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CONFERENCE OF THE PARTIES TO THE
CONVENTION ON BIOLOGICAL DIVERSITY
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Curitiba, Brazil, 20-31 March 2006
Item 27.5 of the provisional agenda*

**REPORT OF THE GROUP OF LEGAL AND TECHNICAL EXPERTS ON LIABILITY AND
REDRESS IN THE CONTEXT OF PARAGRAPH 2 OF ARTICLE 14 OF THE CONVENTION
ON BIOLOGICAL DIVERSITY**

INTRODUCTION

A. Background

1. At its sixth meeting, the Conference of the Parties, in its decision VI/11, requested 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, including non-governmental organizations and convention secretariats, and with the mandate to review information gathered in accordance with paragraph 2 of the decision, 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

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

2. Accordingly, the Executive Secretary convened, with financial support from the European Community, a meeting of a Group of Legal and Technical Experts on Liability and Redress in the Context of Paragraph 2 of Article 14 of the Convention, which was held in Montreal from 12 to 14 October 2005.

B. Attendance

3. In accordance with the established practice, the Executive Secretary requested Parties to nominate suitably qualified experts to be considered for selection as members of the Group of Experts. On the basis of the nominations received, the Executive Secretary selected members of the Group taking into consideration the following factors:

(a) Knowledge and experience of international environmental law, international law relating to liability and redress for transboundary harm, or issues concerning the conservation and sustainable use of biological diversity;

(b) Equitable geographical representation; and

(c) Gender balance.

4. In addition, representatives of competent intergovernmental and non-governmental organizations, as well as stakeholders were invited to participate as observers.

5. Accordingly, the meeting was attended by experts from the following Parties and other Governments: Argentina, Austria, Belgium, Brazil, Canada, Chile, Colombia, Cuba, Egypt, Estonia, European Community, Finland, Germany, Ghana, Hungary, India, Indonesia, Kenya, Lithuania, Mexico, Netherlands, Poland, Switzerland, Thailand, United Kingdom of Great Britain and Northern Ireland, United States of America, Zambia.

6. Representatives of the following intergovernmental and non-governmental organizations and other stakeholders participated in the meeting as observers:

(a) *Intergovernmental organizations:* United Nations Environment Programme (UNEP);

(b) *Non-governmental organizations and other stakeholders:* Defenders of Wildlife, Foundation for Public Research and Regulation, Global Industry Coalition, International Chamber of Commerce, International Grain Trade Coalition and University of Minnesota.

ITEM 1. OPENING OF THE MEETING

7. The meeting was opened by the Executive Secretary of the Secretariat of the Convention on Biological Diversity, Mr. Hamdallah Zedan, at 10 a.m. on Wednesday, 12 October 2005. Mr. Zedan welcomed participants and thanked the European Community for its financial support that facilitated the convening of the meeting and enabled the participation of experts from developing countries and countries with economies in transition. The Executive Secretary recalled the work of the Convention on liability and redress under paragraph 2 of Article 14 of the Convention since the fourth meeting of Conference of the Parties. In particular, he noted decision V/18, by which the Conference of the Parties had 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, and welcomed the offer of the Government of

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France to host a workshop on the issue. He also noted the outcome of the Paris Workshop that was held from 18 to 20 June 2001. He also recalled decision VI/11, in which the Executive Secretary was requested to convene a group of legal and technical experts on liability and redress and defined its mandate. He noted that the mandate was broad and dealt with complex legal and technical issues and that the experts needed to be creative in addressing the issues.

ITEM 2: ORGANIZATIONAL MATTERS

2.1. Election of officers

8. At the opening session of the meeting, on 12 October 2005, the Group of Experts elected the following officers for the meeting:

Chair: Ms. Anne Daniel (Canada)

Rapporteur: Mr. Larsey Mensah (Ghana)

2.2. Adoption of the agenda

9. Also at the first session of the meeting, the Group adopted the following agenda on the basis of the provisional agenda (UNEP/CBD/EG-L&R/1/1) prepared by the Executive Secretary:

I. ORGANIZATIONAL MATTERS

1. Opening of the meeting.
2. Organizational matters:
 - 2.1. Election of officers;
 - 2.2. Adoption of the agenda;
 - 2.3. Organization of work.

II. REPORT ON DEVELOPMENTS WITHIN THE FRAMEWORK OF ARTICLE 27 OF THE CARTAGENA PROTOCOL ON BIOSAFETY

3. Report on the work of the Open-ended Ad Hoc Working Group of Legal and Technical Experts on Liability and Redress under the Cartagena Protocol on Biosafety.

III. REVIEW OF THE INFORMATION AND ANALYSIS

4. Review of information gathered in accordance with paragraph 2 of decision VI/11, and further analysis of pertinent issues relating to liability and redress in the context of paragraph 2 of Article 14 of the Convention, including:
 - 4.1. Clarification of basic concepts and development of definitions relevant to paragraph 2 of Article 14;
 - 4.2. Analysis of activities and situations that contribute to damage to biological diversity, including situations of potential concern;

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- 4.3. Proposals regarding the possible introduction of elements to address liability and redress for damage to biological diversity into existing liability and redress regimes;
- 4.4. Examination of the appropriateness of a liability and redress regime under the Convention;
- 4.5. Consideration of preventive measures on the basis of the responsibility recognized under Article 3 of the Convention.

IV. FINAL MATTERS

5. Other matters.
6. Adoption of the report.
7. Closure of the meeting.

2.3. Organization of work

10. The Group adopted the proposal for the organization of work for the meeting as contained in annex I to the annotations to the provisional agenda (UNEP/CBD/EG-L&R/1/1/Add.1).

ITEM 3. REPORT ON DEVELOPMENTS WITHIN THE FRAMEWORK OF ARTICLE 27 OF THE CARTAGENA PROTOCOL ON BIOSAFETY

11. Agenda item 3 was taken up at the 1st session of the meeting, on 12 October 2005.

12. Ms. Anne Daniel, the Chair of the Group asked Ms. Jimena Nieto, the Co-Chair of the Open-ended Ad-Hoc Working Group on Liability and Redress under the Cartagena Protocol on Biosafety, to brief the meeting on developments under that process.

13. Ms. Nieto recalled decision BS-I/8 of the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol, in which the Open-ended Working Group was established. She noted that as part of preparation for the first meeting of the Working Group, a technical expert group had been convened in Montreal from 18 to 20 October 2004. The Co-Chair recalled that the technical expert group reviewed information relating to liability and redress for damage resulting from the transboundary movements of living modified organisms and identified several areas where additional information would be of benefit to the work of the Open-ended Ad Hoc Working Group.

14. Ms. Nieto stated that the Ad Hoc Working Group had held its first meeting in Montreal from 25 to 27 May 2005 and had further developed the options, approaches, issues as well as scenarios regarding situations for which international rules and procedures referred to in Article 27 of the Protocol may be needed. She noted the difficulties encountered by the Working Group in addressing the issue of damage to biological diversity, as well as issues relating to the valuation of such damage and thresholds. She hoped that the work in the context of paragraph 2 of article 14 of the Convention would assist in clarifying some of these issues. She also recalled that, in its decision BS-I/8, the Conference of the Parties serving as the meeting of the Parties to the Protocol had noted that although the process under Article 27 of the Protocol was distinct from that of paragraph 2 of Article 14 of the Convention, there was a need to promote appropriate synergy and cross-fertilization.

ITEM 4. REVIEW OF INFORMATION GATHERED IN ACCORDANCE WITH PARAGRAPH 2 OF DECISION VI/11, AND FURTHER ANALYSIS OF PERTINENT ISSUES RELATING TO LIABILITY AND REDRESS IN THE CONTEXT OF PARAGRAPH 2 OF ARTICLE 14 OF THE CONVENTION

15. The Group of Experts took up agenda item 4 at the 1st session of the meeting, on 12 October 2005. In considering the item, the Group had before it a note by the Executive Secretary on liability and redress in the context of paragraph 2 of Article 14 of the Convention on Biological Diversity: an analysis of pertinent issues (UNEP/CBD/EG-L&R/1/2/Rev.1). The Group agreed to first review the information gathered in accordance with paragraph 2 of decision VI/11 and, subsequently, to undertake further analysis of issues relating to liability and redress in the context of paragraph 2 of Article 14 of the Convention.

Review of information gathered.

16. The Secretariat presented the various pre-session documents prepared for meeting, namely:

(a) Liability and redress in the context of paragraph 2 of article 14 of the Convention on Biological Diversity: an analysis of pertinent issues (UNEP/CBD/EG-L&R/1/2/Rev.1)

(b) Liability and redress in the context of paragraph 2 of article 14 of the Convention on Biological Diversity: update on developments in relevant sectoral international and regional legal instruments and developments in private international law (UNEP/CBD/EG-L&R/1/INF/1)

(c) Summary of case-law and case-studies pertaining to transboundary environmental damage (UNEP/CBD/EG-L&R/1/INF/2)

(d) Summary of submissions by Parties received by the Executive Secretary on liability and redress (UNEP/CBD/EG-L&R/1/INF/3)

17. The participants welcomed the documentation prepared by the Secretariat and noted that it formed a good basis for the work of the Group of Experts. One expert objected to the inclusion of living modified organisms in a list of activities/situations causing damage, including situations of potential concern, as he noted that genetically modified organisms were not inherently dangerous. Some experts noted that out-crossing did not in and of itself constitute damage to biological diversity. In addition, they pointed out that some of the literature referred to in the documentation on genetically modified organisms lacked an authoritative scientific basis. One expert stressed that the issue was being addressed in the context of Article 27 of the Cartagena Protocol on Biosafety and was therefore outside the mandate of the Group.

4.1. Clarification of basic concepts and development of 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”)

18. The Group of Experts took up agenda item 4.1 at the 1st session of the meeting, on 12 October 2005.

Damage to biological diversity

19. It was noted that mere change in the state of biological diversity might not necessarily constitute damage. To constitute damage, the change had to result in an adverse or negative effect and it should be measurable. Information on baseline conditions for determining and measuring change was not available in many situations. In the absence of information on baseline conditions, several experts emphasized the need for other methodologies for measuring change. It was further noted that some environmental changes did not manifest themselves immediately. Issues of linking actors and long-term environmental effects therefore arose.

20. Some experts noted that the concept of damage to biological diversity should reflect the definition of “biological diversity” as contained in Article 2 of the Convention. In this regard, some experts said that the concept should incorporate negative changes in variability or diversity. One expert expressed the opinion that the term “variability” in the definition of biological diversity was overly broad and unworkable. It was also emphasized that there is need to take into account the definition of “biodiversity loss” provided in decision VII/30 of the Conference of the Parties.

21. Several experts referred to the European Community directive on liability with regard to the prevention and remedying of environmental damage. In this respect, they noted that the directive narrowed down the definition of damage to biodiversity for the purposes of liability and redress within the European Union. Other experts were worried that narrowing definitions could limit the ability to respond and prevent harm to variability within and between species as understood in the context of the Convention. It was also pointed out that the work of the European Community on the directive provided an important framework for examining change and the attribution of change to either anthropogenic factors or natural causes. It was also mentioned that the European Community directive linked “significant adverse effect” to the concept of “favourable conservation status” in order to determine damage to the environment.

22. Several experts mentioned that defining damage was very difficult without having baseline data. In this regard, several other experts mentioned that a lot of baseline data was already available. One expert added that baseline data was costly to gather for countries with limited capacity, but that it was still possible to respond to and prevent damage to biological diversity and the environment in general.

Valuation

23. Some experts noted that the first issue to be considered with regard to valuation of damage was to determine whether the damage was reversible or irreversible. Other factors such as the status of the resources prior to the incident, the scale of damage and the nature of the damage, were also pointed out. If damage is reversible, it was noted that the response measure could be “primary restoration” of the resources, whereas, if the damage was irreversible, “complementary restoration” could be considered. Other experts stated that monetary compensation might be appropriate when the damage was irreversible as well as in cases where restoration was technically not feasible.

24. Experts generally noted that there was a whole range of available valuation methods and tools. Such valuation methods and tools should be applied in a context-specific manner, leading to valuation that was tailor-made and respects the specificities of the situation.

25. Some experts underlined that cultural and spiritual damage resulting from damage to biodiversity was an important aspect to consider in the valuation of damage to biological diversity, in particular bearing in mind Article 8(j) and related provisions in the Convention. The point was also raised as to whether or not monetary compensation would be adequate to respond to such cultural and spiritual

damage. Another expert, on the other hand, pointed out that the consideration of damage to such values as cultural and spiritual fell outside the scope of Article 14, paragraph 2, of the Convention as well as the mandate of the Group. One expert suggested that cultural and spiritual harm should not necessarily constitute separate heads of damage, but rather provide values to be taken into account in non-market valuation techniques.

26. Experts referred to the valuation tools and methods that had been developed for the purpose of environmental damage claims under the United Nations Compensation Commission (UNCC). In this respect, therefore, experts underlined the need to examine similar work under other processes. The Group noted the work currently being undertaken by the Subsidiary Body on Scientific Technical and Technological Advice (SBSTTA) on valuation and the need for the work under Article 14, paragraph 2 of the Convention to take this into account. Reference was also made to the Guidelines for Incorporating Biodiversity-related Issues into Environmental Impact Assessment Legislation and/or Processes and in Strategic Environmental Assessment that were endorsed by the Conference of the Parties in its decision VI/7 A. It was pointed out that the criteria developed under those Guidelines regarding loss of biodiversity would be useful in valuation of damage to biological diversity.

27. Experts pointed to difficulties regarding the valuation of damage in monetary terms in cases where the resources had no commercial value, or at least no present commercial value, attached to them.

28. Several experts noted the interconnectedness of many of the concepts examined. For example, it was mentioned that it would be difficult to consider the concept of valuation of damage without a clear appreciation of what constitutes damage to biological diversity.

Damage to the environment vs. damage to biological diversity

29. Several experts suggested that there was a need to focus on damage to biological diversity and not to concentrate on the broader concept of damage to the environment. However, other experts suggested that damage to the environment always entailed damage to biodiversity. Some experts mentioned that damage to the environment did not sufficiently focus on the element of variability among living organisms, as reflected in Article 2 of the Convention. It was also noted that damage to biological diversity could refer to the complex relationships between environmental components and not merely to the specific components. One expert pointed out that, besides variability, abundance of species was also an important element in this regard. Others pointed out that variability might not be central to damage to biological diversity. Another expert noted that the distinction between biodiversity damage and environmental damage might well be one of threshold whereby it was easier to damage components of the environment than to reach a threshold where variability was affected.

Threshold

30. Experts noted that the threshold for damage to biological diversity was an important concept from both a risk assessment and biological principles perspective. It, however, needed to be linked to variability of ecosystems and be determined on a case-by-case basis.

31. Some experts noted that threshold was a subjective concept depending on the context. Threshold could be qualitative or quantitative. A level of significance to the damage was pointed out as essential.

32. It was pointed out that baseline information was essential in establishing threshold of damage and criteria for determining significance in a particular case may be useful. For example, factors that might need to be taken into consideration in assessing the significance of damage included: geographic scale of

the damage, resources affected, resilience of those resources, vulnerability of the ecosystem, degree and length of change (reversible or irreversible), value and uniqueness of resources.

“Purely internal matter”

33. The Group noted that Article 3 of the Convention, which provided for the principle that States have an obligation to prevent harm to the environment of other States and to areas beyond national jurisdiction, furnished useful guidance on what was not a purely internal matter. In that regard it was pointed out that there might be other parameters to clarify the meaning of “purely internal matter”. For instance, there were internal situations which are nevertheless of concern to the global community (for example where a country is the centre of origin of a particular species and yet it decides to eradicate it or the case of damage to the habitat of migratory species).

Distinction between State responsibility and international liability

34. The Group noted that the distinction between State responsibility and international liability was important. State responsibility focused on international wrongful acts of States, while international liability addressed the issues of allocation of loss arising from activities not prohibited by international law. It was also noted that State responsibility was a principle of customary international law. Reference was made to the work of the International Law Commission (ILC) in this regard.

4.2. Analysis of activities and situations that contribute to damage to biological diversity, including situations of potential concern

35. The Group of Experts took up agenda item 4.2 during the 2nd session of the meeting, on 12 October 2005.

36. The Group took note of the activities/situations causing damage to biological diversity, including situations of potential concern as described in the Secretariat document. Some experts also identified additional activities/situations that might cause damage to biological diversity such as: climate change, habitat change, long-range transboundary pollution, agriculture, forestry, major water works and industrial activities. In this respect, some experts pointed out that with regard to certain activities, it was not possible to identify the actor responsible for the damage.

37. The Group also noted that in decision VII/30, the Conference of the Parties identified some of the major threats to biological diversity.

4.3. Proposals regarding 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

38. The Group of Experts took up agenda item 4.3 at the 3rd session of the meeting, on 13 October 2005.

39. There were different views as to what should be discussed under this heading. Some experts noted that it would be practically difficult to introduce amendments to current international regimes to specifically include damage to biological diversity. For those regimes that were not yet in force, it would not be possible to amend them. Other experts were of the view that the item was intended to also address gaps in national laws and concepts that could be used at the national level.

40. At the international level, it was noted that regimes traditionally had been developed on the basis of need, not necessarily on the basis of gaps. For example, the focus had been on activities that could result in catastrophic damage, and on that basis, a number of the activities might not be considered appropriate for inclusion in a liability regime. Therefore, those activities would not necessarily constitute gaps. Causality would be an important issue in considering whether an activity should be considered. Another expert suggested that the international regime might not be complete and coherent in the treatment of the concept of damage to biological diversity.

41. It was also noted that there might be gaps at the national level with respect to experience with damage to biodiversity and valuation, and that there was also a lack of capacity to develop and implement regimes for liability and redress at the national level.

42. One expert noted that gaps could be analysed on the basis of the activities or the damage, and suggested that since the International Law Commission was already considering draft principles with general application to activities not prohibited by international law, that perhaps the Convention on Biological Diversity should focus on damage to biological diversity. Another expert reminded the meeting that Article 14, paragraph 2, addressed damage to biological diversity, rather than activities.

4.4. Examination of the appropriateness of a liability and redress regime under the Convention on Biological Diversity, as well as the exploration of issues relating to restoration and compensation

43. The Group of Experts took up agenda item 4.4 at the 3rd session of the meeting, on 13 October 2005.

44. The Group noted that there were various categories of restoration measures, such as primary restoration and complementary restoration.

45. It was noted that primary restoration should be the preferred approach where feasible, but that it would be useful to canvass the range of options for primary restoration currently used at the national and international levels. Criteria should be developed by which appropriate options/approaches could be selected and tailored to specific circumstances. Among the criteria that could be relevant for the selection of a particular option were the effect on public health and safety, the cost, the likelihood of success, the likelihood that it would prevent future damage and the length of time it would take for restoration to occur.

46. As regards complementary restoration, there were different views of what would fall into this category, since restoration not directly related to the damaged resources might be more akin to a compensatory measure for damage that is irreversible or technically not feasible.

47. It was also noted that monetary compensation was the last choice in the range of response measures and was more appropriate for cases where damage was irreversible.

48. With respect to the issue of the appropriateness of a liability regime, a number of experts suggested that a general liability regime might not be appropriate, given the complexity of the issues, the broad range of activities and the difficulty in defining damage to biological diversity. It was also noted that many international treaties on liability and redress had not entered into force. In addition, one expert noted the efforts of the Working Group on Review on Implementation to streamline and prioritize the work of the Convention.

49. Some other experts underlined the value of a legal regime for liability and redress under the Convention. Some of the benefits were that it could help harmonize national laws, provide remedies for transboundary harm, promote fairness and equity, and catalyse capacity building.

50. The Group agreed that it was premature at the current time to make a decision on the appropriateness of a liability regime under the Convention. .

51. In this regard, the Group suggested that the Convention could focus on developing guidance relating to damage to biological diversity, its valuation, and restoration; and capacity-building at the national level, including the development and implementation of national liability and redress regimes.

4.5. *Consideration of preventive measures on the basis of the responsibility recognized under Article 3 of the Convention*

52. The Group of Experts took up agenda item 4.5 at the 3rd session of the meeting, on 13 October 2005.

53. Given the fact that damage is often irreversible, the Group emphasized the importance of prevention. Preventive measures were considered relevant both in the context of Article 3 of the Convention and at national level.

54. A number of experts recalled the International Law Commission (ILC) draft articles on prevention of transboundary damage from hazardous activities and noted that they provide useful guidance to States. In this regard, it was suggested that the Convention should closely follow developments within the ILC process.

55. Some experts noted the importance of capacity-building at the national level with regard to the development of measures for the prevention of damage to biological diversity.

ITEM 5. OTHER MATTERS

56. Under this agenda item, the expert from Colombia, Ms. Jimena Nieto, thanked the European Community for providing the funding that had made it possible to convene the Group of Legal and Technical Experts and had facilitated the participation of experts from developing countries and countries with economies in transition.

ITEM 6. ADOPTION OF THE REPORT

57. The Group adopted its report, including an annex containing its main conclusions, on the basis of the draft report submitted by the Rapporteur (UNEP/CBD/EG-L&R/1/L.1) at the 6th session of the meeting, on 14 October 2005.

ITEM 7. CLOSURE OF THE MEETING

58. The meeting was closed by the Chair at 4 p.m. on Friday, 14 October 2005.

*Annex***CONCLUSIONS OF THE GROUP OF LEGAL AND TECHNICAL EXPERTS ON LIABILITY AND REDRESS IN THE CONTEXT OF PARAGRAPH 2 OF ARTICLE 14 OF THE CONVENTION ON BIOLOGICAL DIVERSITY**

1. For reasons identified elsewhere in the report of the meeting, it may be premature at this time to draw a conclusion that an international regime focused on damage to biodiversity should either be developed or not developed. This is true regardless of the form and binding/non-binding nature of such a regime.
2. Should the Conference of the Parties wish to pursue further work in the context of Article 14, paragraph 2, at this time, a first step could be to seek further information in order to develop guidance relating to damage to biological diversity, valuation, and restoration in accordance with paragraphs 3 and 4 below.
3. The Conference of the Parties to the Convention on Biological Diversity could develop guidance for the benefit of national Governments and relevant international forums (for both existing regimes and those under development) on a number of topics related to damage to biological diversity. Of particular importance would be guidance provided through the further elaboration of the definition of damage to biological diversity, and approaches to valuation of damage and restoration of biological diversity.
4. Further information that would be needed to support the development of guidance in the above areas could include technical information on restoration and compensation methods, the outcomes of the eighth meeting of the Conference of the Parties on the work on valuation conducted by the Subsidiary Body on Scientific, Technical and Technological Advice at its eleventh meeting, and more examples of national experiences in the three areas. Attention should also be given to lessons which could be learned from the Guidelines for Incorporating Biodiversity-related Issues into Environmental Impact Assessment Legislation and/or Processes and in Strategic Environmental Assessment, endorsed by the Conference of the Parties in decision VI/7 A.
5. Capacity-building at the national level is of central importance with regard to several areas such as the development of measures for the prevention of damage to biological diversity, the generation of information on baseline conditions, and the establishment and implementation of national legislative regimes, policy and administrative measures on liability and redress. In this regard, the Conference of the Parties may wish to consider this issue in any guidance that may be developed in accordance with paragraph 3 or in other relevant processes under the Convention.
6. Should the Conference of the Parties wish to provide further guidance in the area of damage to biological diversity, the following elements should be taken into consideration, *inter alia*:
 - (a) Change may not necessarily equal damage;
 - (b) To qualify as damage, the change needs:
 - (i) To have an adverse or negative effect;
 - (ii) To be present over a period of time, that is, it cannot be redressed through natural recovery within a reasonable period of time;

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- (c) Baselines are needed against which to measure change;
- (d) Other methods are needed for measuring change where baselines are not available;
- (e) The need to distinguish between natural variation and human-induced variation;
- (f) The need to reflect the definition of biological diversity in Article 2 of the Convention, that is, “the variability among living organisms from all sources including, *inter alia*, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems”;
- (g) The need to factor in the definition of biodiversity loss in decision VII/30;
- (h) The issue of thresholds of significance of the damage.

7. Should the Conference of the Parties wish to provide further guidance on the concept of valuation of damage to biodiversity, the following elements should be taken into consideration, *inter alia*:

- (a) Valuation is tied to the definition of damage;
- (b) Where components of biological diversity can be restored, the costs of the restoration measures can be the basis for valuation of the damage to such components;
- (c) Placing a value on irreversible damage is novel in the context of current international regimes, but there may be useful precedents from other fields (e.g. damage to architectural heritage) and at the national level. The issue of placing a value on irreversible damage requires further consideration;
- (d) In non-market valuation techniques, spiritual and cultural values may be relevant;
- (e) Valuation techniques may need to be adapted to national needs;
- (f) The outcome of the work on valuation techniques by the Subsidiary Body on Scientific, Technical and Technological Advice could make an important contribution to any work under paragraph 2 of Article 14 on valuation of damage to biodiversity.

8. Should the Conference of the Parties wish to provide further guidance on restoration of damage to biological diversity, the following elements should be taken into consideration, *inter alia*:

- (a) Where primary restoration is not possible or reasonable, other methods of redress should be considered, such as complementary methods of restoration and/or monetary compensation for irreversible damage on the basis of criteria to be developed;
- (b) A focus on primary restoration;
- (c) The canvassing of a range of options for primary restoration currently used at the national and international levels;
- (d) The development of criteria by which appropriate options/approaches can be selected and tailored to specific circumstances;

(e) Among the criteria that could be relevant for the selection of a particular option: effect on public health and safety; the cost effectiveness; likelihood of success; likelihood that it would prevent future damage; the length of time it would take for restoration to occur;

(f) The award of monetary compensation as a means to redress irreversible damage to biological diversity requires further consideration.
