



ABS WG-2 HIGHLIGHTS: MONDAY, 1 DECEMBER 2003

Delegates to the second meeting of the *Ad Hoc* Open-ended Working Group on Access and Benefit-sharing of the Convention on Biological Diversity (CBD) met in Plenary throughout the day to hear opening statements, address organizational matters, consider reports on experience in using the Bonn Guidelines on Access and Benefit-sharing (ABS), and hear views on an international regime on ABS.

PLENARY

OPENING STATEMENTS: Hans Hoogeveen (the Netherlands), President of the CBD Conference of the Parties (COP) and Working Group Chair, opened the meeting, stressing that the success of COP-7 depends on the Working Group's discussions. He highlighted the need to identify clear terms of reference for negotiating an international regime on ABS, and called upon delegates to build on the spirit of compromise that led to the adoption of the Bonn Guidelines.

CBD Executive Secretary Hamdallah Zedan noted that ABS is of particular significance to developing countries, and emphasized links with traditional knowledge, intellectual property rights (IPRs) and trade.

Nehemiah Rotich, on behalf of UNEP Executive Director Klaus Töpfer, stressed the need for benefit-sharing for biodiversity conservation in developing countries, and encouraged delegates to initiate actions for capacity building for ABS.

ORGANIZATIONAL MATTERS: Delegates adopted the agenda (UNEP/CBD/WG-ABS/2/1) and agreed to establish two sub-working groups as proposed in the annotated agenda (UNEP/CBD/WG-ABS/2/1/Add.1/Rev.1). Delegates also agreed to convene a brief daily Plenary to review progress, and to establish a Friends of the Chair group to prepare discussions on an international regime on ABS. They elected Ines Verleye (Belgium) as Chair of Sub-Working Group I (SWG-I) and Desh Deepak Verma (India) as Chair of Sub-Working Group II (SWG-II).

STATEMENTS OF INTERNATIONAL ORGANIZATIONS: The World Intellectual Property Organization (WIPO) highlighted its technical study on disclosure requirements (UNEP/CBD/WG-ABS/2/INF/4), stressing that it does not represent WIPO official policy. He drew attention to the expanded mandate of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, which should focus on international aspects and not exclude the development of an international regime.

The UN Food and Agriculture Organization (FAO) highlighted the adoption and key features of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGR), expressing hope that the ITPGR will enter into force in the first half of 2004.

REPORTS: Regarding experience gained in using the Bonn Guidelines, CHINA noted its success in exchanging agricultural crop genetic material based on prior informed consent (PIC). With KENYA and JORDAN, he emphasized capacity building as a prerequisite for developing and implementing legislation, and with ARGENTINA, he stressed challenges faced by countries that are both providers and users of genetic resources. BRAZIL noted that the Guidelines do not secure the rights of provider countries and indigenous communities.

JAPAN highlighted its bioindustry's capacity-building programmes in developing countries and its workshops to promote the Guidelines' implementation. SWITZERLAND and CANADA noted national workshops for stakeholders. Noting activities of its national expert group to monitor the Guidelines' implementation, NORWAY described efforts to update its ABS legislation and amend its patent law to include PIC.

The EUROPEAN COMMUNITY (EC) drew attention to its biodiversity strategy and an upcoming communication on the implementation of the Guidelines, and noted industry's lack of awareness. FRANCE described studies on the state of its ABS legislation and measures for PIC and mutually agreed terms (MAT), and highlighted information-sharing initiatives through the French Biodiversity Clearing-House.

EL SALVADOR announced the establishment of national measures for access, and underscored regional harmonization efforts. BANGLADESH and COSTA RICA noted use of the Guidelines in developing national biodiversity legislation, and JAMAICA highlighted their use in establishing a register of material transfer agreements (MTAs). COSTA RICA underlined experiences from benefit-sharing in bioprospecting. EGYPT underscored amendment of its IPR legislation, with inclusion of PIC and requirements on disclosure of origin. PAKISTAN, UGANDA and ETHIOPIA described the development of draft national legislation on ABS, with PAKISTAN noting measures on community rights. NAMIBIA stressed the need to increase awareness and mainstream the Guidelines within national legislation. JORDAN said political unrest hampers regional cooperation.

AUSTRALIA mentioned its internal agreement which, *inter alia*, determines the scope and modality of actions to apply the Guidelines. BELGIUM shared its experience with ABS relating to microbial resources. The NETHERLANDS described the establishment of a national platform for codes of conduct, MTAs and



information exchange. DENMARK highlighted an amendment to its patent law requiring the disclosure of origin. SWEDEN reported a lack of awareness of the Guidelines among its research institutions.

The UK stressed its undertaking of a two-stage review of the Guidelines, development of a policy framework, and establishment of a Commission on IPRs. He called for considering all aspects of ABS, not only the Guidelines' implementation. CANADA emphasized the need for further research, and said ABS regimes should, *inter alia*, address stakeholders' interests and indigenous participation. UGANDA identified challenges, including lack of capacity, negotiating different types of benefits, and addressing non-compliance. SPAIN highlighted its inter-ministerial coordination committee to address ABS and develop a draft MTA. HAITI stressed the need for: a coherent national ABS policy; work on IPRs; and legal clarification of the ABS-related concepts.

The SOUTHEAST ASIA REGIONAL INSTITUTE FOR COMMUNITY EDUCATION (SEARICE) stressed the usefulness of the Bonn Guidelines in establishing the Framework on ABS of the Association of South East Asian Nations, and called upon delegates to recognize indigenous rights in developing legislation and managing ABS initiatives.

INTERNATIONAL REGIME ON ABS: Chair Hooegeven emphasized that the mandate for an international ABS regime has already been decided upon by the World Summit on Sustainable Development (WSSD) and endorsed by the UN General Assembly.

Mexico, on behalf of the LIKE-MINDED MEGADIVERSE COUNTRIES, underlined that the regime should promote compliance with PIC according to MAT, address certification of the origin of genetic resources, and balance the regulatory burden on user and provider countries. COLOMBIA suggested recommending that COP-7 recognize that beginning negotiations on the regime is crucial for the future of the CBD. ARGENTINA, BRAZIL, COSTA RICA and TANZANIA stressed the need to include provisions on monitoring, compliance, dispute settlement, and capacity building, and to protect local and indigenous communities' rights. TANZANIA, supported by many, further emphasized the need to guarantee the rights of the countries of origin and reinforce, rather than substitute, their legislation, and address certification of origin and capacity building through a country-driven approach.

KYRGYZSTAN highlighted the links between ABS and biosafety issues, stressing that discussions on genetic resources should also address conservation. Several countries emphasized the need for technical and financial support to develop and implement national legislation. JAMAICA noted difficulties in monitoring and enforcing contract-based regimes. CANADA and others called for indigenous and local communities' involvement. JAPAN warned against excessive ABS regulation, and called for developing a common understanding regarding the current situation between providers and users, as a first step.

Many said the regime should be legally binding, with COLOMBIA and NAMIBIA noting that national legislation is not sufficient to ensure compliance with ABS. Uganda, on behalf of the AFRICAN GROUP, stressed the need for a dispute settlement mechanism and, with JORDAN, for taking into account the special needs of developing countries. MALAYSIA said the regime should address illegal transboundary movements of genetic resources. ALGERIA supported including products derived from genetic resources, and JAMAICA suggested that the regime address governments' role and scientific research. MALAYSIA supported including a compliance mechanism, and EGYPT highlighted existing multilateral dispute mechanisms. JORDAN supported arbitration mechanisms between users and providers. HAITI said a regime should address capacity building, and go beyond existing technology transfer measures.

Italy, on behalf of the EC Member States and acceding countries, said the analysis of the effectiveness of, and synergies among, existing instruments should be considered. AUSTRALIA and SWITZERLAND recalled that the regime should build on ongoing work within WIPO, the Agreement on Trade-Related Aspects of Intellectual Property Rights and the ITPGR, rather than establish a new treaty, with AUSTRALIA noting the lack of measures to encourage commitment from industry. CANADA, NEW ZEALAND and the REPUBLIC OF KOREA supported implementing the Bonn Guidelines and sharing experience before negotiating a binding international regime.

NORWAY suggested that COP-7 extend the mandate of the Working Group to identify and analyze gaps in the implementation of the Guidelines. ALGERIA said COP-7 should establish a working group to negotiate the regime, and MALAYSIA and BANGLADESH supported mandating an intergovernmental negotiating committee. Noting the Biosafety Protocol experience, EGYPT supported the negotiation of a protocol on ABS.

Calling for indigenous consultation at all levels, the INTERNATIONAL INDIGENOUS FORUM ON BIODIVERSITY stressed: indigenous rights over their knowledge; links between indigenous knowledge and biodiversity; indigenous customary laws and cultural heritage; and equity in benefit-sharing.

The INTERNATIONAL CHAMBER OF COMMERCE cautioned against an international regime that would discourage countries from developing national legal frameworks, and recommended that countries be given more time to implement the Guidelines.

SEARICE noted a lack of monitoring and the need for considering human genetic resources in ABS. THE EDMONDS INSTITUTE said ABS discussions should be understood in the context of biodiversity conservation. INSTITUTO SOCIOAMBIENTAL supported the development of a code of ethics to give legitimacy to PIC. The UN UNIVERSITY noted its work on user measures and ABS governance.

Chair Hooegeven said he would prepare a Chair's text for further discussion in SWG-I.

IN THE CORRIDORS

Encouraged by the momentum gathered at COP-6 and the WSSD, the Working Group kick-started its discussions in a positive spirit. Chair Hooegeven set the tone in reminding delegates that renegotiating the WSSD call for an international regime was off the table. While some delegates from developing countries were keen on tackling the regime as soon as possible, rather than dwelling on domestic experience with the Bonn Guidelines, many were quick to stress that embarking on negotiations for a binding instrument would distract from, if not run counter to, what is really needed, namely the implementation of the Guidelines. In any event, several delegates noted that discussions on the disclosure of origin and the role of IPRs may attract most of the attention during the week.

THINGS TO LOOK FOR TODAY

SUB-WORKING GROUP I: SWG-I will convene at 10:00 am in Room I to discuss the use of terms. Look for a Chair's text on the ABS regime.

SUB-WORKING GROUP II: SWG-II will meet at 10:00 am in Room II to discuss measures to ensure compliance with PIC and MAT.

PLENARY: Plenary will convene at 5:30 pm in Room I to review progress.