



## CONVENTION ON BIOLOGICAL DIVERSITY

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

Second meeting

Montreal, 1-5 December 2003

Item 5 of the provisional agenda\*

### **OTHER APPROACHES, AS SET OUT IN DECISION VI/24 B, INCLUDING CONSIDERATION OF THE PROCESS, NATURE, SCOPE, ELEMENTS AND MODALITIES OF AN INTERNATIONAL REGIME**

*An international regime on access to genetic resources and benefit-sharing: compilation of views on  
the process, nature, scope, elements and modalities*

*Note by the Executive Secretary*

1. The Executive Secretary is pleased to transmit herewith, for the information of participants in the second meeting of the Ad Hoc Open-Ended Working Group on Access and Benefit-sharing, the submissions provided by Parties and relevant organizations regarding their views on the process, nature, scope, elements and modalities of an international regime on access to genetic resources and benefit-sharing. As of 8 October 2003, submissions had been received from Brazil, the European Union, Switzerland and the International Chamber of Commerce. This document is to be considered as a complement to the note by the Executive Secretary on the subject (UNEP/CBD/WG-ABS/2/4).
2. The submissions are reproduced herewith in the original language of submission.

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\* UNEP/CBD/WG-ABS/2/1.

*Annex*

**COMPILATION OF VIEWS BY PARTIES AND RELEVANT ORGANISATIONS ON THE NATURE, SCOPE, ELEMENTS AND MODALITIES OF AN INTERNATIONAL REGIME ON ACCESS TO GENETIC RESOURCES AND BENEFIT-SHARING**

**A. Parties**

1. *Submission by Brazil dated 15 September 2003 on the views of the Government of Brazil pertaining to the international regime to promote and safeguard the fair and equitable sharing of benefits arising out of the utilization of genetic resources:*

*Nature*

The negotiation of the international regime should have as its aim the adoption of a legally-binding document that would effectively protect and guarantee the rights of countries of origin of genetic resources as well as the rights of indigenous and local communities in relation to their associated traditional knowledge.

*Scope*

The international regime on benefit-sharing could also address the issue of access to genetic resources. However, in accordance with Article 15(1) of the Convention, provisions related to access to genetic resources should not be a substitute for the national legislation of countries of origin of those resources, but rather reinforce this legislation.

The international regime should also promote and safeguard the fair and equitable sharing of benefits arising out of the utilization of traditional knowledge of indigenous and local communities relevant to biological diversity. The Conference of the Parties of the Convention has already recognized that the Convention on Biological Diversity is the primary international instrument with the mandate to address issues regarding the respect, preservation and maintenance of that knowledge. Where traditional knowledge associated with genetic resources is being accessed, the rights of indigenous and local communities over their traditional knowledge, including their right to fair and equitable sharing of benefits arising out of the utilization of that knowledge, should be respected and safeguarded.

*Elements*

In order to effectively promote and safeguard the fair and equitable sharing of benefits the international regime should be endowed with a mechanism to monitor its implementation.

2. *Submission by the European Union dated 3 October 2003 on an international regime on access and benefit-sharing*

*The process*

The European Union notes that the Convention on Biological Diversity Ad Hoc Open-ended Working Group on Access and Benefit-sharing has been a constructive forum to conduct discussions on the issue of access and benefit-sharing where positive outcomes, which led to the adoption of the Bonn Guidelines, have been achieved. Therefore, the European Union believes that, should the Conference of the Parties decide that it is necessary to set up a specific process, within the framework of the Convention on Biological Diversity, to discuss this issue further, the Ad Hoc Open-ended Working Group on Access and Benefit-sharing could continue and be mandated to address the question of the international regime

on access and benefit-sharing. This group could analyse the present international regime, its possible gaps and their consequences and evaluate the experience gained from the implementation of the Bonn Guidelines. The Ad Hoc Working Group should report to the Conference of the Parties.

#### *The nature*

The European Union believes that paragraph 44 (o) of the Plan of Implementation of the World Summit on Sustainable Development does not provide any specific indication on the nature of an international regime on access and benefit sharing. This is understandable as a sound choice of the appropriate instrument/s which could further develop the international regime on access and benefit-sharing will only be possible when an analysis of the possible gaps in the current international regime on access and benefit-sharing, and of their consequences, has taken place.

The European Union wishes to reiterate its commitment to working towards a transparent, effective and comprehensive international regime on access and benefit-sharing. However, the European Union does not intend to pre-judge, at this stage, the nature of the instrument/s which may be put in place to further develop the present international regime on access and benefit-sharing.

#### *The scope*

The European Union considers that the international regime on access and benefit-sharing should address all issues necessary for the achievement of the objective of the Convention on Biological Diversity on the “fair and equitable sharing of the benefits arising out of the utilisation of genetic resources, including by appropriate access to genetic resources” (Article 1). In line with the recommendations of Inter-Sessional Meeting on the Multi-Year Programme of Work of the Conference of the Parties up to 2010, the European Union believes that access to genetic resources and benefit-sharing are two side of the same issue that need to be dealt with together. Moreover, as it is the case for the Bonn Guidelines, an international regime on access and benefit-sharing must be linked to the other two objectives of the Convention on Biological Diversity and therefore aim to contribute to the conservation and sustainable use of biodiversity.

#### *The elements*

Elements of an international regime on access and benefit-sharing already exist and should be the starting point for any discussion on its further development.

The Bonn Guidelines, whose importance is emphasised in both paragraphs 44 (n) and (o) of the World Summit Plan of Implementation, represent the corner-stone of the international regime on access and benefit-sharing under the Convention on Biological Diversity. In this respect, the preliminary reports by Parties on the use they have made of the Bonn Guidelines at national and regional level will provide essential information in order to review and revise the Guidelines if necessary. In addition, the development of “other approaches”, which is on the agenda of the meeting of the Working Group on Access and Benefit-sharing in December, would provide further elements for the international regime. Similarly, possible outcomes of the work of the Convention’s Working Group on Article 8(j) could provide valuable inputs, in particular in relation to traditional knowledge.

The European Union also recognizes the fundamental importance of the International Treaty on Plant Genetic Resources for Food and Agriculture. One of the objectives of the latter is the fair and equitable sharing of the benefits arising out of the use of plant genetic resources for food and agriculture, in harmony with the Convention on Biological Diversity, for sustainable agriculture and food security. The early entry into force and implementation of this Treaty, including the development of a standard

Material Transfer Agreement, will make it an important element of the international regime on access and benefit-sharing.

Other existing elements of the international regime on access and benefit-sharing include relevant provisions of the TRIPs agreement; \* different intellectual property instruments administered by WIPO; and relevant provisions of the UPOV Conventions. Further developments in these forums may be of great importance for the international regime on access and benefit-sharing. The European Union is committed to playing a constructive role in these forums through co-ordinated efforts.

Finally, demand-driven capacity building activities will need to be a horizontal element of the future regime in order to ensure its swift and effective application. The draft Action Plan on Capacity-building for Access to Genetic Resources and Benefit-sharing, which the Convention experts elaborated in December 2002, provides a good basis for this element of an international regime on access and benefit-sharing.

The analysis of the effectiveness of the above mentioned instruments and of their ongoing development as well as the enhancement of synergies among them should be the basis for further work on access and benefit-sharing under the Convention on Biological Diversity. An inventory of existing instruments structured by the different kinds of genetic resources (microbiological, plant and animal) as well as the different uses of these resources (e.g., commercial, non-commercial, agricultural, etc.) could be part of this analysis. Moreover, the international regime on access and benefit-sharing should take into account the strong links between the three objectives of the Convention on Biological Diversity and contribute to the conservation and sustainable use of biodiversity.

#### *The modalities*

Since we have already addressed the process through which the international regime on access and benefit-sharing could be further developed, we assume that the term “modalities” refers to the way the international regime should function. In this respect, the European Union believes that, as is the case for the nature of the regime, it would be inappropriate to take a position before an adequate analysis of the existing elements of and possible gaps in the current international regime has taken place in the framework of a process to be set-up by the Conference of the Parties.

3. *Excerpt from the submission by Switzerland dated 15 September 2003, regarding considerations on the process, nature, scope, elements and modalities of an international regime on access and benefit-sharing*

With regard of implementation of the access and benefit-sharing obligations of the Convention on Biological Diversity, the position of Switzerland can be summarized in the following three points:

1. Priority should be given to national implementation of the Bonn Guidelines. Switzerland supports a voluntary access and benefit-sharing approach based on the rapid implementation of the Bonn Guidelines. Indeed in our view such an approach presents the following advantages:

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\* With regard to the TRIPs Agreement, the European Union wishes to recall its submission of a “Concept paper” to the TRIPs Council on, *inter alia*, the relationship between the TRIPs Agreement and the Convention on Biological Diversity. See “Communication by the EC and its Member States to the TRIPs Council on the review of Article 27.3 (b) of the TRIPs Agreement, and the relationship between the TRIPs Agreement and the Convention on Biological Diversity and the protection of traditional knowledge and folklore”.

- Quick and easy participation of all the stakeholders involved in the use of genetic resources;
- Fast implementation, allowing considerable pertinent experience to be gained over a relatively short period of time;
- Flexibility which allows specific measures adapted to the needs of each group of users.

2. National and international measures should be established to promote the declaration of the source of genetic resources and traditional knowledge.

3. If relevant gaps are identified by providing countries, Switzerland is ready to actively discuss any proposal to improve the implementation of the Convention on Biological Diversity within the negotiation of an international regime on access and benefit-sharing.

Based on this and in the absence of any substantive proposal, Switzerland does not have at this stage any particular view regarding the scope, elements and modalities of an international regime except that it should address both access to genetic resources and benefit and should focus only on issues which are not properly covered by the Bonn Guidelines. It is also premature to define the nature of the International Regime since this will depend on its scope and modalities. Regarding the process, the first step should be to identify the gaps that would require additional action at the international level. This should be made in close coordination with relevant ongoing activities under the International Treaty on Plant Genetic Resources for Food and Agriculture and WIPO. On the basis of the outcome of this analysis, the Conference of the Parties should decide on the appropriate measures to address these gaps.

### ***B. Relevant organizations***

*Comments submitted to the Secretariat on 12 September 2003, on behalf of the International Chamber of Commerce (ICC), reflecting the views of its Task Force on Access and Benefit-sharing with respect to a new regime on access and benefit-sharing.\**

It is the view of the ICC that we are in a rather delicate period in the evolution of access & benefit sharing policy. Adoption of the Convention on Biological Diversity in 1992 was clearly a step forward in systematic protection of biological diversity of genetic resources as well as in recognizing their potential value in our efforts to enhance human well-being. Additionally, the Convention on Biological Diversity clearly articulated an expectation that any value realized from those resources would be equitably shared with the nations, local communities and indigenous peoples charged with *in situ* stewardship of those resources.

We now find ourselves a decade later with those expectations still very much alive, but with relatively few countries having implemented legislative guidance needed to translate those expectations into realities. We were hopeful that the adoption of the Bonn Guidelines would prompt more countries to frame their domestic policies and thus enable the responsible access and benefit sharing envisioned by the Convention on Biological Diversity. We believe the Guidelines are a “shopping list” of potential considerations that is broader than necessary; but as voluntary guidelines, we regard them as workable and are ready to engage with countries to enable them to be productively applied.

Despite the significant accomplishment embodied in the Bonn Guidelines, however, we now face a situation in which countries may well be discouraged from applying the Guidelines. The World Summit in Johannesburg has directed that countries:

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\* These comments were previously offered in the statement of the ICC to the Inter-Sessional Meeting on the Multi-Year Programme of Work of the Conference of the Parties up to 2010 on 17 March 2003.

“Negotiate within the framework of the Convention on Biological Diversity, 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”

Our fear is that prospect of initiating negotiation of a new regime at this time may actually discourage countries from initiating any domestic programs under the Bonn Guidelines. It is the hope of private sector that the Conference of the Parties would choose to allow countries time to work with those Guidelines and sort out the strengths and weaknesses of the various options they lay out, rather than immediately embarking on another round of negotiation on those very same topics. The Convention should be encouraging countries to utilize the Guidelines and develop and apply domestic programs first. By doing so, we would all would gain valuable experience in implementing access and benefiting sharing systems before making even more commitments in broad, new international agreements.

Deferring initiation of the new negotiation would have the additional benefit of allowing issues relating to the intellectual property rights to play out more fully in the World Trade Organization and the World Intellectual Property Organization. As well, it would benefit from the work just getting under way at the Food and Agriculture Organization of the United Nations to detail implementation of its recently concluded International Treaty on Plant Genetic Resources, including its crucial work on Materials Transfer Agreements. These are all pieces in the overall mosaic of “access and benefit sharing.” They all have a role to play and we need an orderly process that allows each to mature in its own venue of expertise. Failure to do so, we fear, would bog-down all of these efforts and effectively push complete resolution of these matters even further into the future.

In conclusion, let me reiterate that scientific developments and products utilizing these resources can benefit all countries; but the development of such beneficial uses increasingly depends upon orderly access and benefit sharing arrangements. Our sense is that we remain at some risk of embarking upon policies that could effectively discourage access and use of genetic resources, thereby reducing the potential for future benefits. Our sense is that responsible frameworks must be the product of mutual understanding between the countries and the involved segments of the research community, including the private sector. We are prepared to engage with this Convention, groups of countries and individual countries to advance that mutual understanding. We are hopeful that this Convention can provide time to enable such initiatives, and to gain practical experience under the Bonn Guidelines.

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