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## Self-withering: The Biodiversity Convention and its new Global Biodiversity Framework

By Dr S Faizi

The Convention on Biological Diversity's (CBD) Global Biodiversity Framework (GBF), adopted at the end of 2022 marked another step in the process of weakening of the enforcement of the treaty that is finely balanced on the North-South axis. The CBD articles that protect the interests of the South continue to remain silenced, the West winning a virtual amendment of the treaty by default. The adoption of the GBF itself was procedurally flawed and while some of its 23 targets to be achieved by 2030 are meaningful, some are problematic. The target of increasing the global coverage of protected areas to 30 per cent each of the terrestrial and marine areas is likely to exclude the traditional caretakers of biodiversity and lead to further alienation of the historical custodians of biodiversity. The nature-based solutions (NbS) promoted by the GBF are likely to cause even more damage to the natural systems. The CBD provisions that are particularly favourable to the South are excluded from the GBF.

*Le Cadre mondial pour la biodiversité de la Convention sur la diversité biologique, adopté fin 2022, a marqué une nouvelle étape dans l'affaiblissement de l'application des dispositions du traité, qui garantissent un bon équilibre entre les pays du Nord et les pays du Sud. Les articles de la Convention qui protègent les intérêts des pays du Sud restent ignorés, les pays occidentaux ayant obtenu par défaut un amendement virtuel au traité. L'adoption du Cadre mondial lui-même a été entachée de vices de procédure et si certains de ses 23 objectifs à atteindre d'ici 2030 sont significatifs, d'autres posent problème. L'objectif d'augmenter la couverture mondiale des aires terrestres et marines protégées à 30 % est susceptible d'exclure les gardiens traditionnels de la biodiversité et de conduire à une plus grande aliénation de ses acteurs historiques. Les solutions basées sur la nature (NbS) promues par le Cadre mondial risquent de causer encore plus de dégâts aux systèmes naturels, les dispositions de la Convention qui sont particulièrement favorables au Sud en étant exclues.*

*El Marco Global de la Biodiversidad (GBF, por sus siglas en inglés) del Convenio sobre la Diversidad Biológica (CDB), adoptado a finales de 2022, supuso un paso más en el proceso de debilitamiento de la*

*aplicación del tratado, que está finamente equilibrado en el eje Norte-Sur. Los artículos del CDB que protegen los intereses del Sur siguen silenciados, y Occidente gana por defecto una enmienda virtual del tratado. La adopción del propio GBF tuvo fallas de procedimiento y, aunque algunos de sus 23 objetivos para 2030 son significativos, otros son problemáticos. Es probable que el objetivo de aumentar la cobertura global de áreas protegidas al 30 por ciento de las zonas terrestres y marinas excluya a los cuidadores tradicionales de la biodiversidad y provoque una mayor alienación de los custodios históricos de la biodiversidad. Las soluciones basadas en la naturaleza (NbS, por sus siglas en inglés) promovidas por el GBF probablemente causen aún más daño a los sistemas naturales. Las disposiciones del CDB que son especialmente favorables para el Sur quedan excluidas del GBF.*

The Convention on Biological Diversity's (CBD) thirtieth year was marked by the adoption of the Kunming-Montreal Global Biodiversity Framework (GBF) by the 15th meeting of its Conference of the Parties (COP), in December 2022. While the widespread political interest in biodiversity that the lengthy negotiations on the GBF has generated is welcome, the GBF raises some basic questions.

### **Weakening of a balanced Convention**

The CBD is finely balanced between the conservation and development objectives and along the North-South axis, marking a departure in the domain of international environmental law by incorporating the triple objectives of conservation, sustainable use and equitable benefit sharing, while the previous generation of international conservation treaties remain focused on the protectionist approach. I recall the CBD formation negotiation period of 1990-92 when the developing countries turned the table on the West that wanted -through a set of initial draft articles prepared by the International Union for Conservation of Nature's (IUCN) Environment Law Centre- biodiversity legally recognised as a 'global resource' and access to biodiversity be made 'open and free', and put in place a treaty that recognised national sovereignty over biodiversity and made access to biodiversity conditional on, namely, prior informed consent, mutually agreed terms and

equitable benefit sharing. Fairness and the North-South balance embedded in the treaty made the West uncomfortable with it.

That the treaty became a fair and balanced one made the West pursue a strategy of selectively choosing articles for domestic implementation and for consideration by the CBD Conference of the Parties (COP), carefully sidelining the articles that they do not favour, while the United States took the candid position of rejecting the treaty altogether though paradoxically it was that country that initiated the very idea of a biodiversity convention. While countries were in the process of ratification, the United Kingdom's ministry of foreign affairs had sent fax messages in 1993 to their strategic partners about the CBD articles of 'concern', advising them not to ratify, though eventually they too joined the treaty. The selective exclusion of CBD articles from the attention of the COP and from enforcement, with the conforming support of the Secretariat, was a strategy that worked well. As a result, several provisions of particular importance to the developing world were practically rendered insignificant. Some of these provisions are as follows:

- Biopiracy due to the failure of compliance with Article 15 by developed countries; failure of most developed countries in taking 'legislative, administrative or policy measures' as per Article 15.7
- No technology transfer by developed countries as required by Article 16; neither any 'legislative, administrative or policy measures' taken in this respect as required by Article 16.3 nor cooperation on intellectual property rights (IPRs) as per Article 16.5
- No significant promotion of research in developing countries as entailed by Articles 12.b and 15.6
- No examination of the issue of liability and redress for damage to biodiversity caused by other countries as Article 14.2 states
- Failure in having the financial mechanism 'under the authority and guidance of and be accountable' to the COP as per Article 21.1.

The West -including some of their non-governmental organizations (NGOs)- resorted to arguments that CBD is not legally binding, it is soft law or a framework convention and so on, though they never raised such points in the meetings of the COP. Such an argument even found place on the website of the Swiss government though it was taken out when it was criticised in the civil society group CBD Alliance. Interestingly, the 'legally not binding' argument found a place even in the CBD Secretariat's document in 2011, a SWOT (Strengths, Weaknesses, Opportunities, and Threats) analysis report prepared for the first meeting of the CBD Expert Group on Biodiversity and Development, though it was taken out without an apology when I as a member pointed it out.

Besides, the mechanisms created for ensuring the implementation of the Convention by the Parties are made ineffective:

- No 'review of implementation of this Convention' by the COP as per Article 23.4
- No significant assessment by the Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA) of the effects of implementation as per Article 25.2.b.

The meetings of the COP do not address issues of non-compliance, infractions and breaches of the Convention by the Parties which it is supposed to, thereby ignoring the experience of the Convention on International Trade in Endangered Species (CITES). The country reports submitted by Parties in line with Article 26 are not reviewed by the COP, nor is the synthesis report submitted by the Subsidiary Body on Implementation for non-compliance and infractions. The only time a COP body addressed an infraction was when the Bureau asked Germany and India to stop their ocean (iron) fertilisation experiment called LOHAFEX in 2009, which was a violation of the moratorium on such experiments called for by the COP.

I have raised concern about the CBD trajectory that amounted to the unmaking of the treaty as early as 2004[1]. A few others too have raised concern but there was no response commensurate to the level of the misdirection of the treaty course. The developing countries had lost the unity and collective negotiation skill that was so evident during the treaty formation negotiations. However, in response to the criticism of the COP meetings producing a maze of documents rather than focusing on the implementation of the CBD articles, the CBD Executive Secretary promised, on the eve of COP 11 in 2012, that there would be fewer number of COP decisions and more implementation in a written response to pointed questions on this from the CBD Secretariat's civil society bulletin[2]. However, that was not followed through. Since the civil society is largely influenced by the major players in the West, owing primarily to financial resources, they also did not take on board this critical issue.

### **GBF: another digression from the treaty**

It was in the above context that the GBF was negotiated and adopted, as the third generation strategic plan of CBD. Most of the 21 sub-targets of the first strategic plan of 2002-2010 had failed to be achieved as reported by the third edition of the Global Biodiversity Outlook in 2010. The second strategic plan that ran during 2011-2020 too had failed to achieve its 20 targets, and made significant progress only in 6 targets as analysed by the Global Biodiversity Outlook 5. It is from there that the GBF commences its course in 2023.

The problem with the strategic plans is that these documents carefully exclude articles that give CBD the North-South balance as listed above. With the GBF, the whole attention of the CBD process has shifted from the enforcement of CBD to discussions on GBF. The US hardliners who wanted their country not to ratify CBD

[1] S Faizi, "CBD: The Unmaking of a Treaty", *South Bulletin*, No. 67 (South Centre, March 2004).

[2] Braulio Dias, "Fewer Decisions and More Implementation, an interview with the Executive Secretary of the CBD", [*Square Brackets*] Issue 6 (2012).



would now be regretting their decision as none of the articles that they feared would affect their national interests is addressed by GBF or its predecessors. Nor in any of the COP decisions. Perhaps the only reason why they don't join CBD is the concern that at some point some developing country delegations would invoke those uncomfortable articles.

CBD is a legally binding instrument while GBF cannot categorically claim so. It only *urges* Parties while in the treaty it is *The parties shall* although some articles are with caveats like 'as far as possible' and 'where appropriate'. All operative articles of the Convention are meant for enforcement by the Parties; the Convention does not envisage strategic plans. However, if a strategic plan for the Convention is made it should address the contents of all the operative articles of the treaty, without excluding any.

This is, however, not to suggest that the GBF content is entirely flawed, far from that. In talking about GBF it is pertinent to mention that its adoption was procedurally problematic as the chair went ahead with his gavel of approval without giving opportunity for the dissenting voices to be heard. It is ironical that this document and related decisions on monitoring, capacity building, resource mobilisation and digital sequence information were adopted as a 'package' of decisions without even recording the differing views of the Democratic Republic of Congo, Cameroon and Uganda that together hold about 20 per cent of the global biodiversity, as I wrote to the United Nations (UN) Secretary General[3].

GBF sets a pathway to achieve the vision of 'a world living in harmony with nature' by the year 2050. It has four overarching goals and a total of 23 targets to be achieved by 2030. It urges Parties to bring all areas under biodiversity-inclusive spatial planning, bring the loss of biodiversity rich areas and important ecosystems close to zero, and restore at

least 30 per cent of the ecologically degraded areas by 2030. Resource harvests are to be made sustainable, reducing the invasive species by 50 per cent by the target year, supporting customary biodiversity use, promoting equitable benefit sharing, mainstreaming biodiversity management, reducing over consumption including halving of food waste by 2030 and reducing harmful subsidies by US Dollar 500 billion by that year. GBF also seeks to increase domestic and international spending on biodiversity by US \$ 200 billion per year and developed country support to others by US \$ 25 billion by the year 2030.

GBF also addresses the issue of hitherto ignored critical pandemic issue of human-wildlife conflict and seeks to minimise it. However, it has not taken on board the issue of land tenurial reforms that could both help enhance agrobiodiversity and reduce rural poverty. Target 3, increasing the global coverage of protected areas to 30 per cent each of the terrestrial and marine areas -from the current coverage 17 per cent land and 10 per cent marine- is problematic and has been opposed by the Indigenous Peoples and local communities as it could lead to further alienation of these historical custodians of biodiversity and defeat the very purpose of conservation and accentuate the disenfranchisement of these communities. What we are talking about is 1.8 billion people, the poorest of the earth. Powerful elements were campaigning hard for this, pushing the self-defeating Western colonial paradigm of conservation, the same paradigm that has brought an estimated one million species to the threat of extinction as recently reported by the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services. Even as the GBF lacks appropriate integration with the Sustainable Development Goals (SDGs) this target is likely to gravely impede the achievement of SDGs 1 (no poverty), 2 (zero hunger) and 10 (equity), and it disregards the CBD Chennai Guidance for Implementation of the Integration of Biodiversity and Poverty.

[3] See <https://mainstreamweekly.net/article12972.html>.

Although the CBD asks for its financial mechanism to be under the authority and accountable to the CBD COP, the financial mechanism has been vested with the World Bank-dominated Global Environment Facility (GEF) and the new Global Biodiversity Framework Fund established in August 2023 which is also outside the CBD COP authority, with the GEF. That is yet another outcome weakening the CBD and the West having its intriguing ways.

Nature-based solutions (NbS) has also been transposed to the GBF from the climate change parlance. Biodiversity offsets, for example, are already taking prominence and reducing natural ecosystems. This is also perplexing given the existence of a well-defined ecosystem approach that is inclusive and widely encompassing, adopted by the CBD COP in 2000. NbS, when introduced in the early versions of the GBF did not even have a definition. IUCN has been campaigning hard for it and it even subsequently had the United Nations Environment Programme (UNEP) Governing Council adopt a definition of NbS as an answer to the criticism of lack of definition. A questionable definition.

The climate crisis and biodiversity disruption are likely to cause the extinction of the industrial civilisation in the not-too-distant future. The capitalist mode of infinite exploitation within a finite system carries the seeds of its own destruction. The West is busy causing this destruction. Their compradors in the global South are willing partners.

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