



**CONVENTION ON
BIOLOGICAL
DIVERSITY**

Distr.
GENERAL

UNEP/CBD/COP/6/19
9 January 2002

ORIGINAL: ENGLISH

CONFERENCE OF THE PARTIES TO THE
CONVENTION ON BIOLOGICAL DIVERSITY
Sixth meeting
The Hague, 7-19 April 2002
Item 23 of the provisional agenda*

ACCESS AND BENEFIT-SHARING AS RELATED TO GENETIC RESOURCES

Progress report on the implementation of decisions V/26 A-C

I. INTRODUCTION

1. The present note has been prepared to assist the Conference of the Parties in its consideration of item 23 of the provisional agenda, which deals with access and benefit-sharing as related to genetic resources. Under this item, the Conference of the Parties is also invited to consider recommendations 1, 2 and 3 of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing (UNEP/CBD/COP/6/6, annex) on, respectively:

- (a) Draft Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization;
- (b) Other approaches, including the development of an action plan for capacity-building; and
- (c) Role of intellectual property rights in the implementation of access and benefit-sharing arrangements.

2. The note provides an overview of activities carried out under the Convention process to implement decisions V/26 A-C of the Conference of the Parties on access to genetic resources. It also identifies areas where further work is needed. Section III of the note contains elements for draft decisions to be considered by the Conference of the Parties, additional to the recommendations of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing.

* UNEP/CBD/COP/6/1 and Corr.1/Rev.1.

II. PROGRESS ACHIEVED IN IMPLEMENTING DECISIONS V/26 A-C

A. *Second meeting of the Panel of Experts on Access and Benefit-sharing*

3. In paragraph 10, of decision V/26 A, the Conference of Parties decided to reconvene the Panel of Experts on Access and Benefit-sharing, established at its fourth meeting, to conduct further work on outstanding issues from the first meeting of the Panel, 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.

The Panel was to include additional expertise and to submit its report to the Ad Hoc Open-ended Working Group on Access and Benefit-sharing established in the same decision.

4. In preparation for the meeting of the Panel of Experts, background documentation was prepared, including a note by the Executive Secretary on assessment of user and provider experience, identification of approaches to involvement of stakeholders, and complementary options (UNEP/CBD/EP-ABS/2/2), which was used as a basis for discussion.

5. The meeting was held in Montreal from 19 to 22 March 2001. The Panel considered, among other things, examples of access and benefit-sharing and identified elements that could serve as a basis for the development of international guidelines and other approaches on access and benefit-sharing. The report of the meeting (UNEP/CBD/WG-ABS/1/2) was presented to the Ad Hoc Open-ended Working Group on Access and Benefit-sharing, in October 2001.

B. *Meeting of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing*

6. The Ad Hoc Open-ended Working Group on Access and Benefit-sharing, established pursuant to decision V/26 A, met in Bonn from 22 to 26 October 2001, with the financial support of the Government of Germany.

7. Over 400 delegates and observers participated in the meeting, including representatives from Government, indigenous and local communities, non-governmental organizations, industry, scientific and academic institutions, as well as intergovernmental organizations.

8. In preparation for this meeting, pre-session documentation was prepared, including a note by the Executive Secretary on elements for consideration in the development of draft guidelines on access to genetic resources and benefit-sharing (UNEP/CBD/WG-ABS/1/3), which took into account the reports of the two meetings of the Panel of Experts and other relevant documentation, such as existing guidelines.

9. In accordance with the mandate set out in decision V/26 A, the Working Group developed draft guidelines and other approaches for submission to the Conference of the Parties at its sixth meeting. These guidelines may assist Parties when establishing legislative, administrative or policy measures and/or when developing contractual arrangements for access and benefit-sharing under mutually agreed terms. The draft guidelines address among other issues roles and responsibilities pursuant to Article 15 of the Convention, the participation of stakeholders, and steps in the access and benefit-sharing process, including prior informed consent (PIC) and mutually agreed terms (MAT). A few outstanding issues may require further clarification. They include the use of terms, the scope of guidelines with respect to products and derivatives of genetic resources, and stakeholder involvement.

10. With regard to the use of terms, the Working Group recommended, in paragraph 2 of its recommendation 1, that the Executive Secretary, in consultation with the Bureau of the Conference of the

Parties, convene a group of ten representatives nominated by Parties, having due regard to the principle of equitable geographical representation, to develop draft elements of a decision for paragraph 6 of the draft Bonn Guidelines. In response to that recommendation, the Executive Secretary, by a notification of 29 November 2001, invited Parties to nominate an expert. Based on the nominations received, the Secretariat will select ten experts on the basis of their expertise and the need to ensure equitable geographical representation, and with due regard to gender balance. It is expected that the group will work initially using electronic means of communication with a view to elaborating elements of a draft decision on the use of terms for the Conference of the Parties at its sixth meeting.

11. As noted in paragraph 1 above, the recommendations adopted by the Ad Hoc Open-ended Working Group, for submission to the Conference of the Parties at its sixth meeting, are contained in the annex to the report of the meeting (UNEP/CBD/COP/6/6).

C. Information related to access and benefit-sharing arrangements

12. In decision V/26 A, paragraph 1, the Conference of the Parties, requested Parties to designate a national focal point and one or more competent national authorities, as appropriate, to be responsible for access and benefit-sharing arrangements or to provide information on such arrangements within its jurisdiction.

13. As of 20 December 2001, 28 Parties had responded to this request. Of these, 27 nominated national focal points and 14 also nominated national competent authorities. One country nominated a competent national authority and no national focal point. Details are available on the Convention website (www.biodiv.org).

14. In paragraph 4 (a) of the same decision, the Conference of the Parties urged Parties to pay particular attention to their obligations under Article 15, 16 and 19 of the Convention and requested them to report to the Conference of the Parties on the measures they have taken to this effect.

15. In paragraph 12 of the decision, the Conference of the Parties noted “that information is a critical aspect of providing the necessary parity of bargaining power for stakeholders in access and benefit-sharing arrangements, and that, in this respect, there is a particular need for more information regarding:

- (a) User institutions;
- (b) The market for genetic resources;
- (c) Non-monetary benefits;
- (d) New and emerging mechanisms for benefit-sharing;
- (e) Incentive measures;
- (f) Clarification of definitions;
- (g) *Sui generis* systems; and
- (h) Intermediaries”.

16. In paragraph 13, the Conference of the Parties requested the Executive Secretary to compile the above-mentioned information and to disseminate it through the clearing-house mechanism and relevant meetings, and requested Parties and organizations to provide such information to assist the Executive Secretary.

17. The Secretariat has received little information in response to the abovementioned requests by the Conference of Parties. With a view to promoting access to and exchange of information regarding developments on access to genetic resources and benefit-sharing, the Conference of Parties may wish to invite Parties to make available to the Executive Secretary information on the nature of measures they have taken to address access and benefit-sharing. The Secretariat could then compile this information and make it available to Parties through the clearing-house mechanism. Section III below contains elements to this effect that might be included in a draft decision.

D. Capacity-building

18. In paragraph 14 of decision V/26 A, the Conference of the Parties noted “that further development of capacities regarding all aspects of access and benefit-sharing arrangements is required for all stakeholders, including local governments, academic institutions, and indigenous and local communities, and that key capacity-building needs include:

- (a) Assessment and inventory of biological resources as well as information management;
- (b) Contract negotiation skills;
- (c) Legal drafting skills for development of access and benefit-sharing measures;
- (d) Means for the protection of traditional knowledge associated with genetic resources.”

19. At its second meeting, the Panel of Experts, recommended that high priority should be placed on capacity-building and underlined that capacity-building should be the essence of the work on access and benefit-sharing under the Convention on Biological Diversity and should be operationalized. It also stressed the need for increased awareness of the importance of this area, nationally at all levels, from government to local communities; the need for funding and for the development of action plans for capacity-building on access and benefit-sharing with specific indicators, identified milestones, time-frames, roles, donors, drivers; and the need for monitoring and evaluation of progress in building capacity.

20. As suggested by the Panel of Experts and in response to paragraph 11 of decision V/26 A, the Ad Hoc Open-ended Working Group on Access and Benefit-sharing considered issues of capacity-building. In its recommendation 2, on other approaches, the Working Group requested the Executive Secretary, in consultation with the Bureau of the Conference of the Parties, to convene, as soon as possible and depending on voluntary financial contributions by Parties and other donors, an open-ended expert workshop on capacity-building for access to genetic resources and benefit-sharing. The workshop was to further develop draft elements for an action plan on capacity-building for access and benefit-sharing, for consideration by the Conference of the Parties at its sixth meeting.

21. Further to the meeting of the Working Group, a notification was sent out to Parties and other relevant institutions to gather information on the needs and priorities of Parties and stakeholders and existing capacity-building initiatives on access and benefit-sharing with a view to providing a basis for the further development of an action plan for capacity-building. The notification also invited contributions by Parties to make it possible to hold the workshop before the sixth meeting. As of 11 January 2002, the Secretariat had not been notified of any contribution for this purpose.

22. In the event that funding is not forthcoming and the workshop cannot be held before the sixth meeting of the Conference of the Parties, the Executive Secretary is proposing that the Conference of the Parties itself decide that such a workshop be held, along the lines suggested by the Ad Hoc Open-ended Working Group. The elements for the possible inclusion of this proposal in a decision by the Conference of the Parties are contained in section III B below.

E. Intellectual property rights

23. In paragraph 15 of decision V/26 A, the Conference of the Parties noted “that 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 the Panel developed a list of specific issues that require further study”. Parties and relevant organizations were invited to submit to the Executive Secretary information on these issues by 31 December 2000.

24. On the basis of these submissions and other relevant material, a report on the role of intellectual property rights in the implementation of access and benefit-sharing arrangements (UNEP/CBD/WG-ABS/1/4) was prepared by the Executive Secretary for the Ad Hoc Open-ended Working Group on Access and Benefit-sharing, in consultation with the Secretariat of the World Intellectual Property Organization (WIPO).

25. The Working Group considered the issue of intellectual property rights in relation to access and benefit-sharing and adopted recommendation 3, on the role of intellectual property rights in the implementation of access and benefit-sharing arrangements (see UNEP/CBD/COP/6/6, annex). The recommendation provides suggestions regarding further work on intellectual property rights as they relate to access and benefit-sharing, in collaboration with a number of relevant organizations, such as WIPO, the World Trade Organization (WTO), the Food and Agriculture Organization of the United Nations (FAO), the United Nations Conference on Trade and Development (UNCTAD), and others. It also recommends that certain questions be submitted to WIPO for further study and advice. The Conference of the Parties may wish to consider future action to make further progress on these issues based on the recommendations of the Working Group. Elements for a possible decision by the Conference of the Parties are contained in section III C below.

F. Ex situ collections

26. In decision V/26 C, on *ex situ* collections acquired prior to the entry into force of the Convention and not addressed by the Commission on Genetic Resources for Food and Agriculture (CGRFA) (“*ex situ* collections”), the Conference of the Parties recognized the need for information on the status of genetic resources held *ex situ* and decided to continue the information-gathering exercise on *ex situ* collections initiated by decision IV/8.

27. On the basis of the questionnaire annexed to decision V/26 C, the Executive Secretary was requested to gather available information from Parties, Governments and relevant organizations and forums. In response to this request, a notification was sent out to Parties and other relevant bodies that could provide information on *ex situ* genetic resource collections.

28. Four Parties responded to this request (Netherlands, New Zealand, Pakistan, Sweden). The small number of contributions by Parties does not make it possible to draw any meaningful conclusion from this exercise. However, these contributions are available on the Convention website, under the access and benefit-sharing web page addressing *ex situ* collections.

29. However, with respect to plant collections more specifically, with the support of the Secretariat and the Government of the United Kingdom, Botanic Gardens Conservation International carried out an *International Review of the Ex Situ Plant Collections of the Botanic Gardens of the World: Reviewing the Plant Genetic Resource Collections of Botanic Gardens Worldwide*. An electronic version of this publication is available on the Convention website, under the access and benefit-sharing pages. The publication has also been reproduced as a CD-ROM, copies of which were distributed to participants in the meeting of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing and will be distributed at the sixth meeting of the Conference of the Parties.

30. The report covers the majority of botanic gardens, arboreta and similar institutions worldwide that hold significant *ex situ* collections of living plants. According to the review, the vast majority of collections in botanic gardens of the world were accessed by botanic gardens prior to the entry into force of the Convention. The most relevant findings that relate to access and benefit-sharing include the following:

31. Although many botanic gardens have distributed plant material accompanied by data on their origin (from the wild and otherwise), in many cases source data has been lost as collections have been passed from garden to garden around the world. Effective data management systems have however been developed over the last decades which have facilitated better tracking of plant material in a botanic garden to ensure that it is used in accordance with the original supplier's conditions. Also, botanic gardens have started to adopt harmonized policies and practices related to providing appropriate access and benefit-sharing benefits to meet the requirements of the Convention on Biological Diversity, such as the International Agenda for Botanic Gardens in Conservation and the Principles on Access to Genetic Resources and Benefit-sharing for Participating Institutions (botanic gardens and herbaria). Therefore, although the Convention does not apply retroactively to *ex situ* collections acquired prior to the entry into force of the Convention, efforts have been undertaken by *ex situ* collection holders of plant genetic resources to follow the principles and requirements of the Convention.

G. Thematic reports on access and benefit-sharing

32. In decision V/19, on national reporting, the Conference of the Parties invited Parties, in addition to the submission of their second national report, to prepare detailed thematic reports on specific items, including benefit-sharing. Parties were invited to submit reports on benefit-sharing, by 30 December 2000, for consideration by the Conference of the Parties at its sixth meeting.

33. Thirteen Parties responded to the invitation (Austria, Central African Republic, Estonia, India, Namibia, New Zealand, Panama, Poland, Saint Lucia, Russia, Singapore, Switzerland, Turkey). These thematic reports are all available on the Convention website. In the first part of the report, Parties were invited to respond to a series of questions regarding their national experience with respect to intellectual property rights as they relate to access and benefit-sharing arrangements. The information provided by countries has been reflected, as appropriate, in the note by the Executive Secretary on the role of intellectual property rights in access and benefit-sharing arrangements (UNEP/CBD/WG-ABS/1/4), prepared for the meeting of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing. In addition, certain countries also provided case-studies on benefit-sharing. These are also available on the Convention website under thematic reports on access and benefit-sharing.

H. Relevant developments in other international forums

1. World Intellectual Property Organization

34. In paragraph 15 (d) of its decision V/26 A, the Conference of the Parties invited relevant international organizations, including the World Intellectual Property Organization, to analyse issues of intellectual property rights as they relate to access to genetic resources and benefit-sharing, including the provision of information on the origin of genetic resources, if known, when submitting applications for intellectual property rights, including patents.

35. In paragraph 15 (e) of the same decision, it requested "relevant international organizations, for example, the World Intellectual Property Organization and the International Union for the Protection of New Varieties of Plants, in their work on intellectual property rights issues, to take due account of relevant provisions of the Convention on Biological Diversity, including the impact of intellectual property rights on the conservation and sustainable use of biological diversity, and in particular the value

of knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity”.

36. At the twenty-sixth session of the WIPO General Assembly, in September 2000, the member States decided to establish the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore. The first session of this Committee was held from 30 April to 3 May 2001. It was attended by 102 States members of WIPO or the Paris Union for the Protection of Industrial Property, 18 intergovernmental organisations and secretariats, and 15 accredited non-governmental organizations. The Convention Secretariat participated in the session as an observer. WIPO member States expressed support for a work programme, the following components of which are relevant to access and benefit-sharing:

(a) *With respect to genetic resources:* Considering the development of “best contractual practices”, guidelines and model intellectual property clauses for contractual agreements on access to genetic resources and benefit-sharing, taking into account the specific nature and needs of different stakeholders, different genetic resources and different transfers within different sectors of genetic resources policy;

(b) *With respect to traditional knowledge:*

- (i) Determining the scope of the subject matter referred to by the term “traditional knowledge” in order to discuss the type of protection which can be awarded by intellectual property rights;
- (ii) Compiling, comparing and assessing information on the availability and scope of intellectual property protection for traditional knowledge;
- (iii) Considering the revision of existing criteria and developing new criteria, which would allow the effective integration of documentation data about disclosed traditional knowledge into searchable prior art;
- (iv) Considering ways of assisting traditional knowledge holders in relation to the enforcement of intellectual property rights, in particular by assisting them to strengthen their capacity to enforce their rights.

37. The second session of the Intergovernmental Committee was held in Geneva from 10 to 14 December 2001. Once again, the Convention Secretariat participated in the session as an observer. The Secretariat representative briefed Committee members on the results of the meeting of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing, including the draft Bonn Guidelines and the recommendations for further work, as well as on the second meeting of the Ad Hoc Open-ended Working Group on Article 8(j) to be held in Montreal in February 2002.

38. With respect to genetic resources, the Committee decided to continue the work on the establishment of model clauses for contractual agreements. There was general agreement that draft guiding principles or model provisions should be established for various sectors of access to and use of genetic resources, dealing purely with intellectual property aspects of contracts, this work being without prejudice to the possible development of international standards on *sui generis* protection in this field. Guiding principles or model provisions would be non-binding and would serve as guide in contract negotiations.

39. A number of Committee members emphasized that the work undertaken by WIPO should be without prejudice to, and consistent with, the work undertaken in other organizations, especially the Convention on Biological Diversity, FAO and the International Union for the Protection of New Varieties of Plants (UPOV) and that such work should be carried out with the full participation of representatives of indigenous and local communities. The WIPO work to develop the model clauses will begin with the

elaboration of a format for the compilation of existing intellectual property clauses used in access and benefit-sharing contracts. The database to be established as a result of this work could be linked to the Convention's clearing house mechanism.

40. With respect to traditional knowledge, the Intergovernmental Committee agreed with and supported the programme of work proposed by WIPO on the relations between disclosed traditional knowledge and prior art with regard to the issuance of patents as one important element for the recognition and protection of the value of traditional knowledge. However, a number of delegations were of the view that this work should not prejudice any discussions on the legal protection of traditional knowledge through a *sui generis* system.

41. Members of the Committee were supportive of the following activities under this task of the Committee:

(a) To compile an inventory of existing traditional knowledge-related periodicals for consideration by the International Search Authorities for integration into the minimum documentation list under the Patents Cooperation Treaty;

(b) To study the feasibility of electronic exchange of public-domain traditional knowledge documentation data, including through online databases and digital libraries;

(c) To examine the applicability of existing intellectual property documentation standards to traditional knowledge-related subject matter and the relationship of these standards with existing traditional knowledge documentation standards;

(d) To consider ways and means of providing assistance to indigenous and local communities as well as national/regional traditional knowledge documentation initiatives to manage the intellectual property implications during the documentation process.

42. The Committee further requested the Secretariat to prepare a document for the next session of the Committee with elements of a possible *sui generis* system for the protection of traditional knowledge.

43. It was also agreed that future work in this field should be closely coordinated with the work undertaken under the Convention on Biological Diversity and that synergies should be ensured with the work of WTO. Furthermore, the Committee issued a recommendation that the WIPO Program and Budget Committee should consider the possible financing by WIPO of the participation of indigenous and local communities at the sessions of the Committee.

44. Finally, as a result of the increasing level of cooperation resulting from the close interface in the work undertaken under each process, the Secretariat and WIPO have undertaken to further strengthen such cooperation through the negotiation of a memorandum of cooperation. It is hoped that such a memorandum will be signed by the heads of both organizations at the earliest date possible.

2. *World Trade Organization*

45. In paragraph 2 of its decision V/26 B, the Conference of the Parties invited WTO to acknowledge relevant provisions of the Convention on Biological Diversity and to take into account the fact that the provisions of the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPs) and the Convention are interrelated and to further explore this relationship.

46. The relationship between the TRIPs Agreement and the Convention on Biological Diversity is being considered in the context of discussions in the TRIPs Council regarding the revision of the TRIPs Agreement. While a number of countries are of the opinion that both agreements are compatible, others

are of the view that the TRIPs Agreement, and more particularly Article 27.3(b), should be modified in order to meet the objectives of the Convention on Biological Diversity.

47. In decision V/26 B, the Conference of the Parties renewed its request to the Executive Secretary to apply for observer status on the TRIPs Council and requested him to report back to the Conference of the Parties. On 4 July 2000, the Executive Secretary officially transmitted the text of decision V/26 B to the Director-General of WTO and reiterated the request regarding the granting of observer status on the TRIPs Council to the Convention Secretariat. By letter dated 30 March 2001, the Secretary to the WTO Committee on Trade and Environment confirmed that the Executive Secretary's communication had been forwarded to the chairs of the WTO Committee on Trade and Environment and of the TRIPs Council.

48. At the meeting of the Committee on Trade and Environment on 28-29 June 2001, the representative of the Secretariat recalled the request for observer status on the TRIPs Council. The Chair of the Committee noted the request and undertook to bring the issue, again, to the attention of the General Council and the Council for TRIPs. At the time of writing this report the Secretariat had still not been granted observer status in the Council for TRIPs.

49. The Ministerial Declaration issued at the conclusion of the fourth session of the WTO Ministerial Conference, held in Doha, Qatar, from 9 to 14 November 2001, addresses a number of issues of relevance to the Convention. Under the section on trade-related aspects of intellectual property rights, the Council for TRIPs, in pursuing its work programme, is instructed to examine, inter alia, the relationship between the TRIPs Agreement and the Convention on Biological Diversity. In addition, in the section on trade and environment, with a view to enhancing mutual supportiveness of trade and environment, negotiations are agreed to on a number of issues of particular relevance to multilateral environmental agreements, such as the relationship between existing WTO rules and specific trade obligations set out in MEAs, the procedures for regular information exchange between the secretariats of the multilateral environmental agreements and the relevant WTO committees, and the criteria for the granting of observer status.

3. *Food and Agriculture Organization of the United Nations*

50. In paragraph 7 of decision V/26 A, the COP stressed that in developing national legislation on access, it is important that Parties take into account and allow for the development of a multilateral system to facilitate access and benefit-sharing in the context of the International Undertaking on Plant Genetic Resources, which was being revised.

51. In paragraph 8 of the decision, it urged the Commission on Genetic Resources for Food and Agriculture to finalize its work as soon as possible and called upon Parties to coordinate their positions in both forums.

52. The Commission on Genetic Resources for Food and Agriculture completed its work to revise the International Undertaking on Plant Genetic Resources for Food and Agriculture, in harmony with the Convention on Biological Diversity, at the sixth extraordinary session of the Commission, held in Rome from 25 to 30 June 2001. The text of the Undertaking was forwarded by the Director-General to the FAO Conference in November 2001 for finalization and adoption.

53. The International Treaty on Plant Genetic Resources for Food and Agriculture was adopted in Rome on 3 November 2001. As set out in article 1 of the Treaty, its objectives "are the conservation and sustainable use of plant genetic resources for food and agriculture and the fair and equitable sharing of the benefits arising out of their use, in harmony with the Convention on Biological Diversity, for sustainable agriculture and food security. These objectives will be attained by closely linking this Treaty to the Food and Agriculture Organization of the United Nations and to the Convention on Biological Diversity.

54. The Treaty establishes a Multilateral System of Access and Benefit-sharing that is of particular relevance in the context of this paper. Article 10, paragraph 2, of the Treaty states that:

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“In the exercise of their sovereign rights, the Contracting Parties agree to establish a multilateral system, which is efficient, effective, and transparent, both to facilitate access to plant genetic resources for food and agriculture, and to share, in a fair and equitable way, the benefits arising from the utilization of these resources, on a complementary and mutually reinforcing basis.”

55. While the general provisions of the Treaty apply to all plant genetic resources for food and agriculture, the Multilateral System applies only to the list of crops in annex 1 of the Treaty and then only to material that is in the public domain (article 11.2). The list includes most major food crops (some 35 crop genera), plus a list of forages (29 genera containing some 70 species). For such material, the Contracting Parties agree to facilitate access to plant genetic resources for food and agriculture under the Multilateral System (article 12.1). Access shall be provided solely for the purpose of utilization and conservation in research, breeding and training for food and agriculture, subject to various property rights and other conditions (article 12.3). Relevant conditions of access and benefit-sharing shall be set out in a standard material transfer agreement (article 12.4).

56. Benefits arising from the use, including commercial, of plant genetic resources for food and agriculture under the Multilateral System shall be shared fairly and equitably through the following mechanisms: the exchange of information, access to and transfer of technology, capacity-building, and the sharing of the benefits arising from commercialization (article 13.2). In the case of commercialization of a product that is a plant genetic resource for food and agriculture and that incorporates material accessed from the Multilateral System, recipients shall pay to a mechanism, an equitable share of the benefits arising from the commercialization of that product, except whenever such a product is available without restriction to others for further research and breeding, in which case the recipient who commercialises shall be encouraged to make such payment. The Governing Body shall determine the level, form and manner of the payment, in line with commercial practice (article 13.2 (d) (ii)). There shall be additional voluntary modalities for benefit sharing (article 13.6) as well as a funding strategy for the overall implementation of the Treaty (article 18).

III. RECOMMENDATIONS

57. The Conference of the Parties is invited to consider the recommendations of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing contained in annex to its report (UNEP/CBD/COP/6/6), as well as the following additional elements

A. *Draft Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising Out of their Utilization*

The Conference of the Parties

1. *Takes note* of the report of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing (UNEP/CBD/COP/6/6);

2. *Takes note also* of the work done by the group convened by the Executive Secretary to develop elements of a decision on the use of terms in paragraph 6 of the draft Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization (see para. 10 above);

3. *Decides* to adopt the draft Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization;

4. *Invites* Parties and Governments to use the Guidelines when developing and drafting legislative, administrative or policy measures on access and benefit-sharing, and contracts and other arrangements under mutually agreed terms for access and benefit-sharing.

B. Capacity-building

The Conference of the Parties

1. *Decides* to convene an Open-ended Expert Workshop on Capacity-building for access to genetic resources and benefit-sharing. The workshop will be open to participation by representatives, including experts, nominated by Governments and regional economic integration organizations; as well as representatives of relevant intergovernmental organizations (including donor organizations), non-governmental organizations, and indigenous and local communities. The workshop should further develop the draft elements for an Action Plan on Capacity-building for Access and Benefit-sharing;*

2. *Requests* the Executive Secretary to make appropriate arrangements for the Workshop;

3. *Invites* the financial mechanism and other relevant intergovernmental organizations to participate in the Workshop and to support the implementation of the Action Plan on Capacity-building for Access and Benefit-sharing.

C. The Relationship between the WTO Agreement on Trade-related Aspects of Intellectual Property Rights and the Convention on Biological Diversity

The Conference of Parties,

Noting that the provisions of the Agreement on Trade-related Aspects of Intellectual Property Rights of the World Trade Organization and the Convention on Biological Diversity are interrelated,

Noting also that the relationship between the Agreement on Trade-related Aspects of Intellectual Property Rights and the Convention on Biological Diversity is being examined by the Council for Trade-related Aspects of Intellectual Property Rights,

Noting further that the Convention Secretariat has still not been granted observer status on the Council for Trade-related Aspects of Intellectual Property Rights, notwithstanding the official request of the Executive Secretary to the Director-General of the World Trade Organization in a letter dated 4 July 2000,

1. *Requests* the Executive Secretary of the Convention to renew the application for observer status on the Council for Trade-related Aspects of Intellectual Property Rights, and to report back to the Conference of Parties on his efforts;

2. *Requests* the Executive Secretary to follow discussions and developments in the Committee on Trade and Environment of the World Trade Organization and the Council for Trade-related

* This element is included for the consideration of the Conference of the Parties in the event that the workshop referred to in paragraph 1 of recommendation 2 A of the Ad Hoc Working Group on Access and Benefit-sharing cannot be held before the sixth meeting of the Conference of the Parties.

Aspects of Intellectual Property Rights regarding the relationship between the Agreement on Trade-related Aspects of Intellectual Property Rights and the Convention.

D. Information related to access and benefit-sharing arrangements

The Conference of the Parties,

Recognizing that access to information is an essential instrument in the development of national capacity for dealing with access and benefit-sharing arrangements,

Noting that, since the adoption of the Convention, an increasing number of Parties have developed national/regional regimes on access and benefit-sharing and that Parties and stakeholders could learn from sharing their respective experiences relating to the development and implementation of access and benefit-sharing regimes,

Recognizing that the Secretariat of the Convention could assist in disseminating this information among Parties and stakeholders, *inter alia*, through the clearing house mechanism,

1. *Requests* Parties to make available to the Executive Secretary detailed information on the measures adopted to implement access and benefit-sharing, including the text of any legislation or other measures developed to regulate access and benefit-sharing;

2. *Requests* the Executive Secretary to compile this information and to make it available through the clearing house mechanism and relevant meetings under the Convention on Biological Diversity in order to facilitate access to this information by Parties and relevant stakeholders.

E. Ex situ collections acquired prior to the entry into force of the Convention and not addressed by the Commission on Genetic Resources for Food and Agriculture

The Conference of the Parties

Notes with appreciation the report *International Review of the Ex Situ Plant Collections of the Botanic Gardens of the World: Reviewing the Plant Genetic Resource Collections of Botanic Gardens Worldwide*, prepared by Botanic Gardens Conservation International with the support of the Government of the United Kingdom and the Secretariat of the Convention on Biological Diversity.
