



CONVENTION ON BIOLOGICAL DIVERSITY

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AD HOC OPEN-ENDED WORKING GROUP ON ACCESS AND BENEFIT-SHARING

First meeting

Bonn, 22-26 October 2001

Item 2.2 of the provisional agenda*

ORGANIZATIONAL MATTERS: ADOPTION OF THE AGENDA

Annotated provisional agenda

INTRODUCTION

1. The Ad Hoc Open-ended Working Group on Access and Benefit-Sharing was established pursuant to decision V/26 A, paragraph 11, in which the Conference of the Parties to the Convention on Biological Diversity decided:

“[To] establish an Ad Hoc Open-ended Working Group, composed of representatives, including experts, nominated by Governments and regional economic integration organizations, with the mandate to develop guidelines and other approaches for submission to the Conference of the Parties and to assist Parties and stakeholders in addressing the following elements as relevant to access to genetic resources and benefit-sharing, *inter alia*:

- (a) Terms for prior informed consent and mutually agreed terms;
- (b) Roles, responsibilities and participation of stakeholders;
- (c) Relevant aspects relating to *in situ* and *ex situ* conservation and sustainable use;
- (d) Mechanisms for benefit-sharing, for example through technology transfer and joint research and development;
- (e) And means to ensure the respect, preservation and maintenance of knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity,

* UNEP/CBD/WG-ABS/1/1.

Taking into account, *inter alia*, work by the World Intellectual Property Organization on intellectual property rights issues.”

2. In decision V/26, the Conference of the Parties also decided to reconvene the Panel of Experts established pursuant to decision IV/8. At its first meeting, in Costa-Rica, in October 1999, the Panel of Experts had been mandated to develop a common understanding of basic concepts and to explore options for access and benefit-sharing. Having considered the report of that meeting (UNEP/CBD/COP/5/8), the Conference of the Parties decided, *inter alia*, in decision V/26 A:

“[T]o reconvene the Panel of Experts on Access and Benefit-sharing with a concrete mandate and agenda. The Panel will conduct further work on outstanding issues from its first meeting, especially:

(a) Assessment of user and provider experience in access to genetic resources and benefit-sharing and study of complementary options;

(b) Identification of approaches to involvement of stakeholders in access to genetic resources and benefit-sharing processes;

and will include additional expertise. The Panel will submit its report to the Ad Hoc Working Group on Access and Benefit-Sharing referred to in paragraph 11 [of the decision];”

3. The Panel of Experts held its second meeting in Montreal, from 19 to 22 March 2001. The report of that meeting is contained in document UNEP/CBD/WG-ABS/1/2

4. In accordance with paragraph 11 of decision V/26 A, the work of the Working Group shall take into account the reports of the Panel of Experts on Access and Benefit-sharing and other relevant information. The results of the deliberations of the Working Group, including draft guidelines and other approaches, shall be submitted for consideration by the Conference of Parties at its sixth meeting.

5. The Conference of the Parties also noted in paragraph 15 of decision V/26 A that, at its first meeting, the Panel of Experts on Access and Benefit-sharing was not able to come to any conclusions about the role of intellectual property rights in the implementation of access and benefit-sharing arrangements and that a list of specific issues had been identified for further study:

(a) The role of intellectual property rights in prior informed consent;

(b) Intellectual property and traditional knowledge related to genetic resources;

(c) Intellectual property rights and access and benefit-sharing agreements;

(d) Scope, prior art and monitoring.

6. As requested by the Conference of the Parties, a report on these specific issues has been prepared for consideration by the Working Group and is available as document UNEP/CBD/WG-ABS/1/4.

7. In accordance with paragraph 11 of decision V/26 A, the Working Group shall be “composed of representatives, including experts, nominated by Governments and regional economic integration organizations. The Working Group will be open to the participation of indigenous and local communities, non-governmental organizations, industry and scientific and academic institutions, as well as intergovernmental organizations.”

8. Accordingly, and following an offer of the Government of Germany to host the meeting, the Ad Hoc Open-ended Working Group on Access and Benefit-sharing will meet from 22 to 26 October 2001, in Bonn, Germany. Registration of participants will take place at the venue of the meeting from 3 p.m. to 6 p.m. on Sunday 21 October 2001 and will continue from 8 a.m. on Monday 22 October 2001.

9. A list of documents for the meeting is contained in section A of annex I to the present note. In addition to normal distribution, documents are available on the Secretariat's website at the following <http://www.biodiv.org>.

10. The Working Group should note that preparations for the Strategic Plan for the Convention on Biological Diversity will be considered at the Open-ended Inter-Sessional Meeting on the Strategic Plan, National Reports and Implementation of the Convention on Biological Diversity, to be held from 19 to 21 November 2001. It should be noted that future developments on access to genetic resources and benefit-sharing will be considered by that meeting and are addressed in a note by the Executive Secretary on the Strategic Plan (UNEP/CBD/MSP/2).

11. The Secretariat is distributing an information note containing details of registration and logistical arrangements for the meeting, including information on travel, visa requirements, accommodation and other matters.

ITEM 1. OPENING OF THE MEETING

12. The meeting will be opened at 10 a.m. on Monday, 22 October 2001 by the President of the Bureau of the Conference of the Parties. The Executive Secretary will make introductory remarks.

ITEM 2. ORGANIZATIONAL MATTERS

2.1. OFFICERS

13. The Bureau of the Conference of the Parties will serve as the Bureau of the Working Group. The President of the Conference of the Parties may, however, nominate a representative from the host country to act as presiding officer for plenary sessions of the meeting.

2.2. ADOPTION OF THE AGENDA

14. The Working Group may wish to adopt its agenda on the basis of the provisional agenda proposed in document UNEP/CBD/WG-ABS/1/1, which has been prepared by the Executive Secretary on the basis of decision V/26.

2.3. ORGANIZATION OF WORK

15. Interpretation will be provided in the six official languages of the United Nations.

16. In light of the number of issues to be addressed, and in accordance with past practice, the Working Group may wish to establish two sessional sub-working groups open to all Parties and observers with well defined terms of reference to ensure in-depth consideration of all items on the agenda.

17. Should the Working Group decide to establish two sessional sub-working groups, it is proposed that the chairs of those groups be elected at the first plenary session of the meeting.

18. A suggested timetable and division of responsibilities between the plenary and the two sub-working groups is proposed in annex II below. According to that proposal, Sub-Working Group I would consider the development of draft international guidelines on access and benefit-sharing, while Sub-Working Group II would consider other approaches, including the development of an action plan for capacity building and the role of intellectual property rights in the implementation of access and benefit-sharing arrangements.

ITEM 3. DEVELOPMENT OF DRAFT INTERNATIONAL GUIDELINES ON ACCESS AND BENEFIT-SHARING

19. Under this item, the Working Group may wish to consider and develop guidelines based on the structure suggested by the Panel of Experts, which includes the following elements:

- (a) General provisions;
- (b) Roles and responsibilities of users and providers;
- (c) Participation of stakeholders;
- (d) Steps in the Access and Benefit-sharing process, including terms for prior informed agreement and mutually agreed terms;
- (e) Other provisions;
- (f) Cross-cutting elements.

20. These six elements are addressed in the note by the Executive Secretary (UNEP/CBD/WG-ABS/1/3), which is the main working document for the meeting.

ITEM 4. OTHER APPROACHES, INCLUDING THE DEVELOPMENT OF AN ACTION PLAN FOR CAPACITY-BUILDING

21. In its second meeting, the Panel of experts recognized that guidelines should be part of a package of measures or approaches that may be considered to address the different needs of Parties and stakeholders in the implementation of access and benefit-sharing arrangements. Other measures or approaches that may provide guidance to parties include codes of conduct, model agreements and indicators. Capacity-building and information-exchange mechanisms were also identified as useful complementary approaches in assisting parties and stakeholders to implement access and benefit-sharing.

22. As suggested by the Panel of Experts, the Working Group may wish to consider the need to draw up an action plan for capacity-building on access and benefit-sharing with specific indicators, milestones, time-frames, roles, donors, drivers, etc. Progress could then be monitored and evaluated.

23. These issues are also addressed in the note by the Executive Secretary (UNEP/CBD/WG-ABS/1/3)

ITEM 5. REPORT ON THE ROLE OF INTELLECTUAL PROPERTY RIGHTS IN THE IMPLEMENTATION OF ACCESS AND BENEFIT-SHARING ARRANGEMENTS

24. The Working Group is invited to take note of the report prepared by the Executive Secretary on the role of intellectual property rights in the implementation of access and benefit-sharing arrangements

(UNEP/CBD/WG-ABS/1/4). It may also wish to make recommendations to the Conference of Parties on priorities for further work on this issue, in light of recent developments both under the framework of the Convention on Biological Diversity and in other international organizations, such as the World Intellectual Property Organization (WIPO).

ITEM 6. OTHER MATTERS

25. Under this item, the members of the Working Group may wish to raise and discuss other matters related to the subject-matter of the meeting.

ITEM 7. ADOPTION OF THE REPORT

26. The Working Group will consider and adopt its report, on the basis of the draft report of the meeting to be presented by the Rapporteur and the draft recommendations agreed by the two sub-working groups, which will be introduced by their respective chairs.

27. The final report of the meeting will be presented by the Chairperson of the Working Group to the Conference of the Parties at its sixth meeting, to be held in The Hague from April 2002.

ITEM 8. CLOSURE OF THE MEETING

28. The meeting is expected to be closed at 6 p.m. on Friday 26 October 2001.

Annex I

**DOCUMENTATION FOR THE FIRST MEETING OF THE AD HOC OPEN-ENDED
WORKING GROUP ON ACCESS AND BENEFIT-SHARING**

| <i>Symbol</i> | <i>Title</i> |
|--|---|
| <i>A. Documents distributed for the meeting</i> | |
| UNEP/CBD/WG-ABS/1/1 | Provisional agenda |
| UNEP/CBD/WG-ABS/1/1/Add.1 | Annotated provisional agenda |
| UNEP/CBD/WG-ABS/1/2 | Report of the Panel of Experts on Access and Benefit-sharing on the work of its second meeting |
| UNEP/CBD/WG-ABS/1/3 | Elements for consideration in the development of guidelines and other approaches for access to genetic resources and benefit-sharing |
| UNEP/CBD/WG-ABS/1/4 | The role of intellectual property rights in access and benefit-sharing arrangements |
| UNEP/CBD/COP/5/8 | Report of the Panel of Experts on Access and Benefit-sharing on the work of its first meeting |
| <i>B. Previous documents on access and benefit-sharing</i> | |
| UNEP/CBD/EP-ABS/2/2 | Assessment of User and Provider Experience, Identification of Approaches to involvement of stakeholders, and complementary options (note by the Executive Secretary prepared for the Second Meeting of the Panel of Experts). |
| UNEP/CBD/EP-ABS/2/INF/1 | Building a new partnership: the draft Guidelines on Access and Benefit-sharing Regarding the Utilization of Genetic Resources |
| UNEP/CBD/EP-ABS/2 | Options for access and benefit-sharing arrangements (note by the Executive Secretary prepared for the first meeting of the Panel of Experts) |
| UNEP/CBD/COP/5/INF/25 | Abstract of the international scientific conference on "Guidelines for Access and Benefit-sharing — Initiatives and Perspectives for Implementing the Convention on Biological Diversity" |
| UNEP/CBD/COP/5/INF/21 | Swiss Draft Guidelines On Access And Benefit-sharing Regarding The Utilization Of Genetic Resources |
| UNEP/CBD/COP/5/21 | Access to genetic resources |
| UNEP/CBD/WG8J/1/2 | Legal and other appropriate forms of protection for the knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity |
| UNEP/CBD/TKBD/1/2 | Traditional Knowledge and Biological Diversity |
| UNEP/CBD/ISOC/Inf.5 | Report of the European Workshop on Genetic Resources Issues and Related Aspects: submission by Germany |
| UNEP/CBD/ISOC/Inf.4 | The commercial use of biodiversity: access to genetic resources and benefit-sharing: submission by the European Community |

| <i>Symbol</i> | <i>Title</i> |
|-----------------------|--|
| UNEP/CBD/ISOC/Inf.3 | Final report of the International Conference on Trade Related Aspects of Intellectual Property Rights and the Convention on Biological Diversity: submission by the United Nations Environment Programme |
| UNEP/CBD/ISOC/Inf.2 | Submission by the Government of the United Kingdom: common policy guidelines for participating botanic gardens on access to genetic resources and benefit-sharing |
| UNEP/CBD/ISOC/Inf.1 | Submissions received by the Executive Secretary concerning decision IV/8, paragraph 2 |
| UNEP/CBD/ISOC/3 | Review of options for access and benefit-sharing mechanisms |
| No symbol | Compilation of case-studies on benefit-sharing (prepared for the fourth meeting of the Conference of the Parties) |
| UNEP/CBD/COP/4/Inf.30 | Patents using biological source material and mention of the country of origin in patents using biological source material: submission by the Government of Spain |
| UNEP/CBD/COP/4/Inf.16 | Access to genetic resources and means for fair and equitable benefit sharing: case-study submitted by Switzerland, April 1998 |
| UNEP/CBD/COP/4/Inf.10 | Best practices for access to genetic resources, International Workshop, Cordoba, 16–17 January 1998 |
| UNEP/CBD/COP/4/Inf.7 | Synthesis of case-studies on benefit-sharing |
| UNEP/CBD/COP/4/23 | Review of national, regional and sectoral measures and guidelines on access to genetic resources |
| UNEP/CBD/COP/4/22 | Addressing the fair and equitable sharing of the benefits arising out of genetic resources: options for assistance to developing country Parties to the Convention on Biological Diversity |
| UNEP/CBD/COP/4/21 | Measures to promote and advance the distribution of benefits from biotechnology in accordance with Article 19 |
| UNEP/CBD/COP/3/Inf.53 | Fair and equitable sharing of benefits arising from the use of genetic resources |
| UNEP/CBD/COP/3/22 | The impact of intellectual property rights systems on the conservation and sustainable use of biological diversity and the equitable sharing of benefits from its use |
| UNEP/CBD/COP/3/20 | Access to genetic resources |
| UNEP/CBD/COP/2/13 | Access to genetic resources and benefit-sharing: legislation, administrative and policy information |

| <i>Symbol</i> | <i>Title</i> |
|--|--|
| <i>C. Decisions/recommendations of Convention bodies</i> | |
| Decisions V/26 A-C | “Access to genetic resources”, adopted by the Conference of the Parties at its fifth meeting |
| Decision V/16 | Article 8(j) and related provisions |
| Decision V/19 | “National reporting”, adopted by the Conference of the Parties at its fifth meeting |
| UNEP/CBD/COP/5/4 (extract) | Recommendations 2, 3 and 4 of the Inter-Sessional Meeting on the Operations of the Convention, as contained on pages 28-35 of its report to the fifth meeting of the Conference of the Parties |
| Decision IV/8 | “Access and benefit-sharing”, adopted by the Conference of the Parties at its fourth meeting |
| Decision III/11 | “Conservation and sustainable use of agricultural biological diversity”, adopted by the Conference of the Parties at its third meeting |
| Decision III/15 | “Access to genetic resources”, adopted by the Conference of the Parties at its third meeting |
| Decision II/15 | “FAO Global System for the Conservation and Utilization of Plant Genetic Resources for Food and Agriculture” adopted by the Conference of the Parties at its second meeting. |

Annex II

**PROVISIONAL ORGANIZATION OF WORK FOR THE AD HOC OPEN-ENDED WORKING GROUP ON ACCESS AND
BENEFIT-SHARING**

| | <i>Plenary</i> | <i>Sub-Working Group I</i> | <i>Sub-Working Group II</i> |
|--|--|---|---|
| <i>Monday</i> 22 October 2001 10 a.m. to 1 p.m. | <i>Items:</i> 1. Opening of the meeting. 2. Organizational matters: 2.1 Officers; 2.2 Adoption of the agenda; 2.3 Organization of work. | | |
| 3-6 p.m. | | Item 3. Development of draft international guidelines on access and benefit-sharing | Item 4. Other approaches, including the development of an action plan for capacity-building |
| <i>Tuesday</i> 23 October 2001 10 a.m. to 1 p.m. | | Item 3 (<i>continued</i>) | Item 4 (<i>continued</i>) |
| 3-6 p.m. | | Items 3 (<i>continued</i>) | Item 4 (<i>continued</i>) |
| <i>Wednesday</i> 24 October 2001 10 to 1 p.m. | | Item 3 (<i>continued</i>) | Item 5. Report on the role of intellectual property rights in the implementation of access and benefit-sharing arrangements |
| 3-6 p.m. | | Item 3 (<i>continued</i>) | Item 5 (<i>continued</i>) |
| <i>Thursday,</i> 25 October 2001 10 a.m. to 1 p.m. | Reports of the sub-working groups | | |
| 3-6 p.m. | Reports of the sub-working groups (<i>continued</i>) | | |

| | Plenary | Sub-Working Group I | Sub-Working Group II |
|--|---|---------------------|----------------------|
| Friday 26 October 2001 10 a.m. to 1 p.m. | Item 6: Other matters Item 7: Adoption of the report | | |
| 3-6 p.m. | Item 8: Closure of the meeting | | |
