



**CONVENTION ON
BIOLOGICAL DIVERSITY**

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STATEMENT BY

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CONVENTION ON BIOLOGICAL DIVERSITY

TO

**THE MINISTERIAL SEGMENT OF THE WORKSHOP ON ACCESS
TO GENETIC RESOURCES, TRADITIONAL KNOWLEDGE AND
INTELLECTUAL PROPERTY FOR THE GROUP OF THE LIKE-
MINDED MEGADIVERSE COUNTRIES**

Cusco, Peru, 29 November 2002

Mr. President,
Ministers,
Ladies and Gentlemen,

It is an honour for me to be here and to have the opportunity to address the representatives of the Like-minded Megadiverse Countries.

I was asked to address a number of inter-related issues of particular interest to the Megadiverse countries. First, why the conservation and sustainable use of biodiversity is important? Biodiversity, or the variety of the world's ecosystems, species and genes and the interactions between them provide mankind with a vast range of goods and services, many of which are free, that either cannot be duplicated or can only be so at a prohibitive cost. It is central to agriculture and the maintenance of a reliable food supply. It is the source of both modern and traditional medicines, and meets the energy needs of millions of people, especially the poor. It also has a key role to play in maintaining air and water quality and in mitigating the effects of severe weather events, such as floods. The diversity of species gives ecosystems the resilience to recover from external shocks, while genetic diversity allows species to adapt to survive change. As a result, the natural world can continue to supply this wide range of invaluable goods and services—from food to timber, from pollination to water purification.

The economic value of biodiversity is enormous, particularly in agriculture and medicine. By way of example, forty United States crops, with a total value of \$40 billion, are completely dependent on insect pollinators; biological pest control has an estimated annual value of \$100-200 billion; microbial nitrogen fixation has an estimated annual worth of \$50 billion; and the value of plant-derived drugs for medical purposes in the industrialized world amounted to \$43 billion in 1985, while the market for herbal drugs stood at some \$47 billion in 2000. It is important to bear in mind in this respect that these services can only be provided through interactions between different organisms, not by one or two species alone; it is the diversity that produces the effects. The conservation and sustainable use of biological diversity is therefore essential for maintaining the rich flow of benefits from the natural world.

With escalating human impacts on natural resources and processes, however, biodiversity is being lost at an alarming rate. This loss threatens the sustainability of development efforts and is particularly harmful for the poorest of the poor, who tend to be those most directly dependent on natural resources for their subsistence. The Convention on Biological Diversity was adopted to reverse this trend and to provide an international framework for what are essentially national actions to stop biodiversity loss.

At the World Summit on Sustainable Development, biological diversity was identified as one of the five key issues on which progress could and should be made, and the Convention on Biological Diversity was recognized as the key instrument for the conservation and sustainable use of biological diversity and the fair and equitable sharing of benefits arising from use of genetic resources.

The Convention on Biological Diversity is a wide-ranging instrument, setting out broad obligations of its Parties. Over the years, its provisions have been progressively

operationalized through the adoption by the Conference of the Parties of a number of programmes of work on thematic areas and cross-cutting issues. The thematic areas include:

- Marine and coastal biodiversity;
- Inland water biodiversity;
- Forest biodiversity;
- Agricultural biodiversity; and
- The biodiversity of dry and sub-humid lands.

The cross-cutting issues are too numerous to list here, but include matters such as traditional knowledge, access and benefit-sharing, the development of indicators, the incorporation of biodiversity considerations into environmental impact assessments, and so forth. In short, they are issues that support the implementation of all the thematic programmes of work.

The second issue that I was asked to address is the question of access to genetic resources and benefit-sharing. As you know, along with conservation and sustainable use, the fair and equitable sharing of the benefits derived from the use of genetic resources is one of the three objectives of the Convention. It is a matter of particular significance to developing countries, which hold most of the world's biodiversity. It is intimately linked to a number of related matters—also addressed in programmes of work under the Convention on Biological Diversity—such as the recognition and fair compensation for the utilization of the traditional knowledge of indigenous and local communities. In addition, it also raises important questions relating to intellectual property and trade.

As part of achieving these goals, the Convention establishes a new international framework for access and benefit sharing. It also establishes an international structure within which Parties can cooperate on the implementation and elaboration of such a framework..

The Convention's provisions on genetic resources represent the international community's best effort to define principles for the use of genetic resources from all sources (plants, animals, microbial or other origin containing functional units of heredity, etc.). Prior to the negotiations of the CBD, discussions focused on a specific category of genetic resources: plant genetic resources for food and agriculture.

The core of the CBD framework for genetic resources is found in Article 15 of the Convention supplemented by Articles 16 and 19. In addition, activities subject to the provisions on genetic resources must be consistent with other provisions of the CBD, such as Article 8(j) [on traditional knowledge] and Article 10(b) [on the sustainable use of components of biological diversity].

Article 15.1 affirms the sovereignty of Parties over their genetic resources and that access is subject to "national legislation". Such right is not, however, absolute, since Article 15.2 obligates Parties to endeavour to facilitate access to genetic resources for

environmentally sound uses by other Parties and not to impose restrictions. Other key principles are:

- i. Access shall be on mutually agreed terms;
- ii. It shall be subject to the prior informed consent (PIC) of the Party providing the resource; and
- iii. It shall be encouraged only if the Party seeking access will put the genetic resources to environmentally sound uses.

The CBD recognizes also that access to genetic resources can lead to significant benefits. Thus, it requires each Party to:

- i. take measures “with the aim of sharing in a fair and equitable way the results of research and development and the benefits arising from the commercial and other utilization of genetic resources with the Party providing such resources. Such sharing shall be upon mutually agreed terms” (Article 15.7);
- ii. “take all practicable measures to promote and advance priority access on a fair and equitable basis to the results and benefits arising from biotechnologies based on genetic resources on mutually agreed terms” (Article 19.2);
- iii. promote the full participation of Parties providing genetic resources in the development and conduct of research based on such genetic resources (Article 15.6); and.
- iv. take measures with the aim that Parties in particular developing countries that provide genetic resources “are provided access to and transfer of technology which makes use of these resources on mutually agreed terms” (Article 16.3).

Many activities relating to access and benefit sharing will also be subject to the CBD obligations concerning conservation and sustainable use, for example, collection of samples of genetic resources *in situ*, and large scale commercial harvesting of species containing useful genetic resources, should be carried out in a way that avoids or minimizes harm to biological diversity (Article 10 (b)).

At the national level several countries have established the basis from which access can be regulated. At the regional and international level, a number of instruments containing internationally recognized principles and recommendations to States have been developed. These include the International Treaty on Plant Genetic Resources for Food and Agriculture, the code of conduct for collection and transfer of plant germplasm and the network of collections held by members of the Consultative Group on International Agricultural Research (CGIAR). The international intellectual property regimes such as the International Union for the Protection of New Varieties of Plants (UPOV) and the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs) are germane to access and benefit sharing. States adhering to UPOV undertake to create a system, of granting Plant Breeders Rights (PBR) within their domestic laws in

accordance with UPOV. The TRIPs Agreement contains minimum standards for IPRs and provides for PBRs and an exemption of plants and animals from patenting. However, neither was designed to address the concerns of the CBD.

Central to the issue is the question of developing access legislation and administrative and other policy measures in both user and provider countries. It was with this in mind that, in 1998, the Conference of the Parties established a Panel of Experts on Access and Benefit-sharing to advance work in this area by developing a common understanding of basic concepts and exploring all options for access and benefit-sharing on mutually agreed terms, including guiding principles, guidelines and codes of best practice for access and benefit-sharing arrangements. These options might include, among others:

- Prior informed consent in provider countries for access to genetic resources and research and development;
- Clear, established mechanisms to provide such consent, including legislative, administrative and policy measures, as appropriate;
- Reference to the country of origin in relevant publications and patent applications;
- Mutually agreed terms, including on benefit-sharing and intellectual property rights and technology transfer, where appropriate;
- Efficient permitting and regulatory procedures that avoid burdensome procedures involving high transaction costs;
- Incentive measures to encourage the conclusion of contractual partnerships.

The Panel of Experts met twice and developed an outline for draft Guidelines on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization. The draft was further developed by the Open-ended Working Group on Access and Benefit-sharing, which met in October 2001, and was subsequently adopted by the Conference of the Parties last April.

The Guidelines are expected to assist Parties, Governments and other stakeholders in developing overall access and benefit-sharing strategies, and in identifying the steps involved in the process of obtaining access to genetic resources and benefit-sharing. More specifically, the guidelines are intended to help them when establishing legislative, administrative or policy measures on access and benefit-sharing and/or when negotiating contractual arrangements for access and benefit-sharing. A programme for capacity-building is already under way to ensure that developing countries are in a position to effectively implement the Guidelines and the corresponding provisions of the Convention. In fact, an open-ended expert workshop is to be held next week in Montreal on capacity-building for access and benefit-sharing, which is expected to further develop elements for an Action Plan on the subject.

At the same time, the Conference of the Parties has recognized that a package of measures may be necessary to address the different needs of Parties and stakeholders in the implementation of access and benefit-sharing arrangements and that other approaches

could be considered to complement the Bonn Guidelines, such as model contractual agreements, existing regional agreements and model laws.

The issue of access and benefit-sharing is complex and has a broader dimension in terms of the need for legislation in user and provider countries and an international dimension in terms of its relationship to the questions of intellectual property rights and trade and technology transfer. It also has important implications for the protection of traditional knowledge. There is a need for collaboration among the various organizations working in the area, which include the World Intellectual Property Organization, the United Nations Conference on Trade and Development, and the Union for the Protection of New Varieties of Plants.

It is clear that the Like-minded Megadiverse Countries share a common desire to ensure the full achievement of the Convention objective of access and benefit-sharing. Furthermore, as a means to achieve this objective, you have been affirming your determination to negotiate an international regime on access and benefit-sharing, an objective which was embodied in the Plan of Implementation of the World Summit on Sustainable Development.

Significant issues for international regime:

- Definitions and scope
- Various uses of genetic resources
- Valuation of genetic resources
- Types of benefits that may be shared
- Types of participants in ABS arrangements
- Prior informed consent
- Elements for mutually agreed terms
- Research results
- Capacity building for use of genetic resources
- Local and indigenous knowledge
- Actual and potential impacts of IPRs on access to resources, traditional knowledge and practices, and technology transfer
- Relationship with trade-related regimes.

The Convention process has over the years proved itself capable of meeting new challenges and provides an effective forum for negotiation that can deliver both legally and non-legally binding instruments in a timely manner. The Bonn Guidelines on Access and Benefit-sharing are a case in point, having been developed and adopted in a remarkably short period once the international will was marshalled and focused on the task.

The question of an international regime on access and benefit-sharing is to be discussed at an inter-sessional meeting to be convened under the Convention next March. This meeting is expected to make recommendations to the seventh meeting of the Conference of the Parties.

With regard to institutions, the negotiation of an international regime requires an intergovernmental process, which can be established by the Conference of the Parties. The Open-ended Working Group on Access and Benefit-sharing will meet again, in December 2003, to consider outstanding issues relating to the Guidelines, such as the use of terms, measures in user countries to ensure compliance with the terms of access and benefit-sharing, and other approaches to assist Parties and stakeholders with the implementation of the access and benefit-sharing provisions of the Convention.

It would only be natural for this Working Group to take up the mandate of negotiating an international regime, should the Conference of the Parties so decide at its seventh meeting, in March 2004. Of course, the Convention Secretariat stands ready to assist in this process.

Another major instrument adopted under the Convention is the Cartagena Protocol on Biosafety. This landmark treaty is rapidly moving toward entry into force. It now has a total of 38 ratifications and will enter into force three months after the deposit of the fiftieth instrument of ratification. A key component of the Protocol is the Biosafety Clearing-House, an information exchange mechanism that will form an important part of the notification and decision-making process. A major capacity-building initiative is already under way to ensure that all prospective Parties will be in a position to use the Clearing-House from the moment the Protocol enters into force for them and thus be able to make the informed decisions necessary for the successful implementation of the Protocol.

From our perspective, it is important for the Protocol to achieve the same level of universality in membership as the Convention itself and in the shortest possible time. The objective of the Protocol is not merely to ensure an adequate level of protection in the field of the safe transfer, handling and use of living modified organisms. It also provides an overarching protective framework for biodiversity by reconciling the respective needs of trade and environmental protection. It aims at maximizing the benefits derived from biotechnology while minimizing its possible adverse effects, and this is crucial for the conservation and sustainable use of biological diversity.

To illustrate the inter-relation between biosafety and biodiversity, I wish to remind you of the too-familiar incident of maize contamination in Mexico, where it was alleged that transgenic DNA from GM maize had contaminated local varieties of maize in Mexico. More recently, two cases of contamination by genetically modified organisms which occurred in the United Kingdom and Indonesia are being heatedly debated. In the United Kingdom, tests have shown that organic soya used in livestock feed has been contaminated with genetically modified organisms, while in Indonesia a study found that GM cotton grown experimentally have contaminated the neighbouring plantation. As holders of over 70 % of the world's biodiversity and as centres of origin for many species, it is particularly important for the Megadiverse countries to be on board at an early stage, certainly before the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol, when certain key decisions may be made that will shape the operation of the Protocol for many years to come. I would therefore encourage all of your countries that have not yet done so to ratify the Protocol and participate fully in the first meeting of the Parties.

The conclusion of the Biosafety Protocol brought into sharp relief the relationship between the Convention process and the WTO agreements. Although there is no explicit mention of the World Trade Organization in either the Convention or the Protocol, both texts, and particularly the latter, do have clear trade implications, notably in terms of the WTO agreements of the trade-related aspects of intellectual property rights, sanitary and phytosanitary measures, technical barriers to trade, and agriculture. The request by the Convention on Biological Diversity for observer status in the WTO committees dealing with those matters is still pending.

One of the key challenges in the years ahead will be to find ways to develop an international framework that ensures that global trade, agriculture and development assistance (ODA), and environment policies are mutually supportive. With regard to trade, there is a need to establish an enabling political environment for addressing issues at the interface of trade and biological diversity in relevant forums in a more concrete manner. These issues include the patentability of life forms; the protection of the knowledge, innovations and practices of indigenous and local communities associated with genetic resources; continued access to genetic resources and the equitable sharing of the benefits deriving from their use; the interplay between the Biosafety Protocol's precautionary approach and the scientific approach of the Agreement on Sanitary and Phytosanitary (SPS), as well as between the packaging, labelling and identification provisions of the Protocol and the Agreement on Technical Barriers to Trade (TBT). Finally, there is the question of the use of socio-economic considerations as a basis for decision-making under the Protocol.

The Megadiverse countries have much to gain from the Convention and much to lose if the calamitous levels of biodiversity loss continue. As I have said, much has been done under the Convention but many challenges remain.

In this respect, the ministers gathered at The Hague during the sixth meeting of the Conference of the Parties reaffirmed the need for capacity-building, the facilitation of the transfer of environmentally sound technology and the provision of adequate and predictable financial resources and the promotion and protection of knowledge, including traditional knowledge, and sound science for the conservation and sustainable use of biodiversity in developing countries and countries with economies in transition to fully implement the Convention on Biological Diversity as an essential component for achieving sustainable development. The ministers also considered that developed countries that have not yet done so should make concrete efforts towards the target of 0.7 per cent of GNP as official development assistance to developing countries and between 0.15 and 0.2 per cent to the least developed among them.

At the same time, the developing countries need to create the conditions whereby local communities, through individuals, non-governmental organizations or the private sector, assume greater control over the management of certain biological resources or areas. Here, serious consideration needs to be given to the effects of corruption in defeating the purpose of well-intended conservation laws and of the lack of secure land tenure in breaking the traditional links between people and their natural surroundings.

All countries will need to recognize in a practical way the many values of biological diversity and invest in the continued productivity—as opposed to the long-

term decline—of natural resources. They will also need to mainstream biodiversity concerns and, in particular, to integrate biodiversity objectives into social and economic policies, programmes and actions, particularly when addressing the interface of sustainable development and trade and financial agreements.

I hope this meeting will serve to advance the cause of conservation and sustainable use of biodiversity and help give practical expression to the commitment of the Megadiverse countries to promoting the objectives of the Convention on Biological Diversity and its Biosafety Protocol.

Thank you.