



ABS-3 HIGHLIGHTS: MONDAY, 14 FEBRUARY 2005

Delegates to the third meeting of the *Ad Hoc* Open-ended Working Group on Access and Benefit-sharing (ABS) of the Convention on Biological Diversity (CBD) met in Plenary throughout the day. In the morning, delegates heard opening statements and addressed organizational matters. In the afternoon, delegates reported on the implementation of the Bonn Guidelines on ABS and relevant developments, and held a discussion on an international regime on ABS.

PLENARY

OPENING STATEMENTS: Suboh Mohd Yassin, Deputy Secretary-General of the Ministry of Natural Resources and Environment of Malaysia, President of the CBD Conference of the Parties (COP), expressed his appreciation to Thailand for hosting the meeting in difficult times, following the tsunami tragedy. He said that initiating negotiations on an international regime on ABS marks a new phase in the CBD implementation.

Suwit Khunkitti, Minister of Natural Resources and Environment of Thailand, shared experiences he witnessed in the areas affected by the tsunami, and highlighted that achieving progress in the negotiations on an international ABS regime is crucial for the future of the Convention.

Following a traditional ceremony, Hamdallah Zedan, CBD Executive Secretary, outlined the agenda, stressing the need to respond to the mandate agreed at the World Summit on Sustainable Development by successfully negotiating an international regime.

Nehemiah Rotich, on behalf of the UN Environment Programme (UNEP), cautioned that intellectual property rights (IPRs) can undermine the rights of local communities over genetic resources, and emphasized UNEP's capacity-building work in six African countries to promote benefit-sharing.

ORGANIZATIONAL MATTERS: Delegates adopted the agenda (UNEP/CBD/WG-ABS/3/1), with an amendment to hold an initial discussion on the international regime in Plenary, and established two sub-working groups as proposed in the annotated agenda (UNEP/CBD/WG-ABS/3/1/Add.1/Rev.1). Delegates then elected Khunkitti as Working Group Chair, Sem Taukondjo Shikongo (Namibia) and Jeff Burton (Australia) as co-Chairs of Sub-Working Group I (SWG-I), and Berth Ivars (Norway) and Orlando Rey Santos (Cuba) as co-Chairs of Sub-Working Group II (SWG-II).

STATEMENTS: The Netherlands, on behalf of the EUROPEAN UNION (EU), suggested focusing on: a gap analysis to clarify the regime's objectives; measures to facilitate access; a certificate of origin/source/legal provenance; disclosure in patent applications; and measures to promote benefit-sharing

and safeguard indigenous rights over traditional knowledge. He said that the international regime should consist of a number of mutually supportive instruments, including existing ones.

Egypt, on behalf of AFRICA, said they will contribute constructively to the process, and highlighted the need for technology transfer and recognition of rights of indigenous people. ETHIOPIA added that if access to genetic resources is to be continued, it needs to be reciprocated by benefit-sharing, and urged initiating negotiations on a legally binding international regime.

Ecuador, on behalf of LATIN AMERICA AND THE CARIBBEAN (GRULAC), stressed the importance of reaching agreement on an international regime on ABS.

Mongolia, on behalf of ASIA AND THE PACIFIC, expressed hope for successful deliberations on an international regime and highlighted sub-regional initiatives on ABS. Stressing the linkages between agenda items, she called for coordination between the two sub-working groups.

India, on behalf of the LIKE-MINDED MEGADIVERSE COUNTRIES (LMMC), reported on a Ministerial- and Expert-level meeting of the LMMC recently held in New Delhi, India. He said the regime should include: prior informed consent (PIC) of the country of origin; mutually agreed terms (MAT) between the country of origin and the user country; and mandatory disclosure of origin of genetic resources in IPR applications, including sanctions in case of failure.

Underscoring the complexities of the task, CHINA expressed its commitment to establishing an international ABS regime.

The UN FOOD AND AGRICULTURE ORGANIZATION (FAO) noted the recent entry into force of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGR), stressing its essential contribution to negotiations on ABS in the CBD context.

The UN UNIVERSITY-INSTITUTE OF ADVANCED STUDIES outlined its biodiplomacy initiative, including research and training on the use of genetic resources and distribution of benefits, roles of IPRs, bioprospecting and biotechnology regulation.

The WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO) reported on progress achieved in addressing IPR issues related to genetic resources, traditional knowledge protection, the interrelationship between genetic resources and disclosure requirements in IPR applications, and the role of IPRs in technology transfer.

NEPAL stressed the need to ensure capacity building and technology transfer for the implementation of the Bonn Guidelines in developing countries. JAPAN highlighted efforts to promote cooperation and compliance with regulations in provider countries, and said discussions should focus on practical arrangements and analysis of gaps in existing regulations. The



REPUBLIC OF KOREA said that the regime should be based on the Bonn Guidelines and be consistent with developments under WIPO, the Agreement on Trade-Related Aspects of IPRs (TRIPS) of the World Trade Organization (WTO) and FAO.

The INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS (UPOV) cautioned that the ABS regime should not create barriers to access to genetic resources for plant breeding. The INTERNATIONAL INDIGENOUS FORUM ON BIODIVERSITY underscored the rights of indigenous peoples over traditional knowledge and the genetic resources to which it is inextricably linked, urging delegates to take into account human rights instruments when discussing ABS. COLOMBIA identified PIC and certification of origin as two fundamental principles of an international ABS regime.

Addressing the relationship between TRIPS and the CBD, the WTO identified country views on international actions required for the disclosure of origin of genetic resources and traditional knowledge in IPR applications, namely: the inclusion of such an obligation in the TRIPS Agreement; a mandatory requirement at the international level; and an amendment of WIPO's Patent Cooperation Treaty to enable a mandatory requirement at the national level.

PERU underscored national mechanisms for PIC and MAT, and the need to develop national biodiversity knowledge to ensure ABS. COSTA RICA said the international regime should stimulate and support the implementation of national legislation, while EL SALVADOR stressed transparency, the rights of countries of origin to determine access, and disclosure of origin in all forms of IPRs. BURKINA FASO called for a funding mechanism to support national implementation. The THIRD WORLD NETWORK called for legally enforceable disclosure requirements, and limits to patent broadness. The INTERNATIONAL CHAMBER OF COMMERCE said unrealistic royalties and unclear obligations in national access regimes often discourage genetic resources use.

REPORTS: The Secretariat introduced a compilation of reports from Parties, organizations and stakeholders on the implementation of the Bonn Guidelines and other relevant developments (UNEP/CBD/WG-ABS/3/INF/1).

AUSTRALIA drew attention to an inter-governmental agreement implementing the Bonn Guidelines in their federal states. CHINA reported on, *inter alia*, specific national ABS activities and consideration of options for national legislation. The NETHERLANDS described its code of conduct, and genetic resource databases, for access and exchange of genetic resources in accordance with the CBD and the ITPGR.

BELGIUM, supported by GERMANY and the UK, said the Bonn Guidelines should be considered as a basis for an international ABS regime and reported on national implementation activities. FINLAND reported on its national working group on ABS, and regional cooperation through the Nordic Genetic Resources Council and the Nordic Gene Bank. The EUROPEAN COMMUNITY (EC) reported on ongoing efforts to establish a European network of ABS focal points and the EC Clearing-House Mechanism.

CANADA said that national and regional ABS measures are the precursors to negotiating the binding components of an international regime. He reported on a series of workshops and a ministerial working group on ABS.

GERMANY reported on a recent amendment to its patent law and highlighted support, through development cooperation, to capacity building in developing countries. The UK reported on a national review on implementation of ABS arrangements under the CBD.

NORWAY highlighted amendments in its patent law to ensure compliance with the CBD, draft legislation on access to, and handling of, genetic material, and training sessions for users of genetic resources on the Bonn Guidelines. SWITZERLAND stressed implementation of the Bonn Guidelines and the ITPGR

in the short and medium term, and highlighted national activities on the implementation of the Guidelines. BRAZIL highlighted the national legislative framework on ABS, noting that the Guidelines do not provide for sanctioning users outside national jurisdiction. The LMMC stressed the need for legislation in user countries, and said the Guidelines have not created an enabling environment to ensure compliance with PIC and benefit-sharing.

JAPAN highlighted national and regional activities on promoting the dissemination of the Guidelines. The GAMBIA acknowledged the usefulness of the Guidelines, but stressed they do not prevent abuse of national legislation. The US outlined national experiences to indicate the importance of the Guidelines' flexibility, and capacity-building exercises.

INTERNATIONAL REGIME: AUSTRALIA drew attention to: the need for information collection and dissemination; national implementation of the Bonn Guidelines; and involvement of indigenous communities, NGOs and other stakeholders involved in the use of genetic resources.

GABON stressed the need for sanctions when access granted for academic purposes results in industrial utilization and commercialization of the genetic resources. Highlighting the need to incorporate compliance, monitoring and enforcement elements, ARGENTINA stressed the importance of technology transfer, capacity building and infrastructure improvement.

The GAMBIA suggested that negotiations focus on: monitoring and enforcement; disclosure of origin; recognition and protection of the rights of indigenous and local communities over their traditional knowledge; and ensuring compliance with national ABS legislations, PIC and MAT.

Highlighting the need for controlling biopiracy and for technology transfer, the PHILIPPINES said the CBD is the primary framework to address ABS issues and that it is necessary to address the conflicts between TRIPS and the CBD. MEXICO stressed that the international regime should complement, not substitute, national access legislation, and include a certificate of legal provenance. BOTSWANA said it should provide minimum international standards to address legal uncertainty.

NEW ZEALAND urged clarifying the negotiation process, and coordinating with the Working Group on Article 8(j) (traditional knowledge) and, with CANADA, the EU and SWITZERLAND, called for ensuring participation of indigenous communities. The EU and CANADA also stressed the need to analyze the relationship with other relevant international instruments and processes. SWITZERLAND prioritized close cooperation with the ITPGR and WIPO.

Uganda, on behalf of AFRICA, said the regime should be binding and, *inter alia*: promote collaborative research and capacity building; contribute towards poverty alleviation; ensure compliance with PIC of the provider country and indigenous and local communities; ensure disclosure of origin of genetic resources; and take into account products and derivatives of genetic resources.

BRAZIL stressed the need to ensure that PIC applies to the rights of indigenous and local communities over their traditional knowledge. TANZANIA said the regime must be broad in scope and affirm countries' sovereignty.

IN THE CORRIDORS

Delegates arrived in Bangkok with mixed expectations for the development of a new international regime on ABS. Several participants were optimistic, speaking of collaborative spirits that would allow progress towards practical and cost-effective measures to address ABS. Others, noting the wide array of perceptions about the point of departure for negotiating the regime and the lack of concrete proposals by provider countries, prepared for controversial discussions and slow progress. Many mentioned that the pace of ABS negotiations may also be influenced by parallel deliberations on key issues, such as the disclosure of origin of genetic resources in IPR applications under the TRIPS and WIPO.