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CONFERENCE OF THE PARTIES TO THE
CONVENTION ON BIOLOGICAL DIVERSITY
Sixth meeting
The Hague, 7-19 April 2002
Item 17.5 of the provisional agenda*

LIABILITY AND REDRESS (ARTICLE 14, PARAGRAPH 2)

Update of synthesis report of submissions from Governments and international organizations

Note by the Executive Secretary

INTRODUCTION

1. At its fifth meeting, the Conference of the Parties, by decision V/18, decided to consider at its sixth meeting a process for reviewing paragraph 2 of Article 14, including the establishment of an ad hoc technical expert group, taking into account consideration of these issues within the framework of the Cartagena Protocol on Biosafety, and the outcome of the workshop referred to in paragraph 8 of the decision. In paragraph 8, the Conference of the Parties welcomed the offer of the Government of France to organize an inter-sessional workshop on liability and redress in the context of the Convention.

2. The Conference of the Parties, by the same decision, also renewed the call it had made, through its decision IV/10 C, to Parties, Governments and relevant international organizations to submit information to the Executive Secretary on national, international and regional measures and agreements on liability and redress applicable to biological diversity, including the nature, scope and coverage of such provisions, and information on experiences in their implementation, as well as information regarding access by foreign citizens to national courts potentially applicable to or in cases involving transboundary harm.

3. The Conference of the Parties further requested the Executive Secretary to update the synthesis report submitted to the Conference of the Parties (UNEP/CBD/COP/5/16) to include information contained in further submissions by Parties, Governments and relevant international organizations, taking into account other relevant information, including in particular, information on the work of the International Law Commission and on the development and application of liability regimes under multilateral instruments, including the Antarctic Treaty, the Basel Convention on the Control of

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Transboundary Movements of Hazardous Wastes and Their Disposal, and the Cartagena Protocol on Biosafety, for the consideration of the Conference of the Parties at its sixth meeting.

4. The Executive Secretary has prepared the present note in response to this request with a view to assisting the Conference of the Parties in its consideration of a process for reviewing paragraph 2 of Article 14 of the Convention. Section I contains a summary of additional submissions received by the Executive Secretary. Section II reviews developments under the Convention process since the fifth meeting of the Conference of the Parties. Section III provides information regarding developments in international law since the preparation of note by the Executive Secretary reviewing relevant international legal instruments dealing with liability and redress for transboundary harm (UNEP/CBD/WS-L&R/2), prepared for the Workshop on Liability and Redress in the Context of the Convention on Biological Diversity, which took place in Paris in June 2001. Section IV presents a recommendation on the issue for the consideration of the Conference of the Parties.

I. SUMMARY OF SUBMISSIONS RECEIVED BY THE EXECUTIVE SECRETARY

5. By a letter dated 28 August 2000, the Executive Secretary, in addition to transmitting decision V/18 of the Conference of the Parties, specifically invited Parties, Governments and relevant international organizations to provide the necessary information on this issue. As of January 2002, the Secretariat had received additional submissions from Argentina, Canada, the Commission of the European Communities, Estonia, France, Latvia, Lithuania, Norway, Poland, Sweden, Switzerland, and the United Kingdom. An analysis of these submissions reveals that the national legal regimes in most of these countries address the issue of liability and redress in the context of environmental damage in general. Except for the proposal under the Commission of the European Communities, there is no specific focus on damage to biological diversity per se. Moreover, the regimes do not seem to address the issue of liability and redress for transboundary environmental harm. The information provided addresses issues of internal environmental impacts, which are excluded from the scope of paragraph 2 of Article 14. However, the information on how Parties address the issue internally could be very useful in the development of a liability and redress regime in the transboundary context since the same principles could be applied *mutatis mutandis*. The contributions of France and Switzerland also contain assessments of the experience gained in the implementation of their respective regimes as called for by decision IV/10 C.

6. With regard to the contents of the individual submissions, *Argentina* reported that existing legislation does not contain any provisions relating to damage to biological diversity. The 1994 National Constitution specifically enshrined the protection of biological diversity and incorporated the concept of reparation of environmental damage in general terms (Article 41). The Civil Code provides generally that any act or omission causing damage entails the obligation of reparation. The Penal Code does not specify any environmental offences. There has been no litigation in Argentina concerning damage to biological diversity, although cases of voluntary compensation by the private sector have been recorded. Existing legislation does not draw any distinction between citizens and foreign nationals with regard to access to justice. Foreign nationals have the same rights as citizens in this respect.

7. In *Canada*, the issue of liability and redress for environmental damage is dealt with in the common law regime, the Quebec Civil Code and statute law. Under the common law regime, legal actions can be instituted for trespass, private nuisance, public nuisance, negligence and strict liability in order to secure remedies for damage that might have an environmental dimension. Similar action can be instituted under the Civil Code of Quebec with respect to damage arising from the release of contaminants into the air, water or soil. Statute law has generally broadened the range of remedies available. The primary objective has been to provide the Government with effective mechanisms for the recovery of

environmental clean-up and rehabilitation costs. Nevertheless, a number of the statutes create more general rights to obtain damages or injunctive relief for the violation of statutory provisions.

8. Federal, provincial and territorial jurisdictions in Canada have general environmental legislation addressing a broad range of environmental concerns, including air, water, toxics, and hazardous wastes. Such legislation, though not focused on biological diversity, contain a broad enough definition of the term "environment" to include biodiversity. General environmental legislation, including federal fisheries legislation, contains provisions that empower the Crown to recover costs incurred by the Government in environmental clean-up, mitigation and restoration measures. In addition, the legislation may also provide for private civil actions for injunctive relief for persons suffering loss or damage resulting from a violation of relevant statutory provisions. In certain instances, statutes contain provisions empowering private individuals to institute civil action to protect the environment even in cases where such individuals have not suffered any personal damage. Biodiversity-related legislation incorporates two categories of remedies regarding harm to elements of biological diversity, such as wildlife. First, the Government has a right of action to recover costs of restoration against a person who has destroyed a wildlife habitat in a wildlife management area or for compensation for the loss of the habitat if restoration is not feasible. Secondly, the courts have the discretion, upon conviction, to impose fines or services in kind to be applied directly in environmental conservation. It should be noted, however, that many of the statutory provisions addressing liability and redress for environmental damage are fairly recent and, consequently, little experience has been recorded regarding their practical application.

9. Access to Canadian courts is not usually affected by the residency status of the plaintiff, although the scope of a particular statute might be restricted to protection of the environment in a specific Canadian jurisdiction. Some jurisdictions may have procedural rules that could affect access to the courts by foreign plaintiffs, depending on the cause of action.

10. In *Estonia*, there is no special law concerning liability and redress for environmental damage. Legal provisions relating to the issue are contained in various legal regimes including the Law on Protected Natural Objects, Law on Hunting Management, the Fishing Act, the Forest Act, and the Release into the Environment of Genetically Modified Organisms Act. Article 3 of the Sustainable Development Act establishes the general principles of sustainable development and imposes a general obligation on all persons to avoid causing damage to the environment. Moreover, Article 53 of the Constitution provides the legal basis for the regulation of liability and redress for environmental damage. These two instruments provide the legal system with broad principles that should form the basis for addressing the issue of liability and redress for environmental damage.

11. Both the Criminal Code and the Administrative Offences Code of Estonia both impose criminal liability with respect to acts or omissions that violate specific requirements of environmental legislation governing fishing, forests, wild game, pollutants, release and handling of genetically modified organisms, etc. The Protected Objects Act, the Act on Hunting Management, the Forest Act and the Fishing Act empower State agencies to claim compensation for damage caused to wild fauna and flora. Civil remedies are provided under the Civil Code. Two reform initiatives are likely to improve the state of the law in this area. The proposed Environmental Supervision Act will enable the Environmental Inspectorate to claim compensation for environmental damage. Similarly, the Code of Obligations Act contains special provisions concerning redress measures for environmental damage.

12. The Estonian Civil Procedure Code regulates issues relating to access to justice in civil matters and grants rights of recourse to every person whose rights have been infringed without distinction as to citizenship. As regards tort liability, the Civil Code contemplates situations where the act giving rise to liability or the damage occasioned takes place in different countries. Where the incident that is the basis

of a claim occurs in one country and the corresponding damage in another, the law of the country where the damage arises may apply at the request of the injured party.

13. Within the *European Community*, member States have been considering the development of a Community-wide environmental liability regime since 1993 in order to improve the application of the European Community Treaty and implementation of European Community environmental law. The landmarks in this process have included the issuance of a Green Paper in 1993, a joint hearing with the European Parliament in the same year, a Parliament resolution asking for an European Community directive and an opinion of the Economic and Social Committee in 1994, and a Commission decision in 1997 to produce a White Paper.

14. In February 2000, the Commission issued a White Paper on Environmental Liability, which it submitted to the Secretariat in response to the Executive Secretary's request for submission of information by Parties. The Paper outlines the possible main features of the Community environmental liability regime as including:

(a) Coverage of both environmental damage (site contamination and damage to biological diversity) and traditional damage (harm to health and property);

(b) A closed scope of application linked with European Community environmental legislation: contaminated sites and traditional damage to be covered only if caused by an Community-regulated hazardous or potentially hazardous activity; damage to biodiversity only if protected under the Natura 2000 network;

(c) Strict liability for damage caused by inherently dangerous activities, and fault-based liability for damage to biological diversity caused by a non-dangerous activity;

(d) Commonly accepted defences and some alleviation of the plaintiff's burden of proof and some equitable relief for defendants;

(e) Liability focused on the operator in control of the activity which caused the damage;

(f) An obligation to spend the compensation paid by the polluter on environmental restoration;

(g) An approach to enhanced access to justice in environmental damage cases;

(h) Financial security for potential liabilities.

15. In the proposed scheme, liability for damage to biological diversity would be linked to relevant Community legislation to conserve biodiversity, namely the wild birds directive and the habitats directive. These directives establish a regime, to be implemented through the Natura 2000 network, of special protection of natural resources, namely those important for the conservation of biological diversity. Damage to biodiversity would cover damage to habitats, wild life or species of plants, as defined in the annexes to the directives. Only significant damage to biodiversity would trigger the operation of the liability regime.

16. The White Paper, after examining different options for Community action, concludes that the most appropriate option would be a framework directive providing for strict liability for damage caused by Community-regulated dangerous activities and fault-based liability for damage to biodiversity caused by non-dangerous activities. European Union institutions and interested parties are required to provide

comments on the Paper and the details of the proposed European Community directive will be elaborated on the basis of such comments and relevant consultations

17. In *France*, liability for damage to biological diversity, as is the case with environmental damage in general, is treated under the general principles governing criminal and civil liability. Civil liability is based on the Civil Code, which distinguishes between strict and fault-based liability. The two liability regimes established under the Civil Code and applicable in an environmental context, have provided a more effective framework for environmental liability. However, there is little recourse to civil-law redress regimes, because of the burden of proof (fault liability) or the burden of the causal link (strict liability) imposed on plaintiffs, and the low level of compensation awarded in cases of ecological damage. The violation of environmental regulations constitutes fault upon which a claim for compensation may be based. In addition, special regimes have been established to address environmental damage arising from specific activities. For example, the Law of 30 October 1968 was amended by the Law of 16 June 1990 concerning civil liability in the area of nuclear energy, which imposes liability on the owner of a nuclear installation for any damage resulting from a nuclear accident. Similarly, the Law of 26 May 1977 imposes liability for oil pollution damage.

18. Any person who has suffered damage has the right of access to the courts for redress. However, in certain instances the law grants a right of action to non-governmental environmental organizations. The civil jurisdictions have wide discretion regarding reparation of damage. They can award compensation, require restoration of the damaged environment, or order the cessation of activities causing damage. Actions for compensation must be brought within ten years from the date of damage.

19. The assessment by the French authorities of the experience in the implementation of the foregoing legal provisions is that there is need for improvement. The civil law regime does not fully respond to the problem of liability and redress for environmental damage, nor does it provide an effective mechanism for the implementation of the polluter pays principle enshrined in article L110-1 of the Environment Code.

20. In *Latvia*, the issue of liability and redress for damage to biological diversity is addressed both by the Criminal Code and the Code of Administrative Offences. In both instances criminal liability is imposed for damage to specially protected habitats or animal or plant species. In addition, the Code of Administrative Offences imposes liability with respect to destruction of rare or threatened species and illegal import of alien species. Draft regulations under the 2000 Law on the Protection of Species and Habitats propose a significant increase in the penalties for damage to specially protected habitats and species.

21. In *Lithuania*, the Environment Protection Law, 1992, establishes the main principles governing liability and redress for environmental damage. Liability is imposed for any unlawful activity that causes damage to the environment, human health or property. The person responsible for the damage has the obligation to pay compensation or, where feasible, restore the damaged environment. Claims for compensation for damage arising from unlawful activities can be brought by any person who has suffered damage and by State agencies where damage relates to the public interest. Foreign citizens have the same rights of access to judicial instances as citizens of Lithuania. There are currently draft treaties with Latvia and Poland regarding liability and redress for environmental damage.

22. In *Norway*, three legislative instruments contain provisions on liability and redress applicable to damage to biological diversity. These are the Pollution Control Act, the Gene Technology Act, 1993, and the Act relating to Petroleum Activities, 1996. The Pollution Control Act imposes strict liability on the owner or operator of an activity that causes pollution damage, and it creates an obligation to pay compensation for any loss incurred. The Act does not expressly mention damage to biological diversity,

save for infringement of "rights in common". Under section 58, compensation may be claimed for pollution that interferes with benefits arising from the exercise of such rights. However, compensation is limited to reasonable costs of restoring the damaged environment. A claim can be made by the pollution control authority, a private organization or an association with a legal interest in the matter. Where a private organization or an association brings a claim, the pollution control authority is entitled to determine how the compensation awarded shall be used. The Gene Technology Act requires the person responsible for the introduction of genetically modified organisms into the environment, contrary to applicable regulations, to take all reasonable measures to prevent or limit any damage. The same rule applies to authorized introductions that subsequently prove hazardous to human health and the environment. Liability for damage is strict, requiring no proof of fault. Redress measures in case of damage include compensation and restoration of the affected environment. In addition, the supervisory authority may require the person responsible to take appropriate measures to recover or combat the organisms within a specified time, including measures to restore the environment to its previous state. The Act relating to Petroleum Activities deals with liability for damage arising from incidents of oil pollution within Norwegian territory. Interestingly, the Act also covers damage caused to fishermen due to reduction in fish stocks.

23. In *Poland*, the Constitution of 1997 creates general national obligations, including with respect to the protection of the environment and liability for environmental damage. Activities for the protection and sustainable use of biological diversity are undertaken by public authorities on the basis of operative plans and programmes. Programmes in the agricultural sector cover, among others, the protection of agricultural biodiversity, and landscape protection. In the forestry sector, the Forests Act imposes an obligation on owners and users regarding proper management of forest resources. Breach of this obligation entails administrative penalties. Both the Nature Protection Law and the Environment Protection Law impose liability for damage to biological resources. Breach of regulations dealing with protected areas or species entails criminal liability. Redress measures in such situations may include restoration of the damaged environment where feasible.

24. In *Sweden*, existing legislation does not specifically address damage to biological diversity. The strict liability provisions of the Environment Code are not applicable to damage to biological diversity. Nevertheless, the general provisions of the Tort Liability Act can be applied to such damage. Under this regime, liability is fault-based and covers a wide range of damage, including damage to common interests such as harm to biological diversity. Experience with implementation is rather limited. A Supreme Court decision in 1995 awarded compensation to the Environmental Protection Authority in a case concerning the killing of two wolverines through illegal hunting. Damages were assessed on the basis of "costs for protection of biological diversity rendered useless because of the illegal act".

25. Foreign citizens have the same rights of access to Swedish courts as nationals. In addition, the 1974 Nordic Environmental Convention would be applicable and prevails, on the basis of the more favourable law principle, over national legislation.

26. In *Switzerland*, national law contains only a limited number of provisions on liability and redress applicable to biological diversity. These provisions are in the fisheries legislation and the Law relating to the protection of the environment. The latter imposes liability on the owner of a waste disposal site for any damage arising from pollution. The Swiss legal framework dealing with liability and redress is currently under review. Several important amendments have been proposed, including amendments relating to damage to the environment and biological diversity. For example, it is proposed that public authorities as well as non-governmental organizations should have a right of action against polluters. Switzerland is a party to the Lugano Convention on Competence of Courts and Enforcement of Civil Judgments. Under the Convention, a foreign national suffering damage arising from a transboundary

incident can institute proceedings at the place where the damage occurred against a Swiss polluter and enforce the judgment in Switzerland.

27. The situation in the *United Kingdom* was summarized in the synthesis of submissions prepared for the fifth meeting of the Conference of the Parties to Convention (UNEP/CBD/COP/5/16), and there have been no significant changes since then. The new submission, however, contains important information regarding access to justice. Most of the statute-law arrangements place the responsibility for taking action in the public interest firmly with the public authorities. However, in the case of statutory public nuisance, private citizens can take direct legal action themselves for redress. In addition, citizens and other private entities, and bodies representing them, can also obtain redress through, for example, judicial review of administrative action. The Government is currently considering the question of giving public-interest groups a right to pursue representative actions, including compensation claims, on behalf of others who have sufficient legal interest.

II. DEVELOPMENTS UNDER THE CONVENTION PROCESS

A. The Workshop on Liability and Redress in the Context of the Convention on Biological Diversity

28. The Workshop on Liability and Redress in the Context of the Convention on Biological Diversity was held in Paris from 18 to 20 June 2001, pursuant to paragraph 8 of decision V/18. The Workshop had before it a note prepared by the Executive Secretary entitled "Liability and redress under the Convention on Biological Diversity: review of relevant international legal instruments and issues for consideration"(UNEP/CBD/WS-L&R/1/2). The report of the Workshop is available for the information of the Conference of the Parties as document UNEP/CBD/COP/6/INF/5.

29. Discussions during the Workshop were organized around the following themes: assessment of the status of existing national and international law; scope of paragraph 2 of Article 14; main situations and activities to be considered in the context of the Convention on Biological Diversity; and means and process for the implementation of paragraph 2 of Article 14

30. The Workshop recommended, *inter alia*:

(a) Further information-gathering, particularly relating to sectoral international and regional legal instruments dealing with activities which may cause damage to biological diversity; national legal and policy frameworks; and case-studies pertaining to transboundary damage to biological diversity;

(b) Further analysis relating to coverage of existing international regimes regarding damage to biological diversity; activities and situations causing damage; and concepts and definitions relevant to paragraph 2 of Article 14; and

(c) The convening of a legal and technical experts group to assist the Conference of the Parties in its task under paragraph 2 of Article 14 and to review and analyse the information gathered.

C. The Cartagena Protocol on Biosafety

31. The Intergovernmental Committee for the Cartagena Protocol (ICCP) held its second meeting in Nairobi from 1 to 5 October 2001. It considered the issue of liability and redress in the context of the Protocol. Discussions by the ICCP focused mainly on the process for addressing Article 27 of the Protocol as mandated by the Conference of the Parties in its decision V/1. In this regard, the ICCP emphasized that the process with respect to liability and redress under the Protocol is distinct from the

process with respect to liability and redress under Article 14, paragraph 2, of the Convention but acknowledged the need to identify and promote synergies and cross-fertilization between the two processes.

32. The ICCP recommended, *inter alia*, further information gathering and analysis on the issue of liability and redress pursuant to Article 27; the submission of information by Parties, Governments and relevant international organizations on national, regional and international measures and agreements in the field of liability and redress for damage resulting from the transboundary movements of living modified organisms; the organization of workshops by Parties on liability and redress for damage resulting from the transboundary movements of living modified organisms; and the establishment of an open-ended ad hoc group of legal and technical experts by the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol to carry out the process contemplated under Article 27 of the Protocol.

III. RELEVANT DEVELOPMENTS IN OTHER INTERNATIONAL FORUMS

33. Relevant developments in other international forums up to June 2001 were reviewed by the Executive Secretary in the above-mentioned note prepared for the Workshop on Liability and Redress in the Context of the Convention on Biological Diversity. Since then, an important development has taken place concerning this issue under the International Law Commission.

34. At its fifty-third session, which ended on 10 August 2001, the Commission took a number of decisions regarding the two relevant topics it has been considering, namely, "State responsibility" and "International liability for injurious consequences arising out of acts not prohibited by international law (prevention of transboundary harm from hazardous activities)". 1/

35. On the topic of State responsibility (subsequently re-entitled "Responsibility of States for internationally wrongful acts"), the Commission considered the fourth report of the Special Rapporteur appointed in 1997. It completed the second reading of the draft articles prepared under the topic. The Commission decided to recommend to the General Assembly that it take note in a resolution of the draft articles on responsibility of States for internationally wrongful acts, and that it annex the draft articles to the resolution. The Commission decided further to recommend that the General Assembly consider, at a later stage, and in the light of the importance of the topic, the possibility of convening an international conference of plenipotentiaries to examine the draft articles with a view to adopting a convention on the topic.

36. With regard to the topic of "International liability for injurious consequences arising out of acts not prohibited by international law (prevention of transboundary damage from hazardous activities)", the Commission completed the second reading of the draft articles prepared under the topic and decided to recommend to the General Assembly the elaboration of a convention by the Assembly on the basis of the draft articles on prevention of transboundary harm from hazardous activities.

37. At its fifty-sixth session, following the consideration of the report of the International Law Commission in the Sixth Committee, the General Assembly adopted without a vote two resolutions—56/82 and 56/83—concerning the work of the International Law Commission. In resolution 56/82, on the report of the International Law Commission, the Assembly took note of the report of the International Law Commission and expressed appreciation for the completion of the final draft articles on "Responsibility of States for internationally wrongful acts" and "for the valuable work done on the issue

1/ See the report of the International Law Commission on the work of its fifty-third session, *Official Records of the General Assembly*, *Fifty-sixth Session, Supplement No.10* (A/56/10 and Corr.1 and Corr.2 (Spanish only)).

of prevention on the topic of 'International liability for injurious consequences arising out of acts not prohibited by international law (prevention of transboundary harm from hazardous activities)'". The resolution further requests the Commission to resume, during its fifty-fourth session, in 2002, its consideration of the liability aspects of the latter topic which it had suspended during its forty-ninth session.

38. In resolution 56/83, on responsibility of States for internationally wrongful acts, the Assembly "takes note of the articles on responsibility of States for internationally wrongful acts, presented by the International Law Commission, the text of which is annexed to the present resolution, and commends them to attention of Governments without prejudice to the question of their future adoption or other appropriate action". The General Assembly further decided to include in the provisional agenda of its fifty-ninth session an item entitled "Responsibility of States for internationally wrongful acts".

39. It is apparent that the idea broached by the Commission regarding the elaboration of conventions on both topics did not find much favour either within the Sixth Committee or in plenary session of the General Assembly. Indeed, no further initiatives are contemplated with respect to the prevention aspects of the topic "International liability for injurious consequences arising out of acts not prohibited by international law" and the General Assembly might revisit the issue of State responsibility only at its fifty-ninth session. The liability aspects of the second topic will, however, constitute an important area of focus for the International Law Commission starting from its fifty-fourth session.

IV. RECOMMENDATION

40. In light of the recommendations of the Workshop on Liability and Redress in the Context of the Convention on Biological Diversity, and taking into account the conclusions of the ICCP at its second meeting, the Conference of the Parties may wish to consider the following elements for a decision on this issue at its sixth meeting:

"*The Conference of the Parties*,

Recalling decision V/18 adopted at its fifth meeting,

Taking note of the recommendations of the Workshop on Liability and Redress in the Context of the Convention on Biological Diversity, held in Paris from 18 to 20 June 2001 (UNEP/CBD/COP/6/INF/5, annex I),

Recognizing the central importance of capacity-building and cooperation measures under the Convention to strengthen capacities at the national level with regard to measures for the prevention of damage to biological diversity, the establishment and implementation of national legislative regimes, policy and administrative measures on liability and redress, including through the elaboration of guidelines,

1. *Requests* the Executive Secretary to convene a group of legal and technical experts composed of government-nominated experts based on a fair and equitable geographical representation and including observers from relevant international organizations and convention secretariats, and with the mandate to review information gathered and conduct further analysis of pertinent issues relating to liability and redress in the context of paragraph 2 of Article 14 of the Convention, and in particular:

(a) Clarifying basic concepts and developing definitions relevant to paragraph 2 of Article 14 (such as the concept of damage to biological diversity, its valuation, classification, and its relationship with environmental damage, the meaning of "purely internal matter");

(b) Proposing the possible introduction of elements, as appropriate, to address specifically liability and redress relating to damage to biological diversity into existing liability and redress regimes;

(c) Examining the appropriateness of a liability and redress regime under the Convention on Biological Diversity, as well as exploring issues relating to restoration and compensation;

(d) Analysing activities and situations that contribute to damage to biological diversity, including situations of potential concern; and

(e) Considering preventive measures on the basis of the responsibility recognized under Article 3 of the Convention;

2. *Requests* the Executive Secretary to continue collecting relevant information and to conduct analysis of such information and other relevant issues, with the cooperation of Parties, Governments and relevant organizations, and to make such information and analysis available prior to convening the group of legal and technical experts. Such information gathering should focus on: updating the documentation on sectoral international and regional legal instruments dealing with activities which may cause damage to biological diversity (oil, chemicals, hazardous wastes, wildlife conventions, etc.) as well as developments in private international law; national legal and policy frameworks allowing for mutual recognition and enforcement of judgments, access to justice, liability and redress (restitution, restoration and compensation), extra-judicial settlements, contractual agreements, etc; and case-studies pertaining to transboundary damage to biological diversity including but not limited to case law. Further analysis to be undertaken should relate to the coverage of existing international regimes regarding damage to biological diversity; activities/situations causing damage, including situations of potential concern and whether they can be effectively addressed by means of a liability and redress regime; and concepts and definitions relevant to paragraph 2 of Article 14;

3. *Urges* Parties, Governments and relevant international organizations to cooperate with a view to strengthening capacities at the national level with regard to measures for the prevention of damage to biological diversity, establishment and implementation of national legislative regimes, and policy and administrative measures on liability and redress."
