the term "authority" as follows:

It is the understanding of the Government of the United States of America that, with respect to article 21(1)(a), the "authority" of the Conference of the Parties with respect to the financial mechanism relates to determining, for the purposes of the Convention, the policy, strategy, program priorities and eligibility criteria relating to the access to and utilization of such resources.

Further, paragraph 1 provides that 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."

Paragraph 1 also provides that the Conference of the Parties will determine periodically the amount of resources needed, bearing in mind the need for predictability, adequacy and timeliness referred to in article 20(2). A number of developed countries were, and are, concerned that this last provision could be interpreted to require compulsory contributions to the GEF and to set the overall funding levels for the GEF. As a result, at the time the negotiations on the

Convention were concluded, 19 countries<sup>1</sup> released a common declaration stating that the decision of the Conference of the Parties will apply only to the "amount of resources needed" and not "the extent or nature and form of the contributions of the Contracting Parties."

*Article 21 Understanding: Conference of the parties and "amount of resources needed"*

The Administration recommends that the following understanding related to article 21(1) be included in the instrument of ratification:

The Government of the United States of America understands that the decision to be taken by the Conference of the Parties under article 21, paragraph 1, concerns "the amount of resources needed" by the financial mechanism, and that nothing in article 20 or 21 authorizes the Conference of the Parties to take decisions concerning the amount, nature, frequency or size of the contributions of the Parties to the institutional structure.

Article 22 establishes the relationship between the Convention and existing international agreements, including the United Nations Convention on the Laws of the Sea. The article provides that the Convention shall not affect the rights and obligations of Parties established in existing international agreements, to the extent that the exercise of those rights and obligations do not cause serious damage or threat to biological diversity.

In the Letter of Submittal accompanying the Convention, the Department of State notes that, "(t)he United States is aware of no agreement to which it is a Party, including those relating to the protection of intellectual property rights, the exercise of which would cause serious damage or threat to biological diversity and would therefore be affected by this paragraph."

*Understanding regarding sovereign immune vessels*

The Administration recommends that the following understanding be included in the United States instrument of ratification to clarify the application of the Convention to sovereign immune vessels:

The Government of the United States of America understands that although the provisions of this Convention do not apply to any warship, naval auxiliary, or other vessels or aircraft owned or operated by a State and used, for the time being, only on government noncommercial service, each State shall ensure, by the adoption of appropriate measures not impairing operations or operational capabilities of such vessels or aircraft owned or operated by it, that such vessels or aircraft act in a manner consistent, so far as is reasonable and practicable, with this Convention.

<sup>1</sup>Those countries are: Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Italy, Japan, Malta, the Netherlands, New Zealand, Portugal, Spain, Switzerland, the United Kingdom, and the United States.

Article 23 establishes the Conference of the Parties (COP), the governing body for the Convention. It provides that the COP shall meet within 1 year of the Convention's entry into force and thereafter at intervals to be determined by the COP. (That meeting is scheduled for November 28 through December 9, 1994.)

It is noteworthy that a number of decisions central to the Convention's operation are not contained in the treaty itself, but deferred to the COP. These include: examining liability and compensation issues for damage to biological diversity; at its first meeting determining how to establish the clearinghouse mechanism described in article 18(3); considering the need for a protocol on biosafety; at its first meeting, establishing a list of developed countries for purposes of the Convention's funding mechanism, and reviewing that list thereafter; deciding what institution should carry out the operations of the financial mechanism; and, at its first meeting, determining the policy, strategy and programme priorities for access to financial resources made available under the Convention.

As one of its first and most important issues, the COP must establish its rules of procedure. These rules will, in large measure, determine the United States influence on the COP in addressing the range of issues outlined above as well as other issues within the COP's competence. A number of developed nations that signed the Convention at the Earth Summit made clear that they had concerns with the Convention as drafted, but that they planned to use the rules of procedures to protect and advance their interests. For example, the United Kingdom strongly supports adoption of consensus rules on financial decisions. The Convention provides that the rules of procedure for the COP and any subsidiary bodies created shall be adopted by consensus. U.N. practice to date has been to define consensus as an absence of objections; however the term is not defined in the Convention itself.

Article 23 provides further that the COP shall be responsible for reviewing the Convention's implementation, adopting protocols, annexes, and amendments thereto, establishing such subsidiary bodies as the COP deems necessary, and considering and undertaking such additional actions as may be necessary to further the Convention's objectives.

Article 23 also provides for observer status in the COP. The Convention provides explicitly for such status for the U.N., its specialized agencies and the International Atomic Energy Agency, as well as any state not Party to the Convention. In addition, "any other body or agency, whether governmental or nongovernmental, qualified in the fields relating to conservation and sustainable use of biological diversity" may be represented as an observer subject to approval by the COP.

Article 24 establishes a Secretariat to support implementation of the Convention, including servicing the meetings of the COP, performing any functions assigned to it by any protocols, and performing such other functions as it may be assigned by the COP. Further, article 24 provides that at its first meeting the COP shall designate the Secretariat from among existing competent international organizations.

Article 25 establishes a Subsidiary Body on Scientific, Technical, and Technological Advice to provide the COP and any other subsidiary bodies established with timely advice on the implementation of the Convention. Under the authority and in accordance with guidance from the COP, functions of the body include providing scientific and technical assessments of the status of biodiversity; preparing assessments of the effects of measures taken to implement the Convention; and, the providing advice on scientific programs and international cooperation in research and development related to the conservation and sustainable use of biological diversity.

Article 26 obligates each Party, at intervals to be determined by the COP, to present to the COP reports on measures it has taken to implement the Convention along with an assessment of their effectiveness in meeting the Convention's objectives.

Article 27 contains the Convention's dispute settlement procedures. Paragraph 1 obligates Parties to try to resolve disputes over the interpretation of the Convention through negotiation while paragraph 2 provides the option for Parties to seek the good offices of or request mediation by a third party.

Paragraph 3 provides that for purposes of compulsory dispute resolution, Parties may in writing elect either arbitration in accordance with procedures described below or submission of the dispute to the International Court of Justice, or both. In the event Parties to a dispute have chosen different fora for compulsory dispute resolution, paragraph 4 provides that conciliation procedures described below will be used, unless the Parties agree otherwise. Parties are not, however, required to submit to compulsory dispute resolution procedures at all if they do not want to do so.

Paragraph 5 provides that the dispute resolution procedures in the Convention shall apply with respect to any protocols adopted, unless otherwise stated in such protocols.

Articles 28-30 enumerate the procedures for the adoption of protocols, the amendment to the Convention or Protocols, and the adoption and amendment of Annexes. With respect to the adoption of Protocols, the Convention merely states that they shall be adopted by the COP, but does not establish any voting criteria.

Article 29 provides that with respect to adoption of amendments to the Convention or Protocols, "every effort" shall be made to reach consensus, but that if such efforts have been exhausted, amendments would be adopted by a two-thirds majority vote of Parties present and voting. Unless otherwise provided in a Protocol, such amendment would enter into force 90 days after the receipt of at least two-thirds of the Parties to the Convention or the Protocol. Such amendments would not be binding on countries that did not sign or ratify such amendments.

Article 30 provides that annexes shall be considered an integral part of the Convention or Protocol and shall be restricted to procedural, scientific, technical and administrative matters. Annexes and amendments to annexes would be adopted pursuant to the same procedures as amendments to the Convention or Protocols. An annex or amendment to an annex would enter into force within one year of its adoption by the COP; during this time, Parties unable to approve the annex are obligated to notify the depositary of this fact.

Article 31 provides that each Party shall have one vote and that regional economic organizations—basically the European Union—may exercise its right to vote with a number of votes equal to the number of its constituent members, provided that those members themselves do not vote.

Article 32 provides that States or regional economic integration organizations must become Parties to the Convention in order to become Parties to any Protocols thereto.

Articles 33–36 contain standard provisions on signature, ratification, acceptance or approval; accession; and entry into force. The Convention entered into force on December 19, 1993.

Article 37 prohibits reservations to the Convention.

Articles 38 provides that any time after 2 years from the date on which the Convention has entered into force, a Party may withdraw from the Convention; such withdrawal will occur 1 year after the Depositary has received notice of the Party's intent.

Articles 39 designates the Global Environment Facility to be the interim financial mechanism for the Convention, provided that the GEF has been restructured in accordance with article 21.

Articles 40 provides that the United Nations Environment Programme shall provide the interim Secretariat for the Convention.

Articles 41 provides that the Secretary General of the United Nations shall be the Depositary for the Convention and any Protocols.

*Annex I* provides an indicative list of components of biodiversity important to its conservation and sustainable use. It is referred to in article 7.

*Annex II*, Part I establishes the arbitration procedures referred to in Article 27. Part I provides for a three member arbitral tribunal. Two members would be appointed by the two sides to the dispute and these two members would designate by common agreements a third arbitrator to be President of the tribunal. The third arbitrator shall not be a national of any of the parties to the dispute.

The Annex provides that any awards made by the tribunal shall be binding on the parties to the dispute; no appeals are allowed unless the Parties have agreed in advance to an appellate procedure.

Part 2 establishes the conciliation procedures referred to in article 27. It provides that a party to a dispute may request creation of a conciliation commission. Such commission shall be composed of five members with two members to be appointed by each of the two sides of a dispute. These members would then choose a President. The Commission would make its decisions by majority vote. Any proposals rendered by the Commission shall be considered by the Parties in good faith.

## VI. ENTRY INTO FORCE

The Convention entered into force on December 29, 1993, 90 days after the deposit of the 30th instrument of ratification.

## VII. UNITED STATES IMPLEMENTATION

The Administration has determined that existing law provides sufficient statutory authority for the United States to meet its obli-



gations under the Convention; as a result no new implementing legislation will be necessary.

For example, U.S. obligations related to species and habitat conservation are addressed by a variety of statutes, including the Marine Mammal Protection Act; the Endangered Species Act; and the Marine Protection, Research and Sanctuaries Act; and the Coastal Zone Management Act.

U.S. obligations related to pollution prevention are addressed by statutes, including the Clean Water Act, the Resource Conservation and Recovery Act, and the Ocean Dumping Ban Act.

U.S. obligations related to research activities are addressed by such statute as the 1946 Research and Marketing Act, the National Science Foundation Act of 1950, the Endangered Species Act, and the Fish and Wildlife Act of 1956.

The Convention's education and public awareness obligations are addressed by statutes such as the Fish and Wildlife Act of 1956 and the National Environmental Education Act.

The authority to control the transfer of technology held by the U.S. government is contained in such statutes as the Federal Technology Transfer Act of 1986 and the National Competitiveness Technology Transfer Act of 1989.

#### VIII. COMMITTEE COMMENTS

The Committee on Foreign Relations strongly supports ratification of the Convention on Biological Diversity. Earlier in this report, the committee noted just a few examples of evidence of increased rates of loss of biological diversity and the possible consequences thereof. The United States is particularly vulnerable to these losses as a nation that itself is not rich in biological diversity. The committee believes that the Convention provides a sound basis for international efforts to address this pressing global problem.

##### *Statements of support*

The committee has received numerous statements of support for Senate advice and consent to ratification of the Convention.

At the committee's hearing, Senators Baucus (D-MT) and Chafee (R-RI), respectively the chairman and ranking member of the Committee on Environment and Public Works, testified in strong support of the Convention. The committee also heard from three witnesses who supported ratification of the Convention: Dr. Walter Reid from the World Resources Institute, Ms. Lisa Conte on behalf of the Biotechnology Industry Organization as well as her own company, Shaman Pharmaceuticals, and Dr. George Albers-Schonberg on behalf of the Pharmaceutical Manufacturers Association. These latter two organizations represent approximately 630 companies.

In addition, the committee received numerous letters in support of ratification of the Convention from a wide range of organizations. Letters have been received from the Biotechnology Industry Organization; the Pharmaceutical Manufacturers Association; the American Seed Trade Association, Inc.; Merck & Co., Inc.; the United States Council for International Business; the Biodiversity Action Network; the American Institute of Biological Sciences; the Ecological Society of America; the Animal Protection Institute; and

the Institute for Agriculture and Trade Policy. These letters are reproduced in an annex to this report.

The Committee notes that not all supporters of ratification supported each of the Understandings transmitted to the Senate for its consideration for the resolution of advice and consent to ratification. In particular, concerns were raised about the Understandings requested related to Articles 3 and 22 of the Convention.

*Importance of prompt ratification*

The Committee on Foreign Relations strongly supports early ratification of the Convention on Biological Diversity. Prompt ratification is essential for the effective protection and advancement of U.S. interests in the Convention. The committee notes that the first meeting of the Conference of the Parties (COP) to the Convention is scheduled for November 28 through December 9, 1994. In order for the United States to participate in that meeting as a Party, it must deposit its instrument of ratification by the end of August.

Numerous important decisions are likely to be made at that meeting, including adoption by consensus of the rules of procedure; adoption of financial rules for the Convention's Secretariat; determining how to establish the clearinghouse mechanism described in article 18(3); establishing a list of developed countries for purposes of the Convention's funding mechanism; deciding which institutional structure should carry out the operations of the financial mechanism; and determining the policy, strategy, and program priorities for access to financial resources made available under the Convention.

Prompt ratification is particularly important with respect to the Convention's financial provisions. If the United States is not a Party at the first meeting, it could not ensure that financial rules for the Secretariat will provide for voluntary contributions or that the budget will be adopted by consensus. The United States could not ensure that the rules of procedure for the COP will fully protect donor interests on decisions under article 21, paragraphs (1) and (2). Further, the United States would not be able to play a leading role in the selection of the GEF and in developing its priorities, eligibility criteria, negotiating a cooperative Memorandum of Understanding with the GEF, determining incremental costs, and determining amount of resources needed.

Only as a Party will the United States be able to wield maximum influence in these decisions. This is particularly true with respect to the COP's adoption of its rules of procedure. These must be adopted by consensus, and as a Party, the United States could block rules it opposes.

In a question submitted to the Biotechnology Industry Organization (BIO) and to Dr. Walter Reid, of the World Resources Institute, following the Committee's hearing, Chairman Pell asked:

What would be the impact if the United States were to decide not to ratify the Convention, or if no decision had been reached before the deadline for countries to participate in the first meeting of the Conference of the Parties?

BIO replied as follows:

Preliminary meetings of the signatory parties are already taking place leading up to the first Conference of Parties scheduled for November 28–December 9, 1994, in Geneva, Switzerland. We believe it essential that the U.S. position on the protection of intellectual property rights, the rights of parties under existing contracts and the undesirability of creating a formal biosafety protocol be appropriately represented at the Geneva Meeting. The position of our government will be best put forward by having official representatives at the conference table. It would be unconscionable for the U.S. to stand aside while other nations decide matters of importance to our economic future.

Dr. Reid replied:

Failure of the U.S. to ratify the Convention in time to participate in the first Conference of Parties would have the following consequences.

First, it would mean that the United States would not be able to influence the important decisions regarding Convention procedures that will be agreed to by consensus at that meeting. Thus, the United States would not be in a position to ensure that the procedures adopted result in a strong and effective Convention, or to ensure that U.S. interests are protected.

Second, the first meeting will be instrumental in setting the course for the implementation of the Convention. The COP will establish priorities for the first actions that will be taken under the Convention, establish relationships with the Scientific and Technical Advisory Committee, and so forth. It is in the U.S. interest to help set these priorities for early actions of the COP.

Third, the absence of the United States would be a major blow to the momentum behind the Convention. Already, countries are implementing their commitments under the Convention. For example, Canada, Chile, Norway, Indonesia, Netherlands, Poland, and the U.K. have already begun to develop the required biodiversity strategies detailing how they will meet the Convention's objections. If the United States is not present, countries will begin to question the importance of the Convention and may hold back on these essential actions.

Fourth, the negative consequences would 'spillover' beyond this agreement and undermine U.S. positions and credibility on a variety of other international environment and development issues, including Agenda 21 follow-up, the Commission on Sustainable Development, and the U.S. position in the U.N. Conference on Population and Development.

Fifth, failure to ratify the Convention will eventually cause other countries to raise barriers to U.S. access to their genetic resources. The initial U.S. decision not to sign the Convention in 1992 led some countries to revoke collecting permits. Barriers to trade in genetic resources and

possible to scientific research are likely to be created if the U.S. returns to that initial stance.

Clearly, several of these issues would be less significant if the United States did ratify the Convention but missed the deadline for participating in the first meeting. Nevertheless, the first two concerns alone—regarding determination of rules of procedure and establishment of initial Convention priorities—are reason enough to ensure that U.S. is at the table.

### *Encroachment on the Senate's prerogatives*

Concerns have been raised that the Convention's deferral of a number of important issues to later decisions by the Conference of the Parties constitutes an encroachment on the Senate's prerogatives with respect to its constitutionally mandated advice and consent responsibilities.

The committee does not share this view. There are ample precedents for Senate advice and consent to ratification of framework conventions that, like the Convention of Biological Diversity, defer to the Conference of the Parties important decisions on treaty implementation. For example, the Senate has approved the United Nations Framework Convention on Climate Change, the Vienna Convention for the Protection of the Ozone Layer, the Convention for the Protection of the Natural Resources and Environment of the South Pacific Region, and the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region.

In a number of instances these and other Conventions have left to the Conference of Parties to decide many of the same issues that are left open in the Convention on Biological Diversity.

For example, the Convention has been criticized for deferring until the first meeting the Conference of the Parties the adoption of rules of procedure. In fact, this is a common feature in treaties and has not been a practice over which the Senate has expressed concern. Examples of such treaties include the Vienna Convention for the Protection of the Ozone Layer, the Montreal Protocol on Substances that Deplete the Ozone Layer, the United Nations Framework Convention on Climate Change, the Antarctic Environmental Protocol, the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region, the Convention for the Protection of the Natural Resources and Environment of the South Pacific Region, and the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter.

Concern has also been raised that the Convention leaves to the Conference of the Parties the designation of "developing countries" that will be eligible to receive assistance from the Convention's financial mechanism. Again, Senate approval of a treaty with this type of provision is not precedent setting. In 1988, the committee and the Senate supported ratification of the Montreal Protocol on Substances that Deplete the Ozone Layer which contained a substantively identical provision.

Concern has been raised that the Convention does not specify the amount of money the United States will be committed to paying

under the Convention. In fact, this is to be expected in a framework agreement. Only as the treaty and its associated financial mechanism begin their operations will assessments be made of the financial assistance necessary to implement the Convention. Nonetheless, ample safeguards exist to ensure that the United States will not be saddled with excessive financial burdens. It is precisely for this reason that the committee believes that the Senate can proceed to advise and consent to ratification in good conscience and consistent with its constitutional obligations.

There is again ample precedent for Senate approval of treaties that do not contain specific financial commitments. In 1992, the Foreign Relations Committee and Senate approved the United Nations Framework Convention on Climate Change. This Convention, like the Convention on Biological Diversity, defers decisions on overall funding to the Conventions' financial mechanism. In 1991 the committee and the Senate approved the 1990 Amendment to the Montreal Ozone Protocol. This treaty also left decisions on overall funding levels to the Protocol's Parties.

Concern also has been raised that the Convention does not identify a specific financial mechanism to carry out the Convention's financial provision. This too is not new. In 1992 the Senate approved the United Nations Framework Convention on Climate Change which also left the selection of its financial mechanism to the Convention's Conference of the Parties. Again, the Senate expressed no concerns.

In short, as noted earlier, the committee and the Senate have previously approved treaties that leave open to the Conference of the Parties to decide each of the issues that have been raised as problematic in committee.

Based on these precedents, the committee believes that Senate approval of the Convention on Biological Diversity does not represent an encroachment on Senate prerogatives.

Of course, precedent alone is not sufficient reason for the Senate to advise and consent to ratification. The committee believes, however, that a thorough analysis of the substance of each of the issues that have been raised demonstrates that U.S. interests are safeguarded.

### *Cost*

The committee notes that concern has been raised about the potential costs of U.S. participation in the Convention. In recommending Senate advice and consent to ratification, the committee is extremely sensitive to this issue. The committee is confident that U.S. financial interests will be protected in the implementation of this Convention in a number of ways.

There are two principal cost issues associated with U.S. participation in the Convention: the cost associated with the Convention's financial mechanism and those associated with the operation of the Convention's Secretariat. Concern has been expressed primarily about the former.

With respect to the costs of assistance provided under the financial mechanism, the committee notes that funding levels for the Convention will not be set by the Conference of the Parties to the Convention. The Conference of the Parties has only the authority

to recommend to the financial mechanism "the amount of resources needed." The committee also notes that the United States joined 18 other countries in stating that this refers to the amount of resources needed by the financial mechanism, and not to the extent or nature and form of the contributions of the Contracting Parties. The extent, nature, and form of the U.S. contribution will be determined by the donors to the Global Environment Facility (GEF), which is expected to be designated as the structure to operate the financial mechanism and in which the United States will have substantial voting power.

In addition, as noted earlier, the Conference of the Parties will adopt its rules of procedure by consensus. In answer to questions posed by this committee, the executive branch responded that it will insist upon a rule of procedure relating to the financial mechanism that protects donor's interests. The committee notes that only if the United States is a Party at the first Conference of the Parties will it be able to block consensus on any rule of procedure not acceptable to it.

The United States will meet its financial obligation under the Convention through voluntary contribution to the Global Environment Facility. The amount of the contribution will be determined through negotiations in which the United States has an effective veto over funding levels that it deems excessive. Moreover, this contribution itself requires a statutory appropriation, in which the Senate must affirmatively concur. Thus, the Senate will have an opportunity to participate fully in deciding the level of the U.S. financial contributions under the Convention.

The committee notes that a further safeguard is contained in the Convention's requirement that financial assistance be limited to cover "agreed full incremental costs." Thus costs are limited to those projects that are agreed between the GEF and the developing country, a process which, as the administration has noted in response to committee questioning "will be driven in part by the availability of resources in GEF to fund such projects."

With respect to the cost of the Secretariat, the committee notes that the United States can block the adoption of rules of procedure for the Secretariat's finances if those rules do not protect United States interests, provided that the United States is a Party at the first meeting of the Conference of the Parties.

The committee believes that, in their totality, these provisions more than adequately safeguard U.S. financial interests.

#### *Selection of the financial mechanism*

The committee notes that concern has been raised that the Convention does not identify a permanent financial mechanism to carry out the Convention's financial provisions. As in the Climate Convention, the issue is left open for the Conference of the Parties to decide.

Once again, however, the United States, if it can participate in the first Conference of the Parties, will be in a position to block rules of procedure for selecting the financial mechanism that do not protect U.S. interests.

As a practical matter, the committee notes that most potential donor nations to the Convention's permanent financial facility have

indicated their preference that the GEF be that facility. Since contributions to the Convention's financial mechanism are voluntary, nothing can force the United States to contribute to a facility that it does not support.

*Protection of intellectual property rights and technology transfer*

The Convention's provisions on intellectual property rights and technology transfer have raised concerns in some quarters. The committee believes, however, that understandings incorporated in the resolution of ratification related to articles 15, 16, and 19, and developed in conjunction with representatives from the biotechnology and pharmaceutical industries, address these concerns.

These understandings make clear that the Convention cannot be used as a vehicle for compulsory technology transfer and that access to technology and patents must be consistent with the "adequate and effective protection of intellectual property rights."

The committee notes that with these understandings in place, the Biotechnology Industry Association as well as the Pharmaceutical Manufacturers Association support ratification of the Convention. (Together these groups represent roughly 630 American companies.) The committee considers such support for ratification significant in light of the fact that their consistent companies stand to be particularly adversely affected by U.S. accession to a treaty regime where these protections are not adequately provided for. Consequently Senate adoption of the understandings set forth in the accompanying resolution of ratification are crucial to United States ratification of this Convention.

*Understanding on article 3*

The committee notes that the administration has requested an understanding related to article 3 of the Convention. As is noted in the transmittal package, this article restates Principle 21 of the Stockholm Declaration from the 1972 Stockholm Conference on the Human Environment. The administration's understanding places this understanding "in the specific context within the Convention." The committee wishes to state its view that this understanding does not limit any obligations on the United States already imposed by article 21.

*Understanding on article 22*

The committee notes that the administration has requested inclusion of an understanding to article 22 regarding sovereign immunity. The committee wishes to make clear that while it supports inclusion of the understanding, it expects that the United States will make every effort to ensure that U.S. sovereign immune vessels and aircraft meet the standards of the Convention.

## IX. COMMITTEE ACTION

On April 12, 1994, the committee held a hearing on the Convention. The committee received testimony from: The Honorable Max Baucus (D-MT), chairman, Committee on Environment and Public Works; the Honorable John H. Chafee (R-RI), ranking minority member, Committee on Environment and Public Works; the Honorable Tim Wirth, counselor, Department of State; accompanied by

Mr. Rafe Pomerance, Deputy Assistant Secretary for Environment and Development; Ms. Lisa Conte, president and CEO Shaman Pharmaceutical, on behalf of the Biotechnology Industry Organization; Dr. Georg Albers-Schonberg, consultant and former executive director, natural products, Chemical Department Merck & Co., Inc. on behalf of the Pharmaceutical Manufacturers Association; and Dr. Walter V. Reid, Vice President for Program World Resources Institute.

At a meeting on June 29, 1994, the committee voted to report favorably the treaty and recommend that the Senate give its advice and consent to ratification thereof, subject to seven understandings, as set forth in the accompanying Resolution of Ratification, by a vote of 16 to 3. Senators voting in the affirmative were Senators Pell, Biden, Sarbanes, Dodd, Kerry, Simon, Moynihan, Robb, Wofford, Feingold, Mathews, Lugar, Kassebaum, Brown, Jeffords and Gregg. Senators voting in the negative were Senators Helms, Pressler and Coverdell. At the same meeting the Committee approved by voice vote, a quorum being present, a Sense of the Senate Resolution (S. Res. 239) related to the Convention offered by Senator Brown.

#### X. RESOLUTION OF RATIFICATION

*Resolved, (two-thirds of the Senators present concurring therein),* That the Senate advise and consent to the ratification of the Convention on Biological Diversity, with Annexes, Done at Rio de Janeiro June 5, 1992, and Signed by the United States in New York on June 4, 1993, subject to the following understandings:

(1) The Government of the United States of America understands that Article 3 references a principle to be taken into account in the implementation of the Convention.

(2) It is the understanding of the Government of the United States of America with respect to provisions addressing access to and transfers of technology that:

(a) "fair and most favorable terms" in Article 16(2) means terms that are voluntarily agreed to by all parties to the transaction;

(b) with respect to technology subject to patents and other intellectual property rights, Parties must ensure that any access to or transfer of technology that occurs recognizes and is consistent with the adequate and effective protection of intellectual property rights, and that Article 16(5) does not alter this obligation.

(3) It is the understanding of the Government of the United States of America with respect to provisions addressing the conduct and location of research based on genetic resources that:

(a) Article 15(6) applies only to scientific research conducted by a Party, while Article 19(1) addresses measures taken by Parties regarding scientific research conducted by either public or private entities;



(b) Article 19(1) cannot serve as a basis for any Party to unilaterally change the terms of existing agreements involving public or private U.S. entities.

(4) It is the understanding of the Government of the United States of America that, with respect to Article 20(2), the financial resources provided by developed country Parties are to enable developing country Parties to meet the agreed full incremental costs to them of implementing measures that fulfill the obligations of the Convention and to benefit from its provisions and that are agreed between a developing country Party and the institutional structure referred to in Article 21.

(5) It is the understanding of the Government of the United States of America that, with respect to Article 21(1), the "authority" of the Conference of the Parties with respect to the financial mechanism relates to determining, for the purposes of the Convention, the policy, strategy, program priorities and eligibility criteria relating to the access to and utilization of such resources.

(6) The Government of the United States of America understands that the decision to be taken by the Conference of the Parties under Article 21, Paragraph 1, concerns "the amount of resources needed" by the financial mechanism, and that nothing in Article 20 or 21 authorizes the Conference of the Parties to take decisions concerning the amount, nature, frequency or size of the contributions of the Parties to the institutional structure.

(7) The Government of the United States of America understands that although the provisions of this Convention do not apply to any warship, naval auxiliary, or other vessels or aircraft owned or operated by a State and used, for the time being, only on government non-commercial service, each State shall ensure, by the adoption of appropriate measures not impairing operations or operational capabilities of such vessels or aircraft owned or operated by it, that such vessels or aircraft act in a manner consistent, so far as is reasonable and practicable, with this Convention.

## XI. MINORITY VIEWS OF SENATORS HELMS, PRESSLER, AND COVERDELL

### CONVENTION ON BIOLOGICAL DIVERSITY

The minority's opposition to ratification of the Convention on Biological Diversity is due to the vague and unfinished nature of the treaty. We do not believe that the Senate can responsibly fulfill its duty to advise and consent when so many fundamental matters will be decided only after the treaty has entered into force.

Since the founding of the republic, the Executive Branch has sometimes conflicted with the Legislative Branch, and in particular the Senate, in the matter of treaties. John Quincy Adams' memoirs reveal an early example of this tension:

Mr. Crawford told twice over the story of President Washington's having at an early period of his administration gone to the Senate with a project of a treaty to be negotiated, and been present at their deliberations upon it. They debated it and proposed alterations so that when Washington left the Senate Chamber he said he would be damned if he ever went there again. (Adams, John Quincy. *Memoirs*, v. VI, p. 427.)

Since Washington's presidency, the number of treaties and other international agreements entered into by the United States has expanded dramatically. The President no longer comes to the Senate to discuss treaties he plans to negotiate, but the Constitution's direction on treaty-making remains unchanged:

[The President] shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur. \* \* \* (Article II, Section 2.)

The minority has taken note of an incremental change in the extent to which the Senate is allowed to advise and even consent in any true way on the vast majority of international agreements. Although the number of treaties entered into over the years has remained relatively stable, the number of executive agreements—which do not require Senate approval—has risen dramatically. In the period 1930 to 1939, the United States concluded 132 treaties and 154 executive agreements. In the nine year period from 1980 to 1989, the United States concluded 166 treaties and 3,524 executive agreements.

Perhaps it is not feasible or even desirable for the Senate to have close involvement in this multitude of executive agreements. However, even in the area of international agreement-making where the Senate has a clear constitutional role—to advise and consent on treaties—there is an increasing tendency for the executive

branch to circumvent the Senate. The Convention on Biological Diversity is the latest and most glaring example of this trend.

The product of grueling negotiation at Rio de Janeiro in June 1992, the convention is, at best, a compromise document which leaves contentious but crucial issues undecided. The financing mechanism, the degree to which intellectual property is protected, the definitions of developed and developing states, the voting weights and procedures for member states: all of these and other important matters are left undecided. Their resolution has been put off to the plenary sessions of the Conference of Parties—meetings which will occur only after the treaty enters into force.

The Clinton Administration signed this convention on June 4, 1993 and has sought expeditious ratification by the Senate. Foreign Relations Committee members have been pressured to recommend ratification. In answers to questions regarding the vagueness of the document on matters of fundamental importance, the administration has assured us that it shares our concerns on matters of financing, voting procedures, and so on, and will work to preserve U.S. interests in the negotiations to take place at the Conference of Parties.

Although we appreciate the administration's commitment to preserve U.S. interests, that sentiment does not address the Senate's constitutional responsibility to advise and consent. The Senate's primary involvement with the treaty ends with its recommendation to ratify. The Senate's decision to recommend ratification or not is based solely on the document before it. If that document is silent on matters of fundamental importance, matters that will be decided at a later time, the Senate must make a choice: abdicate its responsibility to examine, advise and consent on the substance and not just the form of a treaty; or delay ratification until such time as those matters have been decided.

The majority of this committee has chosen the former path in the case of this Convention on Biological Diversity. The minority recommended postponing consideration of the treaty until those important particulars had been decided. U.S. participation in the negotiations would still have been assured by virtue of the centrality of U.S. financial participation. Having been outvoted, the minority must voice its concern with what it regards as a significant example of the continuing erosion of the Senate's constitutional authority in treaty matters.

## XII. ANNEX

### STATEMENTS IN SUPPORT OF THE CONVENTION

**AMERICAN SEED TRADE ASSOCIATION, INC.**



April 14, 1994

The Honorable Claiborne Pell  
Chairman  
Senate Committee on Foreign Relations  
Washington, DC 20510

Dear Senator Pell:

I am writing to express the views of the American Seed Trade Association (ASTA) and its members on the United Nations Convention on Biological Diversity. On behalf of the more than 600 members, I am pleased to add our fundamental support for ratification of this important intellectual property rights document, as it has been interpreted by the "interpretation statement" that was added by the United States and signed by President Clinton.

The ASTA, a national trade association representing the American seed industry, supports the basic goal of conservation and sustainable use of biological diversity in the Convention. Further, we acknowledge the importance of biological diversity for the evaluation and maintenance of life systems. For these and other reasons, ASTA member companies are actively engaged in the research necessary to develop new or improved genetic resources in the form of seed varieties. These efforts include the development of improved varieties of wheat, corn, soybeans, alfalfa, and others, all of which benefit American and international agriculture.

ASTA members invest millions of dollars each year in research and development projects that yield improved genetic strain of crop plants with better nutritional aspects and enhanced pest resistance, as well as improved tolerance to varying climatic conditions. These plants and their seeds are sold throughout the United States and the entire world. ASTA members expect to continue to invest heavily in the research of new and improved plant varieties, with the modern methods of biotechnology expected to play an increasing role.

Like other associated organizations, the ASTA was pleased to learn of the President's strong statements regarding intellectual property rights. The ASTA remains committed to strong and meaningful statements and policies affecting intellectual property rights and continues to devote a significant amount of time and effort in advancing such causes. In particular, our own efforts to amend the Plant Variety Protection Act of 1970 (S. 1406 and H.R. 2927) reinforces this strong pursuit for members of the seed industry and the plant breeding community in general.

ASTA is concerned, however, that careful attention should be focused on potential interpretations of the text.

Therefore, as the United States Senate prepares to discuss the merits of the U.N. Convention on Biological Diversity, the ASTA strongly recommends that you and the Committee secure from the Administration commitments that will:

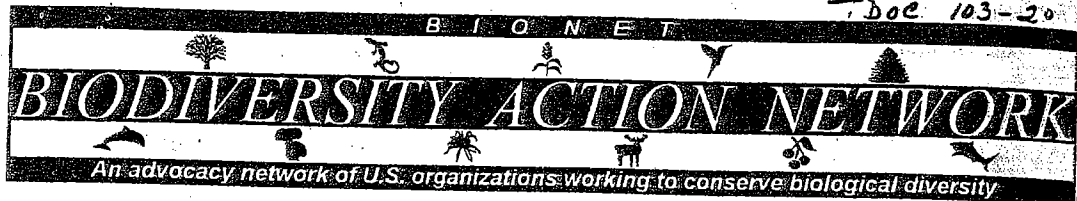
- (1) continue to unconditionally defend intellectual property rights of the Convention;
- (2) oppose any process under the U.N. Convention on Biological Diversity which would seek to regulate products of biotechnology based on an unfounded assumption that such products are intrinsically dangerous to human health and compromise the world's biodiversity; and
- (3) oppose the creation of a system of liability for perceived past wrongs to the genetic base of a participating party.

The ASTA Biotechnology Committee, comprised of member companies with established biotechnology programs, has reviewed the Convention, and in consultation with our Board of Directors, has determined it is of significant interest to the seed industry. In general, the ASTA views this Convention's impact on intellectual property rights as significant as language found in the GATT and NAFTA.

The ASTA would welcome the opportunity to discuss these matters with you and other committee members if necessary.

Sincerely,

DAVID R. LAMBERT  
Executive Vice President



March 25, 1994

**Coordinator**  
Sheldon Cohen

**Interim Steering Committee**

Jan Bowles  
Conservation International  
Barbara Bramble  
National Wildlife Federation  
David Downes  
Center for International  
Environmental Law  
John Fitzgerald  
Defenders of Wildlife  
Katy Moran  
Healing Forest Conservancy  
Gareth Porter  
Environmental and Energy  
Study Institute  
Larry Williams  
Sierra Club  
Dunwood Zaeke  
Center for International  
Environmental Law

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The Jennifer Altman Foundation  
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The John D. and Catherine T.  
MacArthur Foundation  
Weeden Foundation

The Honorable Claiborne Pell  
Chairman, Senate Committee on Foreign Relations  
United States Senate  
Washington, D.C. 20510-6225

Dear Senator Pell:

We, the undersigned, are writing to express our enthusiastic support for the Convention on Biological Diversity, which is on the Committee's docket for this spring. We urge you to expedite the advice and consent process, and to work actively to ensure Senate approval of the Convention.

Prompt advice and consent by the Senate, and speedy ratification by the United States, are high priorities for our organizations. Our groups are among the organizations currently working together through the Biodiversity Action Network (BIONET) on this and other biodiversity issues.

By ratifying this Convention, the United States will demonstrate at the international level the commitment to conserving biodiversity that it has already made in domestic law. Joining the Convention will also bring the United States into a framework for international cooperation on saving the earth's precious biological heritage.

In addition, joining the Convention will allow the United States to attend the first Conference of the Parties, to be held later this year, as a full member of the Convention. Nearly 50 nations have already ratified the Convention, which entered into force as international law on December 29, 1993.

Overall, we are pleased with the administration's positive approach to the Convention, and we look forward to working with the administration on implementing the agreement. While many of us are concerned about the implications of the administration's interpretive statement included in the documents of transmittal, we, the undersigned, all firmly support ratification.

We would be pleased to meet with you or your staff to discuss this further.

Sincerely yours,

424 C Street NE • Washington, DC 20002 • U.S.A.  
Telephone: (202) 547-8902 • Fax: (202) 544-8483 • Email: [bionet@igc.apc.org](mailto:bionet@igc.apc.org)

A Project of the Tides Foundation

National and International Organizations

Diana McMeekin, Acting President  
**AFRICAN WILDLIFE FOUNDATION**

Katy Castagna, President  
**AMERICAN CETACEAN SOCIETY**

Bruce Ward, President  
**AMERICAN HIKING SOCIETY**

Adele Douglass, Director, Washington Office  
**AMERICAN HUMANE SOCIETY**

Andy Paimer, Conservation Director  
**AMERICAN OCEANS CAMPAIGN**

Scott Faber, Director of Flood Plain Programs  
**AMERICAN RIVERS**

William Pace, Director  
**CENTER FOR DEVELOPMENT AND INTERNATIONAL LAW**

Durwood Zaelke, President  
 David Downes, Attorney  
**CENTER FOR INTERNATIONAL ENVIRONMENTAL LAW**

Roger McManus, President  
**CENTER FOR MARINE CONSERVATION**

William Rossiter, President  
**CETACEAN SOCIETY INTERNATIONAL**

Dr. Michael Hirshfield, Senior Science Advisor  
**CHESAPEAKE BAY FOUNDATION**

Ian Bowles, Director, Legislative Programs  
**CONSERVATION INTERNATIONAL**

Howard Kreps, Coordinator  
**CONSORTIUM FOR ACTION TO PROTECT THE EARTH**

John Fitzgerald, General Counsel  
**DEFENDERS OF WILDLIFE**

Scott Hajost, International Counsel  
**ENVIRONMENTAL DEFENSE FUND**

Lynn Davidson, Executive Director  
**ENVIRONMENTAL SOLUTIONS INTERNATIONAL**

Dan Barry  
**ENVIRONMENTAL WORKING GROUP**

Jim Barnes, International Director  
**FRIENDS OF THE EARTH**

Ellen McMahon, National Affairs and Legislation Committee  
**GARDEN CLUB OF AMERICA**

Katy Moran, Executive Director  
**HEALING FOREST CONSERVANCY**

Milton M. Kaufman, President  
**MONITOR INTERNATIONAL**

Steve Parcels, Wetlands Specialist  
**NATIONAL AUDUBON SOCIETY**

Paul Pritchard, President  
**NATIONAL PARKS AND CONSERVATION ASSOCIATION**

Barry Tindall, Director of Public Policy  
**NATIONAL RECREATION AND PARK ASSOCIATION**

Lynn A. Greenwalt, Vice President of International Affairs  
**NATIONAL WILDLIFE FEDERATION**

Liz Barratt-Brown, Senior Staff Attorney  
 International Program  
**NATURAL RESOURCES DEFENSE COUNCIL**

Charles Zerner, Program Director  
 Natural Resources and Rights Program  
**RAINFOREST ALLIANCE**

Carl Ross, Co-Director  
**SAVE AMERICA'S FORESTS**

Carl Pope, Executive Director  
**SIERRA CLUB**

Victor M. Sher, President  
**SIERRA CLUB LEGAL DEFENSE FUND**

Nilo Cayuqueo, Director  
**SOUTH AND MESO AMERICAN INDIAN INFORMATION CENTER**

Jim Owens, Executive Director  
**WESTERN ANCIENT FORESTS CAMPAIGN**

Reed F. Noss, Science Director  
**THE WILDLANDS PROJECT**

Jon Roush, President  
**THE WILDERNESS SOCIETY**

John G. Robinson, Vice President for International Conservation  
**THE WILDLIFE CONSERVATION SOCIETY**

Melody Allen, Executive Director  
**THE XERCES SOCIETY**

Regional and Other Organizations

Claire Holland, President of the Board of Directors  
**ALASKA ENVIRONMENTAL LOBBY**

Mitch Friedman, Executive Director  
**GREATER ECOSYSTEM ALLIANCE**

Glen Spain, Northwest Regional Director  
**INSTITUTE FOR FISHERIES RESOURCES**



Jeanne Klobnak, Public Lands Director  
**JACKSON HOLE ALLIANCE FOR RESPONSIBLE PLANNING**

Frances M. Green, President  
**LAND AND WATER FUND OF THE ROCKIES**

Gerard Bertrand, President  
**MASSACHUSETTS AUDUBON SOCIETY**

Carol Misseldine, Executive Director  
**MICHIGAN ENVIRONMENTAL COUNCIL**

Catherine Johnson, Staff Attorney  
**NATURAL RESOURCES COUNCIL OF MAINE**

Suzanne Dohm, President  
**NEW YORK TURTLE AND TORTOISE SOCIETY**

Jerry J. Black, President  
**OKLAHOMA WILDLIFE FEDERATION**

Andy Kerr, Conservation Director  
**OREGON NATURAL RESOURCES COUNCIL**

Glen Spain, Northwest Regional Director  
**PACIFIC COAST FEDERATION OF FISHERMEN'S ASSOCIATIONS**

Armin Rosencranz, President  
**PACIFIC ENVIRONMENT AND RESOURCE CENTER**

Brian Hill, Director  
**PENNSYLVANIA ENVIRONMENTAL COUNCIL**

Robert T. Dennis, President  
**PIEDMONT ENVIRONMENTAL COUNCIL**

Kate Crockett, Executive Director  
**SOUTHEAST ALASKA CONSERVATION COUNCIL**

Alan D. Jones, Executive Director  
**TENNESSEE ENVIRONMENTAL COUNCIL**

Catherine Tinker, President  
**THE TINKER INSTITUTE ON INTERNATIONAL LAW AND ORGANIZATIONS**

Jane Difley, Executive Director  
**VERMONT NATURAL RESOURCES COUNCIL**

David Grubb, Executive Director  
**WEST VIRGINIA CITIZEN ACTION GROUP**

Norm Steenstra, Director  
**WEST VIRGINIA ENVIRONMENTAL COUNCIL**

Keith Reopell, Associate Director  
**WISCONSIN'S ENVIRONMENTAL DECADE**

William Konstant, Vice President for Conservation  
**ZOOLOGICAL SOCIETY OF PHILADELPHIA**

Scientific Societies

Peter Brussard, President

**SOCIETY FOR CONSERVATION BIOLOGY**

Note: This letter represents the views of the organizations that have signed above, and does not represent the views of all organizations participating in BIONET.

cc: The Honorable Al Gore, Vice President of the United States  
The Honorable Bruce Babbitt, Secretary of the Interior  
The Honorable Timothy Wirth, Under Secretary for Global Affairs, Department of State  
Ms. Carol Browner, Administrator, Environmental Protection Agency  
Ms. Katie McGinty, Director, Office of Environmental Policy  
Mr. Rafe Pomerance, Deputy Assistant Secretary for Environment, Health, and Natural Resources, Department of State  
Mr. David Colson, Deputy Assistant Secretary for Oceans and Fisheries Affairs, Department of State  
Mr. Donald Baker, Under Secretary for Oceans and Atmosphere, National Oceanographic and Atmospheric Administration  
Ms. Eileen Claussen, Director, Environmental Affairs, National Security Council  
Dr. Robert Watson, Assistant Director for Environment, Office of Science and Technology Policy

P. Roy Vagelos, M.D.  
Chairman and Chief Executive Officer

Betty A. For Treaty File

103-20

Merck & Co., Inc.  
One Merck Drive  
P.O. Box 100  
Whitehouse Station NJ 08889-0100

March 23, 1994



Senator Claiborne Pell  
Senate Russell Office Building  
Room 335  
Washington, DC 20510-3901

Dear Senator Pell:

I am writing to you as Chairman and Chief Executive Officer of Merck & Co., Inc. to urge your support of a speedy ratification of the Convention on Biological Diversity. Senate approval of the Convention would send a strong message to the world community that the United States views the conservation and sustainable use of the Earth's biological resources as a critical component of future growth and development.

For Merck, the world's largest research-intensive pharmaceutical products company, the loss of biodiversity could literally mean lost opportunities for researching the mechanisms of disease and discovering important new medicines. Plants, insects, microorganisms and marine organisms have yielded some of the greatest pharmaceutical breakthroughs of this century, including Merck's Ivermectin, an incredibly effective and safe anti-parasitic that prevents the tropical disease Onchocerciasis, or river blindness. The Company's ongoing agreement with the Instituto Nacional de Biodiversidad (INBio) in Costa Rica embodies the principles of resource conservation, sustainable development, technology exchange and protection of strong private property rights for which we believe the Convention would provide an international framework.

As you may know, early on in the discussions over U.S. ratification of the Convention, the pharmaceutical and biotechnology industries raised some serious concerns about the potential for adverse interpretations of certain key Articles that addressed intellectual property rights. Last winter, Merck facilitated the creation of a working group of six representatives of industry, environmental and policy research organizations with interests in biodiversity and biotechnology to address these concerns. The State Department's Letter of Submittal to the Senate incorporates the Interpretative Statement our working group sent to the President and clarifies all ambiguities in a manner that greatly enhances the potential for private sector participation under the Convention.

It is for these reasons that I support ratification of the Biodiversity Convention at the earliest possible date. If you need additional assistance to resolve any outstanding substantive concerns, please contact me directly or call Isabelle Claxton in our Washington office at (202) 638-4170.

Sincerely,

*P. Roy Vagelos*



BIOTECHNOLOGY  
INDUSTRY  
ORGANIZATION

March 9, 1994

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The Honorable Claiborne Pell  
United States Senate  
335 Russell Senate Office Building  
Washington, DC 20510

Re: Convention on Biological Diversity

Dear Chairman Pell:

In his letter of November 19, 1993, transmitting the Convention on Biological Diversity to the Senate, President Clinton specifically noted that adequate and effective protection of intellectual property rights is an important economic incentive which not only encourages the development of innovative technologies, but which improves all parties' ability to conserve and sustainably use biological resources. To this we add that the conservation and preservation of biological materials is an important societal goal. These resources are necessary to sustain our biosphere and offer tremendous opportunities for the development of new products to address human and animal health, nutrition, and other societal needs for us and future generations.

The biotechnology industry believes that the key element of a fair and balanced Biodiversity Convention is a recognition of the value of the products of nature, as well as the contributions made by persons and institutions who modify those products into useful articles of commerce. The value of biological materials is enhanced when intellectual property rights are created, protected and enforced by all nations. Without adequate and effective intellectual property protection there will be less incentive to make contributions to developing nations whose territory encompasses much of the worlds' biological material.

The Biodiversity Convention as written is an admirable set of policy goals which have at their core the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of benefits arising out of the utilization of genetic resources. Unfortunately, we feel these enumerated goals

1625 K STREET, N.W., SUITE 1100  
WASHINGTON, D.C. 20006-1604

202-857-0244  
FAX 202-857-0237

The Honorable Claiborne Pell  
 March 9, 1994  
 Page Two

may be difficult to reach because the technology transfer provisions of the treaty are vague and subject to undesirable interpretations. We believe that the submission of an interpretive statement by the United States with the instruments of ratification is an important step towards ensuring that the Treaty is implemented in a manner that furthers the mutual interest of all nations which have become signatory. The additional submission by the Administration of its views on the Treaty to the Senate further clarifies how the United States will implement the Treaty.

From the point of view of the biotechnology industry there are two important questions which remain to be answered by the Senate during the hearing process. We submit that for the United States interpretive statement to have real world significance, it must be accompanied by an expressed willingness to withdraw from the convention in the event the contracting parties reach interpretations on the issues of intellectual property or governance which are counter to the national interests of the United States. While we recognize that the Convention already sets forth in its text the withdraw option, what is missing from the Administration's submission is a set of conditions under which that right would be exercised. Intellectual property is the very life blood of biotechnology and like other intellectual property reliant industries we need to be assured that the United States will withdraw from the convention if:

\* It is interpreted in a manner fundamentally inconsistent with the minimum level of intellectual property protection contained in the recent GATT round (this means the standards and not the transition rules attached thereto); or

\* It is used to deprive any United States persons of a recognized legal right to property.

We urge the Senate to obtain a second assurance, i.e., that the United States will not seek, and will in fact oppose, the development of a biosafety protocol under the convention. We believe that creation of any such entity would not result in scientific oversight to further ensure human safety, but rather in promotion of a political agenda serving a purpose other than science. Furthermore we believe the Administration should publicly commit to:

The Honorable Claiborne Pell  
March 9, 1994  
Page Three

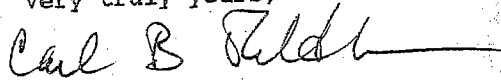
\* The inclusion of broadly representative industry participation in any and all international negotiations;

\* insistence on a factual, science based approach to regulation as the essence of any national regulatory scheme for biotechnology processes and products; and

\* a clear statement that national laws regulating biotechnology should be based on the products and not merely on the fact that the process of biotechnology was used in their development or creation.

BIO is trade association representing more than 500 companies, academic institutions, state biotechnology centers and other organizations involved in the research and development of health care, agricultural and environmental biotechnology products. We respectfully submit these comments on behalf of our membership and want to indicate our willingness to appear as a witness at any future scheduled hearing.

Very truly yours,



Carl B. Feldbaum  
President

CBF/sbt

1212 Avenue of the Americas New York, New York 10036-1689  
 Telephone: 212.354.4480 Telex: 820864 FAX: 212.575.0327



**United States Council for  
 International Business**

ABRAHAM KATZ, President

Serving American Business as U.S. Affiliate of:

The International Chamber of Commerce  
 The International Organisation of Employers  
 The Business and Industry Advisory Committee to the OECD  
 The ATA Carnet System

April 11, 1994

The Honorable Claiborne Pell  
 Chairman, Committee on Foreign Relations  
 United States Senate  
 446 Dirksen Senate Office Building  
 Washington, D.C. 20510

Dear Mr. Chairman,

I am writing to convey the views of the United States Council for International Business (USCIB) on the United Nations Framework Convention on Biological Diversity. In this regard we are pleased to endorse recommendations already conveyed to you by the Pharmaceutical Manufacturers Association and BIO, both of which are our members, emphasizing the importance of strong intellectual property right protection and objecting to *a priori* regulation of biotechnology under the treaty.

The U.S. Council fully supports the goal of protecting the world's biodiversity. Our membership includes companies that have been leaders in studying and preserving biodiversity--most recently through innovative partnerships with appropriate institutions within developing countries. In many developing countries, U.S. companies play a crucial role in furthering technology cooperation related to biodiversity protection and biotechnology. In addition, U.S. companies are a source of foreign investment which in turn brings funds to relieve poverty and lessen pressure on biological resources in those countries.

The U.S. Council was pleased to note both in President Clinton's November 19, 1993 letter of transmittal of the Convention, and in the Department of State's November 16, 1993 letter of submittal of the Convention to the President, strong statements of support for adequate and effective protection of intellectual property rights.

It should be remembered that the interpretive statement of the United States is only necessary because the Convention combines unduly broad, vague and ambiguous provisions which, U.S. industry fears, may be employed by other countries to the detriment of United States interests, e.g. to deny or undercut intellectual property protection or to impose unreasonable technology transfer or financial requirements.

The United States should be a constructive force in advancing its stated positions on the treaty in all appropriate fora. In addition, the United States should continue to strive to build support for its positions among OECD countries and to ensure that the effectiveness of those positions are not compromised by the actions of other countries. In particular, the U.S. Government should be insistent of intellectual property right protection and the development of biotechnology for society's greater benefit.

Page 2  
 Amb. Katz to Sen. Pell  
 April 11, 1994

Hence, as the Senate prepares to provide its advice and consent to ratification of the U.N. Convention on Biological Diversity, we strongly recommend that you and the Committee obtain appropriate commitments from the Administration that it will:

1) vigorously defend intellectual property rights within the terms of the Convention, and seek ways to build incentives for protection of those rights into future initiatives and instruments developed under the Convention, and in other fora, such as the Global Environmental Facility (GEF);

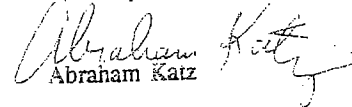
2) oppose any process under the U.N. Framework Convention on Biological Diversity which seeks to regulate products of biotechnology based on the assumption that all such products are intrinsically dangerous to human health and the world's biodiversity. There is no need for a biosafety protocol. In any event, biosafety should be regulated on the basis of science, not fear.

The U.S. Council for International Business is the U.S. affiliate of the International Chamber of Commerce (ICC), the Business and Industry Advisory Committee (BIAC) to the OECD, and the International Organisation of Employers (IOE). The Council formulates policy positions on issues affecting the increasingly globally-oriented U.S. business community through committees and other working bodies drawn from its membership of some 300 major multinational corporations, service companies, law firms and business associations. It advocates these positions to the U.S. Government and such international organizations as the OECD, the GATT, ILO, UNEP and other bodies of the U.N. system with which its international affiliates have official consultative status on behalf of world business.

Our Environment Committee is the leader among American business organizations on international environmental policy and has been involved on behalf of American business in every phase of UNCED, including its follow-up within the United Nations Commission on Sustainable Development, and the ongoing negotiations of the United Nations Biodiversity Convention. Our Intellectual Property Committee has played a major role in preparing business positions on this important aspect of the GATT negotiations as well as on other negotiations such as the U.S.-Canadian Free Trade Area and NAFTA.

The U.S. Council is ready to discuss these matters further with you, other members of the Committee, or with appropriate members of your staff.

Sincerely,

  
 Abraham Katz

cc: Members of the Senate Foreign Relations Committee  
 The Hon. Ronald Brown  
 The Hon. Mickey Kantor  
 The Hon. Timothy Wirth



# The Ecological Society of America

RECEIVED

JERRY F. FRANKLIN, President  
 University of Washington  
 College of Forest Resources, AR-10  
 Seattle, WA 98195  
 (206) 543-2138  
 (206) 685-3091 Fax

1994 APR 14 PM 5:26

April 8, 1994

SENATE COMMITTEE ON  
FOREIGN RELATIONS

The Honorable Claiborne Pell  
 Chairman, Senate Committee on Foreign Relations  
 United States Senate  
 Washington, DC 20510-6225

Dear Senator Pell:

The Ecological Society of America is an association representing over 7,000 professional ecologists who are involved in scientific research, education, and management of our natural resources. Our members are deeply committed to helping in development of solutions to environmental issues confronting our society and humankind.

I am writing you as the President of the Ecological Society of America to express our enthusiastic support for the Convention on Biological Diversity which is on the Committee docket for this spring. Our organization urges you to expedite the advice and consent process, and to work actively to ensure Senate approval of the Convention. Speedy ratification of this Convention is a very high priority for our members, as it is for the vast majority of ecologists and environmental scientists.

By ratifying this Convention, the United States makes clear that it has the same level of commitment to conserving biological diversity at the global level that it does domestically. Joining the Convention also brings the United States into a framework for international cooperation on saving the world's priceless biological heritage.

Joining the Convention will also allow the United States to attend the first Conference of the Parties, to be held later this year, as a full member of the Convention. Nearly 40 nations have already ratified the Convention, which entered into force as international law in December 1993.

We are pleased with the administration's positive approach to the Convention and are anxious, as a society, to assist the administration and Congress in any way possible in implementation of the agreement.

The Ecological Society of America sees this global agreement as an absolutely critical contribution to development of a sustainable human society. The biotic components of ecosystem management are represented by biological diversity. This Convention will help maintain the options for future human generations.

Our society would be pleased to meet with you or your staff to discuss this topic further. I am sending this copy of the letter with only my signature to ensure that it arrives in time for your deliberations. However, it will be followed by another that lists the signatures of all of our executive committee to suggest to you the level of support for this Convention in our organization.

Sincerely yours,

*Jerry F. Franklin*

Jerry F Franklin  
President

c: Executive Committee, Ecological Society of America  
Keller, Janetos  
Gore, Babbitt, Wirth, Browner, Pomerance, Colson, Baker, Claussen,  
McGinty, Watson



103-21

A M E R I C A N I N S T I T U T E O F B I O L O G I C A L S C I E N C E S

Dr. Clifford J. Gabriel  
Executive Director

April 7, 1994

The Honorable Claiborne Pell  
Chairman, Senate Committee on Foreign Relations  
United States Senate  
Washington, DC 20510-6225

Dear Chairman Pell:

The American Institute of Biological Sciences (AIBS), a federation of scientific societies, museums, research laboratories and field stations representing more than 80,000 professional biologists, supports the concept of the Convention on Biological Diversity. Since biological considerations are vital to proper implementation of a protocol of this type, AIBS would be pleased to assist the committee with the views of prominent biologists who can provide scientific testimony on the biological implications of this Convention.

The life sciences community, ranging from ecologists and conservation biologists to the agricultural and biotechnological industries, is concerned at the continuing losses of biological diversity. Biodiversity losses are increasing around the world, but are drastically accelerating in tropical countries, which have the richest array of biological resources. As a comprehensive agreement, the Convention addresses this concern, and will be crucial in setting worldwide priorities on the conservation of critical species and ecosystems.

In addition, the Convention allows for appropriate access to the genetic resources that are crucial to a large part of the pharmaceutical and biotechnology industries, while allowing for sustainable development of these resources. Since protection of intellectual property rights is vital to U.S. industry, Senate ratification of the Convention is necessary to allow the United States to attend the first Conference of the Parties as a full member. As a full member, the U.S. delegation will be in a strong negotiating position.

Again, AIBS would be pleased to assist the committee with scientific expertise on the effects of this Convention.

Sincerely,

Clifford J. Gabriel

WOMAN'S NATIONAL DEMOCRATIC CLUB  
1526 New Hampshire Avenue, N.W.  
Washington, D.C. 20036

(202)232-7363 ♦ fax (202)986-2791

April 20, 1994

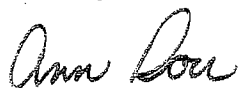
The Honorable Claiborne Pell  
United States Senate  
Washington, D.C. 20510

Dear Senator Pell:

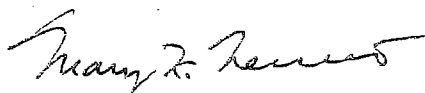
President Clinton has now signed the Biodiversity Treaty prepared at the Rio Conference last year which ex-President Bush refused to sign.

The members of the Woman's National Democratic Club strongly urge the Senate to act at once to authorize the treaty so the United States can participate in its implementation.

Sincerely,



Ann Dorr, Chair  
Energy and Environment Force



Mary Nenno  
Vice President for Political Affairs



## ANIMAL PROTECTION INSTITUTE

P.O. Box 22505, Sacramento, CA 95822 • 2831 Fruitridge Road, Sacramento, CA 95820  
1-800-348-PETS • (916) 731-5521 • FAX (916) 731-4467

April 22, 1994

The Honorable Claiborne Pell  
Chairman, Senate Committee on Foreign Relations  
United States Senate  
Washington, DC 20510-6225

Dear Mr. Chairman:

On behalf of our national membership of 150,000, I wish to convey to you our support for the Convention on Biological Diversity, which awaits ratification by the United States.

Forty nations have already ratified the Convention, thus enacting it into the body of international law. We agree with President Clinton that this Convention will play a major role in stemming the loss of the Earth's species, their habitats, and ecosystems.

We urge you to do all within your power to secure unanimous support by the U.S. Senate for this vital international law. We believe ratification expresses a long overdue national commitment to what we perceive as an overwhelming public mandate for the conservation of biological diversity and the sustainable use of its components expressed in our own federal laws enacted in the 1960s and 1970s.

We are particularly pleased with the provisions of Article 10, which require integrating sustainable use into national decision-making, as well as Article 13's provision to promote public education and awareness related to conservation of biological diversity and the sustainable use of its components.

Thank you for your efforts in this regard. We hope for a speedy ratification.

FOR THE ANIMAL PROTECTION INSTITUTE

In reverence for all life,

David J. Berkman  
Executive Director

# The Ecological Society of America

RECEIVED

JERRY F. FRANKLIN, President  
 University of Washington  
 College of Forest Resources, AR-10  
 Seattle, WA 98195  
 (206) 543-2138  
 (206) 685-3091 Fax

1994 APR 22 AM 11:51

April 11, 1994

SENATE COMMITTEE ON  
FOREIGN RELATIONS

The Honorable Claiborne Pell  
 Chairman, Senate Committee on Foreign Relations  
 United States Senate  
 Washington, DC 20510-6225

Dear Senator Pell:

The Ecological Society of America is an association representing over 7,000 professional ecologists who are involved in scientific research, education, and management of our natural resources. Our members are deeply committed to helping in development of solutions to environmental issues confronting our society and humankind.

We, the Executive Committee of the Ecological Society of America, are writing to you to express our enthusiastic support for the Convention on Biological Diversity which is on the Committee docket for this spring. Our organization urges you to expedite the advice and consent process, and to work actively to ensure Senate approval of the Convention. Speedy ratification of this Convention is a very high priority for our members, as it is for the vast majority of ecologists and environmental scientists.

By ratifying this Convention, the United States makes clear that it has the same level of commitment to conserving biological diversity at the global level that it does domestically. Joining the Convention also brings the United States into a framework for international cooperation on saving the world's priceless biological heritage.

Joining the Convention will also allow the United States to attend the first Conference of the Parties, to be held later this year, as a full member of the Convention. Nearly 40 nations have already ratified the Convention, which entered into force as international law in December 1993.

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The Ecological Society of America sees this global agreement as an absolutely critical contribution to development of a sustainable human society. The biotic components of ecosystem management are represented by biological diversity. This Convention will help maintain the options for future human generations.

Our society would be pleased to meet with you or your staff to discuss this topic further. Last week I sent a copy of this letter with only my signature to ensure that it arrives in time for your deliberations. This copy is signed by all of our executive committee to suggest to you the level of support for this Convention in our organization.

Sincerely yours,

*Jerry F. Franklin*

Jerry F. Franklin  
President

*Judy L. Meyer*

Judy L. Meyer  
First President-Elect

*Gordon H. Orians*

Gordon H. Orians  
Second President-Elect

*Jane Lubchenco*

Jane Lubchenco  
Past President

*Patrice A. Morrow*

Patrice A. Morrow  
Vice President

*Robert K. Peet*

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*L. F. Pitelka*

Louis F. Pitelka  
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Keller, Janetos  
Gore, Babbitt, Wirth, Browner, Pomerance, Colson, Baker, Claussen,  
McGinty, Watson



INSTITUTE  
*for*  
AGRICULTURE  
*and*  
TRADE POLICY

April 8, 1994

Senator Claiborne Pell  
335 Russell Senate Bldg.  
Washington, DC 20510-3901  
Fax: (202) 224-4680

Dear Senator Pell:

The Institute for Agriculture and Trade encourages you to support the U.S. ratification of the Biodiversity Convention. At the same time, we would like to draw your attention to our disagreement with the interpretative statement. The interpretative statement threatens areas of biotechnology and intellectual property rights and undermines benefits and rights of the public. To summarize, we would like you to support the ratification but not the interpretative statement provided by the Clinton Administration. For a better understanding of our view a copy of our position statement is enclosed.

Sincerely,

Mark Ritchie  
Executive Director  
Institute for Agriculture and Trade Policy





INSTITUTE  
for  
AGRICULTURE  
and  
TRADE POLICY

30 March 1994  
Contact: Kristin Dawkins.

### STATEMENT ON U.S. RATIFICATION OF THE BIODIVERSITY CONVENTION

After considerable research and consultation with our board of directors and colleagues in the United States and abroad, the Institute has decided:

- (1) to support Senate ratification of the Biodiversity Convention;
- (2) to further investigate the relationship between the Biodiversity Convention and the proposed Agreement on Trade-Related Aspects of Intellectual Property Rights as negotiated during the Uruguay Round of the GATT;
- (3) to examine other intellectual property rights regimes including those of the World Intellectual Property Organization, the United Nations Food and Agriculture Organization and national legal regimes; and
- (4) to oppose the Clinton Administration's interpretation of Articles 3 and 16 in the Biodiversity Convention, as expressed in letters submitted with the ratification papers to the Senate. If terms stated in these letters are accepted by the Senate and forwarded to the United Nations with the U.S. documents of ratification, the United States government will have unilaterally expressed its contempt for the following matters of international law and cooperation:
  - States' "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." (The Charter of the United Nations, Principle 21 of the 1972 Stockholm Declaration on the Human Environment, Principle 2 of the Rio Declaration of the Earth Summit, and Article 3 of the Biodiversity Convention.) The Clinton Administration fails to recognize this right, stating that "the United States of America understands that Article 3 references a principle to be taken into account in the implementation of the Convention."
  - the obligation "to ensure that [patents and other intellectual property] rights are supportive of and do not run counter to [the Convention's] objectives" (Article 16(5) of the Biodiversity Convention.) The Clinton Administration elevates intellectual property protection over the Convention's objectives, stating that "any access to or transfer of technology that occurs recognizes and is consistent with adequate and effective protection of intellectual property rights, and that Article 16(5) does not alter this obligation."
  - "the protection of plant varieties either by patents or by an effective *sui generis* system or by any combination thereof." (Article 27 of the December 1993 Uruguay Round Agreement on Trade-Related Aspects of Intellectual Property Rights.) The Clinton Administration narrows the range of choice indicated by the reference to a *sui generis* system -- meaning "of their own kind -- by stating that, "The current system of U.S. laws provide an effective level of protection..." and that, "In particular, the Convention does not provide a basis for the use of compulsory licensing laws to compel private companies to transfer technology."

Generally, the Institute opposes the apparent intent of the Clinton Administration to privatize intellectual property by extending the U.S. system of corporate patents throughout the world. The Institute seeks to cooperate with others interested in corporate responsibilities and the rights of indigenous peoples and other nations.

1313 Fifth Street S.E. • Suite 303 • Minneapolis, Minnesota 55414-1546 • 612-379-5980  
Fax 612-379-5982 • (E-Mail) [iatp@ice.apc.org](mailto:iatp@ice.apc.org)

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P. Roy Vagelos, M.D.  
Chairman and Chief Executive Officer

Merck & Co., Inc.  
One Merck Drive  
P.O. Box 100  
Whitehouse Station NJ 08889-0100

March 23, 1994



Senator Claiborne Pell  
Senate Russell Office Building  
Room 335  
Washington, DC 20510-3901

Dear Senator Pell:

I am writing to you as Chairman and Chief Executive Officer of Merck & Co., Inc. to urge your support of a speedy ratification of the Convention on Biological Diversity. Senate approval of the Convention would send a strong message to the world community that the United States views the conservation and sustainable use of the Earth's biological resources as a critical component of future growth and development.

For Merck, the world's largest research-intensive pharmaceutical products company, the loss of biodiversity could literally mean lost opportunities for researching the mechanisms of disease and discovering important new medicines. Plants, insects, microorganisms and marine organisms have yielded some of the greatest pharmaceutical breakthroughs of this century, including Merck's Ivermectin, an incredibly effective and safe anti-parasitic that prevents the tropical disease Onchocerciasis, or river blindness. The Company's ongoing agreement with the Instituto Nacional de Biodiversidad (INBio) in Costa Rica embodies the principles of resource conservation, sustainable development, technology exchange and protection of strong private property rights for which we believe the Convention would provide an international framework.

As you may know, early on in the discussions over U.S. ratification of the Convention, the pharmaceutical and biotechnology industries raised some serious concerns about the potential for adverse interpretations of certain key Articles that addressed intellectual property rights. Last winter, Merck facilitated the creation of a working group of six representatives of industry, environmental and policy research organizations with interests in biodiversity and biotechnology to address these concerns. The State Department's Letter of Submittal to the Senate incorporates the Interpretative Statement our working group sent to the President and clarifies all ambiguities in a manner that greatly enhances the potential for private sector participation under the Convention.

It is for these reasons that I support ratification of the Biodiversity Convention at the earliest possible date. If you need additional assistance to resolve any outstanding substantive concerns, please contact me directly or call Isabelle Claxton in our Washington office at (202) 638-4170.

Sincerely,



BIOTECHNOLOGY  
INDUSTRY  
ORGANIZATION

June 21, 1994

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The Honorable Claiborne Pell  
Chairman, Senate Foreign Relations Committee  
Room 446 Dirksen Senate Office Building  
Washington, D.C. 20510

Dear Mr. Chairman:

Thank you for the opportunity to testify on behalf of BIO, the Biotechnology Industry Organization, at the Senate hearing, April 12, 1994, concerning U.S. ratification of the Convention on Biological Diversity. As you are aware, BIO, which is the trade association that represents more than 500 companies, academic institutions, state biotechnology centers and other associations involved in the research and development of health care, agricultural and environmental biotechnology products strongly supports speedy Senate ratification of the Convention.

We have received your follow-up question to be submitted for the record in which you ask, "What would be the impact if the U.S. were to decide not to ratify the Convention, or if no decision has been reached before the deadline for countries to participate in the first Conference of Parties?"

Preliminary meetings of signatory parties are already taking place leading up to the first Conference of Parties scheduled for November 28 - December 9, 1994 in Geneva, Switzerland. We believe it is essential that the U.S. position on the protection of intellectual property, the rights of parties under existing contracts and the undesirability of creating a formal biosafety protocol be appropriately represented at the Geneva Meeting. The position of our government will be best put forward by having official representatives at the conference table. It would be unconscionable for the U.S. to stand aside while other nations decide matters of importance to our economic future.

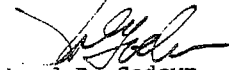
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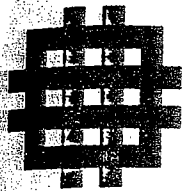
The Honorable Claiborne Pell  
June 21, 1994  
Page 2

We are very appreciative of your willingness to consider these views.

Very truly yours,

  
Richard D. Godown  
Senior Vice President

RDG/sbt



WORLD RESOURCES INSTITUTE

1709 New York Avenue, N.W., Washington, D.C. 20006, Telephone: 202-638-6300  
 Facsimile: 202-638-0036 Telex: 64414 WRIWASH Direct Dial: (202) 662-

May 7, 1994

Steve Poiansky  
 Senate Committee on Foreign Relations  
 United States Senate  
 Dirksen Senate Office Building  
 Washington, D.C. 20510-6225

Dear Mr. Poiansky:

I am submitting the following in response to your request for further elaboration on two issues related to my testimony to the Senate Foreign Relations Committee on April 12 on the Convention on Biological Diversity.

1. **What would be the impact if the U.S. were to decide not to ratify the Convention, or if no decision had been reached before the deadline for countries to participate in the first Conference of Parties (COP)?**

Failure of the U.S. to ratify the Convention in time to participate in the first Conference of Parties would have the following consequences.

First, it would mean that the U.S. would not be able to influence the important decisions regarding Convention procedures that will be agreed to by consensus at that meeting. Thus, the U.S. would not be in a position to ensure that the procedures adopted result in a strong and effective Convention, or to ensure that U.S. interests are protected.

Second, the first meeting will be instrumental in setting the course for the implementation of the Convention. The COP will establish priorities for the first actions that will be taken under the Convention, establish relationships with the Scientific and Technical Advisory Committee, and so forth. It is in the U.S. interest to help set these priorities for early actions of the COP.

Third, the absence of the United States would be a major blow to the momentum behind the Convention. Already, countries are implementing their commitments under the Convention. For example, Canada, Chile, Norway, Indonesia, Netherlands, Poland, and the U.K. have already begun to develop the

required biodiversity strategies detailing how they will meet the Convention's objectives. If the U.S. is not present, countries will begin to question the importance of the Convention and may hold back on these essential actions.

Fourth, the negative consequences would 'spill-over' beyond this agreement and undermine U.S. positions and credibility on a variety of other international environment and development issues, including Agenda 21 follow-up, the Commission on Sustainable Development, and the U.S. position in the U.N. Conference on Population and Development.

Fifth, failure to ratify the convention will eventually cause other countries to raise barriers to U.S. access to their genetic resources. The initial U.S. decision not to sign the convention in 1992 led some countries to revoke collecting permits. Barriers to trade in genetic resources and possibly to scientific research are likely to be created if the U.S. returns to that initial stance.

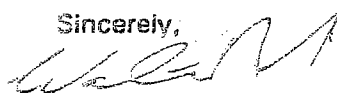
Clearly, several of these issues would be less significant if the U.S. did ratify the Convention but missed the deadline for participating in the first meeting. Nevertheless, the first two concerns alone -- regarding determination of rules of procedure and establishment of initial Convention priorities -- are reason enough to ensure that U.S. is at the table.

2. **Should the U.S. specify conditions under which we would withdraw from the Convention?**

No. Specification of conditions under which the U.S. would withdraw from the Convention would seriously undermine the ability of the U.S. to seek negotiated resolutions to problems that may arise under the Convention. In any conceivable situation, it would be far better for the U.S. to pursue negotiation or mediation of the dispute as provided under Article 27, or to engage in the dispute resolution process identified in that Article. Only after a failure to resolve the situation should any party consider withdrawal. This opportunity to negotiate solutions and thereby avoid withdrawal would be lost if the U.S. specifies conditions in advance.

Please let me know if you have any further questions.

Sincerely,



Walter V. Reid  
Vice President for Program

