



**CONVENTION ON
BIOLOGICAL DIVERSITY**

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STATEMENT BY
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EXECUTIVE SECRETARY
CONVENTION ON BIOLOGICAL DIVERSITY
TO
THE SECOND MEETING OF THE *AD HOC* OPEN-ENDED WORKING
GROUP ON ACCESS TO GENETIC RESOURCES AND BENEFIT-
SHARING
Montreal, Canada, 1 - 5 December 2003

**Distinguished delegates,
Ladies and Gentlemen,**

I would like to welcome you all to the second meeting of the *Ad hoc* Open-ended Working Group on access to genetic resources and benefit-sharing in Montreal, a city which, I am sure, has now become a second home to a number of you.

I also wish to thank the Governments of Finland, Ireland, Italy, Norway, Spain Sweden, Switzerland and the United Kingdom for their generous support which contributed to ensuring the participation of delegates from developing countries and countries with economies in transition. I also wish to extend my appreciation to the Government of Canada for providing warm coats for those delegates who are from warmer climates.

Mr. Chairperson, Distinguished delegates,

This Working Group was established by the Conference of the Parties at its fifth meeting, in 2000, with a mandate to develop guidelines and other approaches with regard to access to genetic resources and benefit-sharing for submission to the Conference of the Parties. Its establishment was motivated by the desire of Parties to expedite progress towards the achievement of the third objective of the Convention, namely the equitable sharing of benefits arising from the utilization of genetic resources. This 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, 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.

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). Prior to the negotiations of the Convention on Biological Diversity, discussions focused on a specific category of genetic resources: plant genetic resources for food and agriculture.

The core of the Convention's framework for genetic resources is found in Article 15 on access to genetic resources supplemented by Articles 16 on access to and transfer of technology and 19 on handling of biotechnology and distribution of benefits. 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 facilitate access to genetic resources for environmentally sound uses by other Parties and not to impose restrictions. Other key principles are:

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

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

- 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**
- 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);**
- 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).**
- “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);**

Many activities relating to access and benefit-sharing will also be subject to the 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)).

The work of this Working Group represents an essential contribution to the operationalization of these provisions of the Convention. Your work to date has been impressive, resulting in the adoption at the last meeting of the Conference of the Parties of the Bonn Guidelines on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising out of their Utilization. This was a significant achievement on the road to implementation of the third objective of the Convention.

However, the Bonn Guidelines were seen by the Conference of the Parties as a first step in an evolutionary process for the implementation of the access and benefit-sharing provisions of the Convention that I have just outlined. Accordingly, the Conference of the Parties decided to keep under review the implementation of the Guidelines and consider the need for their further refinement on the basis of, *inter alia*, relevant work under the Convention, including work on Article 8(j) and related provisions.

It is also widely envisaged that significant challenges lie ahead to further assist Parties and stakeholders with the implementation of fair and equitable access and benefit-sharing arrangements. To address these challenges, the Conference of the Parties identified a number of outstanding issues for further consideration by this Working Group. These include:

- Use of terms and the need for definitions or a glossary;**
- The consideration of other approaches, complementary to the Bonn Guidelines, which may assist Parties and stakeholders with the implementation of access and benefit-sharing arrangements;**
- Measures, in Contracting Parties with users under their jurisdiction, to ensure compliance with the prior informed consent of Contracting Parties providing such resources and mutually agreed terms on which access was granted; and**
- Capacity-building for access and benefit-sharing.**

Capacity-building has been recognized by the Conference of the Parties as essential in order to assist Parties and stakeholders in the implementation of access and benefit-sharing. An open-ended workshop on access and benefit-sharing was held in December 2002 in order to develop a draft Action Plan on capacity-building for access

and benefit-sharing. The draft Action Plan will be transmitted to the seventh meeting of the Conference of the Parties for its consideration.

Following the sixth meeting of the Conference of the Parties, another development took place with respect to access and benefit-sharing which is of direct relevance to your deliberations. The World Summit on Sustainable Development recognized the Convention on Biological Diversity as the key instrument for promoting access to genetic resources and benefit-sharing and, in its Plan of Implementation, called for the negotiation “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 their utilization”.

This was echoed by the General Assembly in its consideration of the outcome of the World Summit last year.

This call for action highlighted the need for complementary measures to develop a comprehensive regime for access and benefit-sharing that includes both the facilitation of access to genetic resources and the sharing of benefits arising out of their utilization.

In this regard, and as recommended by the Inter-sessional Meeting on the Multi-Year Programme of Work for the Conference of the Parties up to 2010 held in Montreal last March, the Working Group is to consider the process, nature, scope, elements and modalities of an international regime and make recommendations to the seventh meeting of the Conference of the Parties on how to address this issue. In this context, it is important to consider experience gained in the implementation of the Bonn Guidelines, as this would facilitate both your deliberations on an international regime on access and benefit-sharing and the provision of guidance to the Conference of the Parties.

The agenda for this meeting involves complex and difficult issues. To assist you in your deliberations over the next few days, the Secretariat has prepared several documents.

The main document addresses use of terms, other approaches, compliance measures to assist with prior informed consent and mutually agreed terms, as well as capacity-building (UNEP/CBD/WG-ABS/2/2).

When addressing the issue of compliance measures, delegates will also be invited to consider the note by the Secretariat on the role of intellectual property rights in access and benefit-sharing arrangements (UNEP/CBD/WG-ABS/2/3). This note highlights a

number of issues to be taken into account when considering the issue of disclosure of origin of genetic resources and related traditional knowledge in patent applications when the subject matter of the application is based on genetic resources or related traditional knowledge. It also provides an overview of existing national and regional initiatives taken by Governments to address the issue of disclosure of origin.

A compilation of views of Parties and relevant organizations on the process, nature, scope, elements and modalities of an international regime, brought to the attention of the Secretariat, has also been made available to the Working Group in documents (UNEP/CBD/WG-ABS/2/4 and UNEP/CBD/WG-ABS/2/INF/3).

Taking into account progress made to date on access and benefit-sharing, the challenge for this meeting is to build on the existing momentum for the implementation of the Bonn Guidelines while identifying additional measures on other approaches that may assist Parties and stakeholders to ensure the establishment of a comprehensive regime on access and benefit-sharing. Finally, this issue should be examined against the backdrop of the commitments made at WSSD.

As usual, I wish to assure you of the full support of the Secretariat in your deliberations and wish you the best of luck for a successful meeting.

Thank you.