



SECOND MEETING OF THE AD HOC OPEN-ENDED WORKING GROUP ON ACCESS AND BENEFIT-SHARING: 1-5 DECEMBER 2003

The second meeting of the *Ad Hoc* Open-ended Working Group on Access and Benefit-sharing of the Convention on Biological Diversity (CBD) opens today and will continue until 5 December at the headquarters of the International Civil Aviation Organization, in Montreal, Canada. Initially established by the fifth Conference of the Parties (COP) to the CBD to develop guidelines and other approaches for access to genetic resources and benefit-sharing (ABS), the Working Group was reconvened by COP-6, following the adoption of the Bonn Guidelines on ABS.

Following the opening Plenary on Monday morning, delegates are expected to convene in two sub-working groups. Sub-Working Group I (SWG-I) will address: consideration of reports arising from decision VI/24 A on the Bonn Guidelines; use of terms; and other approaches, including consideration of the process, nature, scope, elements and modalities of an international regime on ABS. Sub-Working Group II (SWG-II) will consider measures to support compliance with prior informed consent (PIC) and mutually agreed terms (MAT), and capacity-building needs. On Friday, Plenary will consider draft recommendations to the COP and the reports of the Sub-Working Groups, and will adopt the meeting's report.

The Working Group's recommendations will be forwarded to CBD COP-7, to be held from 9-20 February 2004, in Kuala Lumpur, Malaysia.

A BRIEF HISTORY OF THE CBD AND ACCESS AND BENEFIT-SHARING

The CBD, negotiated under the auspices of the United Nations Environment Programme, was opened for signature on 5 June 1992, and entered into force on 29 December 1993. To date, there are 188 Parties to the Convention. The CBD aims to promote "the conservation of biodiversity, the sustainable use of its components, and the fair and equitable sharing of benefits arising from the use of genetic resources." Provisions on ABS are contained in Articles 15 (Access to Genetic Resources), 16.3 (access to and transfer of technology that makes use of genetic resources), 19.1 (participation in biotechnological research on genetic resources) and 19.2 (access to results and benefits from biotechnologies).

COP-2 AND COP-3: At its second meeting (Jakarta, Indonesia, November 1995), the COP considered a compilation of existing legislative, administrative and policy information on

ABS. COP-3 (Buenos Aires, Argentina, November 1996) addressed a compilation of Parties' views on options for developing national measures to implement Article 15.

COP-4: At its fourth meeting (Bratislava, Slovakia, May 1998), the COP addressed matters related to benefit-sharing, including measures to promote the distribution of benefits from biotechnology in accordance with Article 19 (Handling of Biotechnology and Distribution of its Benefits) and means to address the sharing of benefits arising from the use of genetic resources. The COP established a regionally balanced Experts' Panel on ABS, with the mandate to develop a common understanding of basic concepts and explore options for ABS.

ISOC: The Inter-Sessional Meeting on the Operations of the Convention (Montreal, Canada, June 1999) made recommendations for the composition and agenda of the Experts' Panel on ABS and for future work to develop a common appreciation of the relationship between intellectual property rights (IPRs) and relevant provisions of the World Trade Organization's Agreement on Trade-Related Aspects of Intellectual Property Rights.

FIRST MEETING OF THE EXPERTS' PANEL ON ABS: The first meeting of the Experts' Panel on ABS (San José, Costa Rica, October 1999) focused on: ABS arrangements for scientific and commercial purposes; national and regional legislative, administrative and policy measures; regulatory procedures and incentive measures; and capacity building. Participants also discussed IPRs and the use and terms of contractual ABS arrangements. The Panel developed recommendations, which included general conclusions and specific points on PIC, MAT, information needs and capacity building.

COP-5: At its fifth meeting (Nairobi, Kenya, May 2001), the COP established the *Ad Hoc* Open-ended Working Group on ABS to develop guidelines and other approaches on: PIC; MAT; roles, responsibilities and participation of stakeholders; aspects of *in situ* and *ex situ* conservation and sustainable use; mechanisms for benefit-sharing; and the preservation and maintenance of traditional knowledge. COP-5 also decided to reconvene the Experts' Panel on ABS to provide input on user and provider experiences and stakeholder involvement.

SECOND MEETING OF THE EXPERTS' PANEL: The second meeting of the Experts' Panel on ABS (Montreal, Canada, March 2001) addressed: user and provider experience in ABS processes; stakeholder involvement; and complementary options to address ABS within the CBD framework, including possible elements for guidelines. Participants also recommended prioritizing capacity building for ABS.

FIRST MEETING OF THE ABS WORKING GROUP: At its first meeting (Bonn, Germany, October 2001), the *Ad Hoc* Working Group on ABS developed the draft Bonn guidelines on



ABS and also: identified elements for a capacity-building action plan; called for an open-ended workshop on capacity building for ABS; and considered the role of IPRs in implementation of ABS arrangements.

SECOND MEETING OF THE WORKING GROUP ON

ARTICLE 8(J): The second meeting of the *Ad Hoc* Open-ended Inter-Sessional Working Group on CBD Article 8(j) on traditional knowledge and related provisions (Montreal, Canada, February 2002) considered progress on the implementation of the work programme on Article 8(j), and addressed, *inter alia*, the effectiveness of existing instruments impacting the protection of traditional knowledge, particularly IPRs.

COP-6: At its sixth meeting (The Hague, the Netherlands, April 2002), the COP adopted the Bonn Guidelines on ABS. The Guidelines will assist governments and other stakeholders in establishing legislative, administrative or policy measures on ABS and in negotiating ABS contractual arrangements. Delegates decided to reconvene the Working Group to advise the COP on: use of terms, definitions and/or glossary; other approaches as set out in decision VI/24 B on other approaches, including capacity building; measures to support compliance with PIC and MAT; consideration of any available reports or progress reports; and capacity-building needs. The COP also addressed IPRs as they relate to ABS, and invited Parties to encourage the disclosure of the country of origin of genetic resources and traditional knowledge in related IPR applications.

INTERSESSIONAL HIGHLIGHTS

WSSD: The Johannesburg Plan of Implementation, adopted at the World Summit on Sustainable Development (WSSD) in Johannesburg, South Africa, in September 2002, calls for the wide implementation of, and continued work by, CBD Parties on the Bonn Guidelines (paragraph 44(n)). It further calls for action to "negotiate within the framework of the CBD, bearing in mind the Bonn Guidelines, an international regime to promote and safeguard the fair and equitable sharing of benefits arising out of the utilization of genetic resources" (paragraph 44(o)).

ITPGR INTERIM COMMITTEE: The first Meeting of the Commission on Genetic Resources for Food and Agriculture acting as the Interim Committee for the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGR) (Rome, Italy, October 2002) adopted its Rules of Procedure, and established an open-ended expert working group to propose draft rules of procedure and financial rules for the Governing Body, and draft procedures for compliance. The Committee also finalized the terms of reference for an expert group on the standard Material Transfer Agreement.

The ITPGR, adopted by the 31st Conference of the UN Food and Agriculture Organization on 3 November 2001, establishes a Multilateral System for facilitated access to a specified list of plant genetic resources for food and agriculture (PGRFA), balanced by benefit-sharing in the areas of information exchange, technology transfer and capacity building, as well as commercial benefit-sharing. Its objectives are the conservation and sustainable use of PGRFA and equitable benefit-sharing for sustainable agriculture and food security. Currently ratified by 33 countries, the ITPGR will enter into force following the 40th ratification.

MEETING OF LIKE-MINDED MEGADIVERSE

COUNTRIES: The ministerial meeting of the Like-Minded Megadiverse countries (Cusco, Peru, November 2002) discussed issues related to ABS, traditional knowledge and IPRs, and adopted the Cusco Declaration, which, *inter alia*: creates a mechanism for cooperation and exchange of information; establishes an *ad hoc* working group on benefit-sharing mechanisms; and urges the CBD COP to initiate negotiations for an international regime on benefit-sharing.

EXPERT WORKSHOP ON CAPACITY BUILDING FOR

ABS: The Open-ended Expert Workshop on Capacity Building for ABS (Montreal, Canada, December 2002) agreed on a draft Action Plan on Capacity Building for ABS, which will be forwarded to COP-7 for adoption.

UNGA-57: At its 57th session, the UN General Assembly (New York, US, December 2002) reaffirmed the WSSD commitment to negotiate an international regime on benefit-sharing and invited the CBD COP to take appropriate steps in this regard.

MYPOW: The Open-ended Inter-Sessional Meeting on the Multi-Year Programme of Work of the COP up to 2010 (Montreal, Canada, March 2003) adopted recommendations on, *inter alia*, legal and socioeconomic aspects of technology transfer and cooperation, and the WSSD outcomes as they relate to the CBD process. The Meeting invited submission of views on the process, nature, scope, elements and modalities of an international regime on ABS, and recommended that the Working Group on ABS address these issues at its second meeting, in its consideration of other approaches.

TRONDHEIM CONFERENCE ON BIODIVERSITY: The fourth Trondheim Conference on Biodiversity (Trondheim, Norway, June 2003) convened on the theme of technology transfer and capacity building. Conclusions from the meeting relate to: technology transfer in a sustainable development context; technological cooperation; obstacles to technology transfer; sustainable use; medicines and health; bioprospecting; education and awareness-raising for scientific collaboration; the role of the private sector; and criteria for successful technology transfer and capacity building.

WIPO INTERGOVERNMENTAL COMMITTEE ON INTELLECTUAL PROPERTY AND GENETIC

RESOURCES: The fourth meeting of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore of the World Intellectual Property Organization (WIPO) (Geneva, Switzerland, December 2002) focused on ways of providing legal protection for traditional knowledge and folklore. The Committee's fifth meeting (Geneva, Switzerland, July 2003) considered, *inter alia*, a draft technical study on disclosure requirements related to genetic resources and traditional knowledge. The WIPO General Assembly (Geneva, Switzerland, September/October 2003) approved the transmission of the study to CBD COP-7, and decided to extend the Committee's mandate. Regarding the possible outcome of the Committee's work, delegates agreed that no outcome of the Committee's work be excluded, including the possible development of an international instrument or instruments.

SBSTTA-9: The ninth meeting of the CBD Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA) (Montreal, Canada, November 2003) addressed protected areas and technology transfer as main themes. The recommendation on technology transfer suggests establishing an expert group on technology transfer and cooperation, and includes a draft work programme with elements on: technology assessments; information systems; enabling environments; and capacity building.

THINGS TO LOOK FOR TODAY

PLENARY: Plenary will convene at 10:00 am to address organizational matters and begin considering reports on experience gained in the use of the Bonn Guidelines and developments of relevance to the Working Group.

SUB-WORKING GROUP I: SWG-I will convene at 3:00 pm in Room I to continue considering reports, and address the use of terms.

SUB-WORKING GROUP II: SWG-II will meet at 3:00 pm in Room II to address measures to support compliance with PIC and MAT.