



CONVENTION ON BIOLOGICAL DIVERSITY

Distr.
GENERAL

UNEP/CBD/COP/7/6
10 December 2003

ORIGINAL: ENGLISH

CONFERENCE OF THE PARTIES TO THE CONVENTION ON BIOLOGICAL DIVERSITY

Seventh meeting
Kuala Lumpur, 9-20 and 27 February 2004
Item 19.11 of the provisional agenda*

REPORT OF THE AD HOC OPEN-ENDED WORKING GROUP ON ACCESS AND BENEFIT-SHARING ON THE WORK OF ITS SECOND MEETING

INTRODUCTION

1. In paragraph 11 of its decision V/26 A, the Conference of the Parties to the Convention on Biological Diversity decided to establish an Ad Hoc Open-ended Working Group, composed of representatives, including experts, nominated by Governments and regional economic integration organizations, with the mandate to develop guidelines and other approaches for submission to the Conference of the Parties and to assist Parties and stakeholders in addressing the a number of elements relevant to access to genetic resources and benefit-sharing.

2. The first meeting of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing was held in Bonn, Germany, from 22 to 26 October 2001. The report of the meeting (UNEP/CBD/COP/6/6) was considered by the Conference of the Parties at its sixth meeting, held in The Hague in April 2002. At that meeting, the Conference of the Parties, in paragraph 8 of decision VI/24 A, decided:

“[T]o reconvene the Ad Hoc Open-ended Working Group on Access and Benefit-sharing to advise the Conference of the Parties on:

- (a) Use of terms, definitions and/or glossary, as appropriate;
- (b) Other approaches as set out in decision VI/24 B;
- (c) Measures, including consideration of their feasibility, practicality and costs, to support compliance with prior informed consent of the Contracting Party providing such resources and mutually agreed terms on which access was granted in Contracting Parties with users of genetic resources under their jurisdiction;
- (d) Its consideration of any available reports or progress reports arising from the present decision;
- (e) Needs for capacity-building identified by countries to implement the Guidelines.”

* UNEP/CBD/COP/7/1 and Corr.1.

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3. Accordingly, the second meeting of the Open-ended Working Group on Access and Benefit-sharing was held in Montreal from 1 to 5 December 2003.

ITEM 1. OPENING OF THE MEETING

4. The second meeting of the Ad Hoc Open-Ended Working Group on Access and Benefit-sharing was held at the headquarters of the International Civil Aviation Organization in Montreal from 1 to 5 December 2003.

5. The meeting was opened at 10 a.m. on Monday, 1 December 2003, by Mr. Hans Hoogeveen, President of the sixth meeting of the Conference of the Parties to the Convention on Biological Diversity. He welcomed participants, noting that the sixth meeting of the Conference of the Parties had marked the shift from conservation to sustainable use of natural resources and from the development of ambitious plans to their implementation. The adoption of the Bonn Guidelines had marked a major step forward in bridging the gap between policy and implementation as far as access and benefit-sharing were concerned, but they were part of an evolutionary process for the implementation of the access and benefit-sharing provisions of the Convention. The negotiation of an international regime to promote and safeguard the equitable sharing of benefits arising out of the utilization of genetic resources, within the framework of the Convention on Biological Diversity, had been one of the commitments made at the World Summit on Sustainable Development. The present meeting had to develop clear and concrete terms of reference for those negotiations, building upon the experience gained by the implementation of the Bonn Guidelines on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits arising out of their Utilization, and taking into account other international regimes. The fair and equitable sharing of benefits arising from the utilization of genetic resources was of particular importance to developing countries and countries with economies in transition, where the majority of the world's biological diversity was to be found.

6. Mr. Hamdallah Zedan, Executive Secretary of the Convention on Biological Diversity, in welcoming participants, expressed gratitude to those countries that had supported the participation of developing countries and countries with economies in transition. He recalled that the Ad Hoc Working Group had been established 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, which was linked to other issues such as the recognition of and fair compensation for the utilization of the traditional knowledge of indigenous and local communities, as well as intellectual property and trade-related issues. The core provisions on genetic resources in the Convention were to be found in Article 15, supplemented by Article 16, and activities subject to the provisions on genetic resources had to be consistent with other provisions in the Convention, for example, Articles 8(j) and 10(b). The Ad Hoc Working Group to date had made an impressive contribution towards implementing the relevant provisions in the Convention, notably through the adoption of the Bonn Guidelines. The Conference of the Parties had identified a number of outstanding issues to be considered by the Working Group with a view to assisting Parties and stakeholders to implement fair and equitable access and benefit-sharing arrangements..

7. The World Summit on Sustainable Development had recognized the Convention on Biological Diversity as the key instrument for promoting access to genetic resources and benefit-sharing and had called for the negotiation of an international regime to promote and safeguard the fair and equitable sharing of benefits arising out of the utilization of genetic resources. The Working Group would therefore be called on 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 the issue, taking into account the experience gained in implementing the Bonn Guidelines.

8. A draft Action Plan on Capacity-building for Access and Benefit-sharing had been developed and would be transmitted to the seventh meeting of the Conference of the Parties. After reviewing the

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documents before the meeting, he stated that the challenge facing the meeting was to build on the existing momentum for the implementation of the Bonn Guidelines while identifying additional measures for other approaches that could assist Parties and stakeholders to ensure the establishment of a comprehensive regime on access and benefit-sharing, bearing in mind the commitments assumed at the Johannesburg Summit.

9. Mr. Nehemiah Rotich (UNEP), speaking on behalf of the Executive Director of UNEP, recalled that UNEP had played an essential role during the negotiations on the Convention on Biological Diversity. The majority of biological diversity was to be found in developing countries and they would only be motivated to conserve their genetic resources if they could enjoy their benefits. The agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) within the framework of the World Trade Organization had raised hopes that a global legally-binding regime would be put in place, but there remained some discrepancies between the TRIPs Agreement and the Convention on Biological Diversity. UNEP was striving to ensure that trade and environment were mutually supportive rather than in conflict. He concluded by expressing the hope that the present meeting would develop a capacity-building programme for developing countries and countries with economies in transition that would be consonant with their needs.

10. The Chair drew the meeting's attention to the technical study prepared by the World Intellectual Property Organization (WIPO) (UNEP/CBD/WG-ABS/2/INF/4) in response to the invitation extended by sixth meeting of the Conference of the Parties to the Convention on Biological Diversity in paragraph 4 of decision VI/24/ C and invited the representative of WIPO to report on the relevant work being carried out in his Organization.

11. The representative of the World Intellectual Property Organization (WIPO) briefly reviewed the background to the technical study on disclosure requirements related to genetic resources and traditional knowledge (UNEP/CBD/WG-ABS/2/INF/4), which had been prepared by the Secretariat of WIPO pursuant to paragraph 4 of decision VI/24 C of the sixth meeting of the Conference of the Parties. The study reviewed salient aspects of the patent system and of legal mechanisms concerning access to genetic resources and surveyed the responses to a questionnaire circulated to WIPO member States on patent disclosure requirements. It also discussed the range of disclosure mechanisms and reviewed those provisions of the WIPO treaties that might be relevant to disclosure requirements. Lastly, it reviewed disclosure methods consistent with general patent principles and WIPO treaties in particular. He emphasized that the technical study was being transmitted to the Conference of the Parties subject to the following understanding:

“The technical study has been prepared to contribute to international discussion and analysis of this general issue, and to help clarify some of the legal and policy matters it raises. It has not been prepared to advocate any particular approach nor to expound a definitive interpretation of any treaty. It is to be regarded as a technical input to facilitate policy discussion and analysis in the Convention on Biological Diversity and in other forums and it should not be considered a formal paper expressing a policy position on the part of WIPO, its Secretariat or its member States.”

12. He added that WIPO was also working on other activities concerning intellectual property issues relevant to access and benefit-sharing: the compilation of a database of contractual practices and clauses concerning intellectual property, access to genetic resources and benefit-sharing and the possible development of contractual practices, guidelines and model intellectual property clauses from that database; a study on the role of intellectual property rights in the sharing of benefits arising from the use of biological resources and associated traditional knowledge; the defensive protection of genetic resources; and the integration of certain periodicals and databases into the minimum documentation list of the Patent Cooperation Treaty.

13. A representative of the Secretariat read out the following statement on behalf of the Food and Agriculture Organization of the United Nations (FAO): the International Treaty on Plant Genetic Resources for Food and Agriculture was likely to enter into force in the first half of 2004, when the required number of instruments of ratification had been deposited. Once the Treaty had become a legally-binding instrument, it would be a major step in establishing a secure basis for agricultural development, for managing the portfolio of agricultural genetic resources, and in the fight against hunger. In addition to the Treaty, the FAO Commission on Genetic Resources for Food and Agriculture had achieved notable success with a number of other instruments, including the Global Plan of Action for the Conservation and Sustainable use of Plant Genetic Resources for Food and Agriculture, and the Code of Conduct for Germplasm Collecting and Transfer. The Commission was currently developing work in the area of farm animal genetic resources and would then focus on other areas of its mandate in the context of fisheries, forestry, and agricultural microbial genetic resources for hunger elimination and food security.

14. FAO activities in the context of capacity-building relevant to the Bonn Guidelines included active support for many developing countries in implementing the Global Plan of Action on Plant Genetic Resources for Food and Agriculture, and in drafting national legislation in the area of access and benefit-sharing in the context of the International Treaty on Plant Genetic Resources for Food and Agriculture. A collaborative initiative involving FAO the United Nations Development Programme (UNDP), the Global Environment Facility (GEF) and the United Nations Educational, Scientific and Cultural Organization (UNESCO), called the Globally Important Ingenious Agricultural Heritage Systems, was aimed at helping countries and indigenous and local communities increase their capacity to develop and implement innovative frameworks for access to biological diversity that contributed to the sustainable management of agricultural heritage systems and food and livelihood security. The work of the Convention on Biological Diversity in the context of agricultural biodiversity, and more specifically in the area of access and benefit-sharing was of particular interest to FAO, and FAO would foster continued cooperation between the two bodies in a climate of mutual support.

ITEM 2. ORGANIZATIONAL MATTERS

2.1. Attendance

15. The meeting was attended by representatives nominated by the following Governments and regional economic integration organizations: Algeria, Antigua and Barbuda, Argentina, Australia, Bahamas, Bangladesh, Barbados, Belgium, Benin, Bhutan, Bolivia, Brazil, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Central African Republic, Chile, China, Colombia, Congo, Costa Rica, Cuba, Czech Republic, Democratic Republic of the Congo, Denmark, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Ethiopia, European Community, France, Gambia, Germany, Ghana, Guinea, Guinea-Bissau, Haiti, India, Iran (Islamic Republic of), Ireland, Italy, Jamaica, Japan, Jordan, Kenya, Kiribati, Lao People's Democratic Republic, Liberia, Lithuania, Madagascar, Malaysia, Mali, Mexico, Morocco, Mozambique, Myanmar, Namibia, Nepal, Netherlands, New Zealand, Niger, Norway, Pakistan, Palau, Peru, Republic of Korea, Rwanda, Saint Lucia, Samoa, Senegal, Seychelles, Singapore, Slovakia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Turkey, Uganda, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, Yemen, Zambia.

16. Representatives of the following other organizations also participated:

(a) *United Nations organizations:* Food and Agriculture Organization of the United Nations (FAO), Global Environment Facility (GEF), United Nations Development Programme (UNDP), United Nations Environment Programme (UNEP), United Nations University (UNU), World Intellectual Property Organization (WIPO);

(b) *Other organizations:* African Indigenous Women Organization, Ambioterra, Arctic Athabaskan Council, Arnold and Porter Law Firm, Asia Indigenous Peoples Pact Foundation, Asociación Ixacavaa de Desarrollo e Información Indígena, Asociación Napguana, Assembly of First Nations,

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BirdLife International/Royal Society for the Protection of Birds, Call of the Earth/Llamado de la Tierra, Call of the Earth Circle, Care Earth, Center for International Environmental Law, Center for International Sustainable Development Law, Coordinadora de las Organizaciones Indígenas de la Cuenca Amazonica (COICA), Dupont/International Chamber of Commerce, Foundation for International Environmental Law and Development (FIELD), Friends of the Earth-Ghana, Fundacion para la Promocion del Conocimiento Indigena, Fundacion Sociedades Sustentables, Genetic Resources Action International, Hutchins, Soroka and Grant, Indigenous People (Bethchilokono) of Saint Lucia Governing Council, Indigenous Peoples Council on Biocolonialism, Indigenous Peoples' Secretariat on the Convention on Biological Diversity (Canada), Institute for Biodiversity, Institute for Ecology and Action—Anthropology (INFOE), Instituto SocioAmbiental, International Development Research Centre (IDRC), International Environmental Resources, International Institute for Sustainable Development (IISD), IUCN—The World Conservation Union, IUCN/SSC Medicinal Plant Specialist Group, Kowalisyon ng Katutnbong Samahan ng Pilipinas, Na Koa Ikaika o Ka Lahui Hawai'i, National Aboriginal Health Organization, Netherlands Centre for Indigenous Peoples (NCIV), Observatoire de l'Écopolitique Internationale, Observatorio de Derechos Indigenas, Permanent Forum on Indigenous Issues, Plased, PRODIVERSITAS, Royal Botanic Gardens, Kew, Russian Association of Indigenous People of the North (RAIPON), Russian Association of Indigenous Peoples of the North, Secretariat of the Network on Biosecurity and Biosafety in Central Asia and Mongolia, South East Asia Regional Initiatives for Community Empowerment (SEARICE), Stratos Inc—Strategies to Sustainability, Tebtebba Foundation, The Eastern Door, The Edmonds Institute, Tulalip Tribes of Washington, World Hmong People's Congress.

2.2. Election of officers

17. The Bureau of the Conference of the Parties served as the Bureau of the Meeting. Mr. Hans Hoogeveen (Netherlands), President of the Conference of the Parties to the Convention on Biological Diversity, acted as presiding officer for plenary sessions. Ms. Diann Black Layne (Antigua and Barbuda) served as Rapporteur.

2.3. Adoption of the agenda

18. At the 1st plenary session of the meeting, on 1 December 2003, the Meeting adopted the following agenda, on the basis of the provisional agenda (UNEP/CBD/WG-ABS/2/1):

1. Opening of the meeting.
2. Organizational matters:
 - 2.1. Officers;
 - 2.2. Adoption of the agenda;
 - 2.3. Organization of work.
3. Consideration of any available reports or progress reports arising from decision VI/24 A, including on experience gained from the use of the Bonn Guidelines.
4. Use of terms, definitions and/or glossary, as appropriate.
5. Other approaches, as set out in decision VI/24 B, including consideration of the process, nature, scope, elements and modalities of an international regime.
6. Measures, including consideration of their feasibility, practicality and costs, to support compliance with prior informed consent of the Contracting Party providing genetic resources and mutually agreed terms on which access was granted in Contracting Parties with users of such resources under their jurisdiction.

7. Needs for capacity-building identified by countries to implement the Bonn Guidelines.
8. Other matters.
9. Adoption of the report.
10. Closure of the meeting.

2.4. Organization of work

19. At the opening session of the meeting, on 1 December 2003, the Working Group established two sessional sub-working groups open to all Parties and observers: Sub-Working Group I, under the chairmanship of Ms. Ines Verleye (Belgium) to consider any available reports or progress reports arising from decision VI/24 A, including on experience gained from the use of the Bonn Guidelines (agenda item 3), use of terms, definitions and/or glossary, as appropriate (agenda item 4), and other approaches, as set out in decision VI/24 B, including consideration of the process, nature, scope, elements and modalities of an international regime (agenda item 5), and Sub-Working Group II, under the chairmanship of Mr. Desh Deepak Verma (India), to consider measures, including consideration of their feasibility, practicality and costs, to support compliance with prior informed consent of the Contracting Party providing genetic resources and mutually agreed terms on which access was granted in Contracting Parties with users of such resources under their jurisdiction (agenda item 6) and needs for capacity-building identified by countries to implement the Bonn Guidelines (agenda item 7).

20. It was decided that a brief plenary session would be held at the end of each day to allow small delegations to be informed of the discussions that had taken place in each Sub-Working Group.

21. Accordingly, at the 3rd, 4th, and 5th plenary sessions on 2 to 4 December 2003, the Chairs of the Sub-Working Groups gave interim reports on the deliberations in their respective groups.

22. As decided by the Ad Hoc Open-ended Working Group on Access and Benefit-Sharing at the 1st plenary session of the meeting, on 1 December 2003, Sub-Working Group I met under the chairmanship of Ms. Ines Verleye (Belgium) to consider agenda items 3 (Consideration of any available reports or progress reports arising from decision VI/24 A including on experience gained from the use of the Bonn Guidelines), 4 (Use of terms, definitions and/or glossary, as appropriate) and 5 (Other approaches, as set out in decision VI/24 B, including consideration of the process, nature, scope, elements and modalities of an international regime).

23. The Sub-Working Group held six meetings from 2 to 4 December 2003. It adopted its report (UNEP/CBD/WG-ABS/2/WG.I/L.1) at its 6th meeting, on 4 December 2003.

24. As decided by the Ad Hoc Open-ended Working Group on Access and Benefit-Sharing at the 1st plenary session of the meeting, on 1 December 2003, Sub-Working Group II met under the chairmanship of Mr. Desh Deepak Verma (India) to consider agenda items 6 (Measures, including consideration of their feasibility, practicality and costs, to support compliance with prior informed consent of the contracting party providing genetic resources and mutually agreed terms on which access was granted in Contracting Parties with users of such resources under their jurisdiction) and 7 (Needs for capacity-building identified by countries to implement the Bonn Guidelines).

25. The Sub-Working Group held six meetings from 2 to 4 December 2003. It adopted its report (UNEP/CBD/WG-ABS/2/L.1/Add.2) at its 6th meeting, on 4 December 2003.

26. At the 6th plenary session of the meeting, the representative of Switzerland noted that certain meetings of the sub-working groups had been held in an informal setting without interpretation and called on the Bureau to ensure that the situation did not arise at the seventh meeting of the Conference of the Parties.

ITEM 3. CONSIDERATION OF ANY AVAILABLE REPORTS OR PROGRESS REPORTS ARISING FROM DECISION VI/24 A, INCLUDING ON EXPERIENCE GAINED FROM THE USE OF THE BONN GUIDELINES

27. At the 1st plenary session of the meeting, on 1 December 2003, the Working Group considered reports or progress reports, in accordance with decision VI/24 A, paragraph 8 (d), including information on experience gained in the use of the Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization. Experience implementing the Bonn Guidelines would be taken up in Sub-Working Group I. A compilation of submissions on access and benefit-sharing as related to genetic resources received by the Secretariat pursuant to decisions VI/24 A-D of the Conference of the Parties, including information regarding the implementation of the Bonn Guidelines, was available as an information document. (UNEP/CBD/WG-ABS/2/INF/1).

28. Following the introduction by the Chair, a number of representatives described their experience implementing the Bonn Guidelines.

29. Statements were made by the representatives of Algeria, Argentina, Australia, Bangladesh, Belgium, Brazil, Canada, China, Costa Rica, Denmark, the European Community, Egypt, El Salvador, Ethiopia, France, Haiti, Jamaica, Japan, Jordan, Kenya, Mexico (on behalf of the group of Like-Minded Megadiverse Countries), Namibia, the Netherlands, Norway, Pakistan, Spain, Sweden, Switzerland, Uganda and the United Kingdom of Great Britain and Northern Ireland.

30. A statement was also made by the representative of the South East Asia Regional Initiatives for Community Empowerment (SEARICE).

31. Agenda item 3 was taken up by Sub-Working Group I at its 1st meeting on 2 December 2003.

32. The representative of the Secretariat introduced the item by drawing attention to the note by the Executive Secretary on compilation of submissions on access and benefit-sharing as related to genetic resources received by the Secretariat pursuant to decisions VI/24 A-D of the Conference of the Parties (UNEP/CBD/WG-ABS/2/INF/1). The discussion begun in plenary was continued in the Sub-Working Group to allow Parties to describe their experience in implementing the Bonn Guidelines in greater detail.

33. Following the introduction, statements were made by the representatives of Argentina, Australia, Belgium, Brazil, Canada, Chile, China, Denmark, the European Community, France, Gambia, Germany, Iran (Islamic Republic of), Ireland, Mexico (on behalf of the Group of Like-Minded Megadiverse Countries), Norway, South Africa, Spain and Turkey.

34. In her statement, the representative of Brazil requested that the report of meeting reflect the view of her delegation that no more time should be spent on presenting reports on the national implementation of the Bonn Guidelines, as such reports could be sent to the Secretariat for dissemination to all Parties. There was a need to discuss the more pressing issue of an international regime for access and benefit-sharing.

35. Following the statements, the Chair said that she would prepare a draft text containing recommendations on experience gained with implementation of the Bonn Guidelines as it related to access and benefit sharing under the Convention, taking into account the views expressed, for the consideration of the Sub-Working Group.

36. At its 6th meeting on 4 December 2003, the Sub-Working Group took up consideration of the draft text prepared by the Chair containing a draft recommendation on experience gained with implementation of the Bonn Guidelines.

37. Following an exchange of views, the Sub-Working Group agreed to transmit the draft recommendation, as orally amended, to the plenary as draft recommendation UNEP/CBD/WG-ABS/2/L.4.

Action by the Working Group

38. At the 6th plenary session of the meeting, on 5 December 2003, the Working Group took up draft recommendation UNEP/CBD/WG-ABS/2/L.4.

39. The Secretariat introduced a number of editorial corrections, following which the Working Group adopted the draft recommendation, as amended, as recommendation 2/1. The text of the recommendation as adopted is contained in the annex to the present report.

ITEM 4. USE OF TERMS, DEFINITIONS AND/OR GLOSSARY, AS APPROPRIATE

40. Agenda item 4 was taken up by Sub-Working Group I at its 1st meeting, on 2 December 2003. In considering the item, the Sub-Working Group had before it a note by the Executive Secretary on further consideration of outstanding issues related to access and benefit-sharing: use of terms, other approaches and compliance measures (UNEP/CBD/WG-ABS/2/2). It also had before, as information documents, the compilation of submissions on access and benefit-sharing as related to genetic resources received by the Secretariat pursuant to decisions VI/24 A-D of the Conference of the Parties (UNEP/CBD/WG-ABS/2/INF/1) and the compilation of submissions by experts to develop draft elements of a decision on the use of terms in paragraph 6 of the draft Bonn Guidelines, which had been submitted to the sixth meeting of the Conference of the Parties (UNEP/CBD/COP/6/INF/40, annex I).

41. Introducing the item, the representative of the Secretariat recalled that at the sixth meeting of the Conference of the Parties there had not been sufficient time to discuss the draft elements of a decision on the use of terms in paragraph 6 of the draft Bonn Guidelines or the list of terms of direct relevance to access and benefit-sharing, which had been highlighted at the first meeting of the Ad Hoc Working Group. The terms in question were: access to genetic resources; benefit-sharing; commercialization; derivatives; provider; user; stakeholder; *ex situ* collection; voluntary nature. Consequently, the final version of the Bonn Guidelines, as adopted by the Conference of the Parties at its sixth meeting, only referred to terms already defined in the Convention. In decision VI/24 A, paragraph 8, the Conference of the Parties therefore decided to reconvene the Ad Hoc Open-ended Working Group to advise the Conference of the Parties on the use of terms, among other things.

42. Following the introduction, statements were made by Algeria, Antigua and Barbuda, Argentina, Australia, Brazil, Canada, China, Colombia, Ethiopia, the European Community, Germany, Italy (on behalf of the European Community, its member States and the acceding countries), Jamaica, Japan, Kenya, Liberia, Mexico (on behalf of the group of Like-Minded Megadiverse Countries), Namibia, Pakistan, Saint Lucia, Switzerland, Uganda (on behalf of the African Group), the United Kingdom, the United Republic of Tanzania, the United States, and Zambia.

43. Statements were also made by representatives of the International Indigenous Forum on Biodiversity, and the Tulalip Tribes of Washington State.

44. Following the statements, there was a general feeling in the Group that more information on the subject was needed before deciding on how to proceed. It was decided that the draft recommendation to be prepared by the Group should reflect that fact.

45. At its 6th meeting on 4 December 2003, the Sub-Working Group took up consideration of the draft text prepared by the Chair containing a draft recommendation on the use of terms.

46. Following an exchange of views, the Sub-Working Group agreed to transmit the draft recommendation, as orally amended, to the plenary as draft recommendation UNEP/CBD/WG-ABS/2/L.5.

Action by the Working Group

47. At the 6th plenary session of the meeting, on 5 December 2003, the Working Group took up draft recommendation UNEP/CBD/WG-ABS/2/L.5, and adopted it as recommendation 2/2. The text of the recommendation as adopted is contained in the annex to the present report.

ITEM 5. OTHER APPROACHES, AS SET OUT IN DECISION VI/24 B, INCLUDING CONSIDERATION OF THE PROCESS, NATURE, SCOPE, ELEMENTS AND MODALITIES OF AN INTERNATIONAL REGIME

48. At the 2nd plenary session of the meeting, on 1 December 2003, the Working Group considered the process, nature, scope, elements and modalities of an international regime for access and benefit sharing. In considering the item, the Working Group had before it notes by the Executive Secretary on further consideration of outstanding issues related to access and benefit-sharing: use of terms, other approaches and compliance measures (UNEP/CBD/WG-ABS/2/2); other approaches, as set out in decision VI/24 B, including consideration of the process, nature, scope, elements and modalities of an international regime (UNEP/CBD/WG-ABS/2/4); and an international regime on access to genetic resources and benefit-sharing: compilation of views on the process, nature, scope, elements and modalities (UNEP/CBD/WG-ABS/2/INF/3).

49. Introducing the item, the Chair announced that, based on the views expressed in the general discussion, he would be preparing an initial, first draft of a recommendation on the subject for the Conference of the Parties at its seventh meeting.

50. The Ad Hoc Working Group recognized that there was a clear need to have an international regime on access to genetic resources and fair and equitable benefit-sharing and to commence negotiations on such a regime.

51. Statements were made by the representatives of Algeria, Argentina, Australia, Bangladesh, Brazil, Canada, Colombia, Costa Rica, Egypt, Ethiopia, Haiti, India, Italy (on behalf of the European Community, its member States and the acceding countries), Jamaica, Japan, Jordan, Kyrgyzstan, Liberia, Malaysia, Mexico (on behalf of the Group of Like-minded Megadiverse Countries), Namibia, Nepal, New Zealand, Norway, Pakistan, Palau, the Republic of Korea, Saint Lucia, Senegal, Switzerland, Uganda (on behalf of the African Group), the United Republic of Tanzania and Yemen.

52. The representative of the Institute for Advanced Studies of the United Nations University (UNU/IAS) also made a statement.

53. Statements were also made by representatives of the Asociación Ixacavaa de Desarrollo e Información Indígena, Call of the Earth (on behalf of the International Indigenous Biodiversity Forum), the Dupont Company (on behalf of the International Chamber of Commerce), the Edmonds Institute, the Instituto SocioAmbiental, and SEARICE.

54. Following the statements, the Chair said that he would convene a group of friends of the Chair to prepare proposed draft recommendations on the process, nature, scope, elements and modalities to be considered in an international regime on access and benefit sharing for future consideration by the Working Group.

55. Agenda item 5 was taken up by Sub-Working Group I at its 2nd meeting, on 2 December 2003.

56. The Chair of the Sub-Working Group announced that the draft recommendations on an international regime on access to genetic resources and benefit sharing, being prepared by a group of friends of the Chair of the Working Group, would be presented at the 3rd plenary session of the meeting. She therefore requested members of the Sub-Working Group to direct their comments to the issue of other approaches to the implementation of access and benefit-sharing provisions.

57. Introducing that element of the item, the representative of the Secretariat referred to paragraphs 10 and 11 of decision VI/24 B, in which the Conference of the Parties recognized that a package of measures might be necessary to address the different needs of Parties and stakeholders in the implementation of access and benefit-sharing arrangements, and further recognized that other approaches could be considered to complement the Bonn Guidelines. The note by the Executive Secretary

(UNEP/CBD/WG-ABS/2/2) provided an overview of existing approaches and pointed to additional approaches. The Sub-Working Group was invited to give further consideration to additional approaches, complementary to the Bonn Guidelines that might assist Parties and stakeholders with the implementation of access and benefit-sharing provisions of the Convention.

58. Following the introduction, statements were made by Algeria, Argentina, Australia, Brazil, Canada, China, Colombia, El Salvador, Italy (on behalf of the European Community, its member States and the acceding countries), Italy, Jamaica, Japan, Malaysia, Mexico (on behalf of the group of Like-Minded Megadiverse Countries), Norway, Republic of Korea and the United States of America.

59. The representative of the Food and Agriculture Organization of the United Nations (FAO) also made a statement.

60. Following the statements, the Chair said that she would prepare, in cooperation with the Secretariat, a text on other approaches to implement provisions on access and benefit-sharing of genetic resources under the Convention, for further consideration by the Sub-Working Group in connection with the discussions on an international regime.

61. At the 3rd plenary session of the meeting, on 2 December 2003, the Chair introduced a Chair's text of draft recommendations on the process, nature, scope, elements and modalities to be considered in an international regime on access to genetic resources and benefit-sharing. He noted that the text incorporated the points raised at the 2nd plenary meeting of the Working Group and he urged representatives to carefully consider all of the elements needed to elaborate and negotiate such an international regime.

62. Following the Chair's introduction, statements were made by the representatives of Argentina, Burkina Faso, China, Italy (on behalf of the European Community, member States and the acceding countries), Mexico (on behalf of the Group of Like-minded Megadiverse Countries) and Singapore.

63. The Working Group agreed that the Chair's text would be submitted to Sub-Working Group I for further consideration.

64. At its 3rd meeting on 3 December 2003, Sub-Working Group I took up the text of draft recommendations on the process, nature, scope, elements and modalities to be considered in an international regime on access and benefit sharing, prepared by the group of friends of the Chair of the Working Group pursuant to discussions held in plenary. After a number of questions had been raised and clarification given, members of the Sub-Working Group made a number of general comments on the text. Specific amendments were then proposed, following which the Chair of the Sub-Working Group undertook to prepare a revised text for further discussion.

65. At its 4th meeting, on 4 December 2003, the Sub-Working Group considered the revised text prepared by the Chair on the process, nature, scope, elements and modalities of an international regime on access to genetic resources and benefit-sharing. Several proposals were made for amendment of the text.

66. The representative of the United States of America wished the report to reflect his statement that the issue of access to and sharing of the benefits from derivatives of genetic resources had been discussed seriously and at length during the 6th meeting of the Conference of the Parties, where derivatives had been found to lie beyond the scope of the Convention on Biological Diversity. The same issue had been discussed at length at the World Summit on Sustainable Development (WSSD), and the same conclusion had been reached.

67. At the 6th meeting, on 4 December 2003, the Sub-Working Group considered a draft text prepared by the Chair containing a draft recommendation on other approaches, as set out in decision VI/24 B.

68. Following an exchange of views, the Sub-Working Group agreed to transmit the draft recommendation, as orally amended, to the plenary as draft recommendation UNEP/CBD/WG-ABS/2/L.6.

69. At its 5th and 6th meetings, on 4 December 2003, the Sub-Working Group pursued its consideration of the draft text prepared by the Chair on an international regime.

70. At its 6th meeting, on 4 December 2003, the representative of Mexico drew attention to a proposed recommendation to the seventh meeting of the Conference of the Parties on the international regime on access to genetic resources and fair and equitable benefit-sharing by the group of Like-Minded Megadiverse countries, emphasizing that it would remain on the table until the discussions on the international regime had concluded.

71. Following a further exchange of views, the Sub-Working Group agreed to transmit the text, as amended, to the plenary as draft recommendation UNEP/CBD/WG-ABS/2/L.7.

Action by the Working Group

72. At the 6th plenary session of the meeting, on 5 December 2003, the Working Group took up draft recommendation UNEP/CBD/WG-ABS/2/L.6.

73. Following an exchange of views, the Subsidiary Body adopted the draft recommendation, as orally amended, as recommendation 2/3. The text of the recommendation as adopted is contained in the annex to the present report.

74. At the same session, the Working Group took up draft recommendation UNEP/CBD/WG-ABS/2/L.7 and, following a discussion, adopted it, as orally amended, as recommendation 2/4.

ITEM 6. MEASURES, INCLUDING CONSIDERATION OF THEIR FEASIBILITY, PRACTICALITY AND COSTS, TO SUPPORT COMPLIANCE WITH PRIOR INFORMED CONSENT OF THE CONTRACTING PARTY PROVIDING GENETIC RESOURCES AND MUTUALLY AGREED TERMS ON WHICH ACCESS WAS GRANTED IN CONTRACTING PARTIES WITH USERS OF SUCH RESOURCES UNDER THEIR JURISDICTION

75. Agenda item 6 was taken up by Sub-Working Group II at its 1st meeting, on 2 December 2003. In considering the item, the Sub-Working Group had before it notes by the Executive Secretary on further consideration of outstanding issues related to access and benefit-sharing: use of terms, other approaches and compliance measures (UNEP/CBD/WG-ABS/2/2) and the role of intellectual property rights in access and benefit-sharing arrangements, including national and regional experiences (UNEP/CBD/WG-ABS/2/3). It also had before it, as information documents, a technical study commissioned by the Secretariat on disclosure of origin and prior informed consent for applications of intellectual property rights based on genetic resources (UNEP/CBD/WG-ABS/2/INF/2) and technical study submitted by the World Intellectual Property Organization (WIPO) on disclosure requirements related to genetic resources and traditional knowledge (UNEP/CBD/WG-ABS/2/INF/4).

76. Introducing the item, the representative of the Secretariat referred to the mandate given to the Working Group by the Conference of the Parties, as set out in paragraph 8 of decision VI/24 A. He said that several articles of the Convention on Biological Diversity addressed the legal obligations of the Parties concerning users of genetic resources to ensure the fair and equitable sharing of benefits arising from the utilization of genetic resources. He noted that those provisions, together with paragraph 16 (d) of the Bonn Guidelines and decision VI/24 C of the Conference of the Parties served as the background to the agenda item.

77. Following the introduction, statements were made by the representatives of Argentina, Australia, Barbados, Brazil, Canada, China, Colombia, Costa Rica, Denmark, France, Ireland, Italy (on behalf of the European Community, its member States and the acceding countries), Japan, Jordan, Mexico (on behalf

of the Group of Like-minded Megadiverse Countries), the Netherlands, Niger, Norway, Rwanda, Switzerland, the United Kingdom, the United Republic of Tanzania, the United States of America and Yemen.

78. A statement was also made by the representative of the Food and Agriculture Organization of the United Nations.

79. The representatives of Care Earth, Friends of the Earth International and of Programa de Conocimiento Indigena – Indigenous Community also made statements.

80. The Chair announced that, based on the comments made in the initial discussion on the agenda item and in collaboration with the Secretariat, he would prepare a Chair's draft text for subsequent submission to the Sub-Working Group.

81. Under this agenda item, at the 2nd meeting of the Sub-Working Group, on 2 December 2003, the representative of WIPO introduced its technical study submitted by his organization on disclosure requirements related to genetic resources and traditional knowledge (UNEP/CBD/WG-ABS/2/INF/4). Clarifying the procedure being followed, he explained that the document was also being forwarded directly to the Conference of the Parties at its seventh meeting. He also observed that the issue remained before the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, and that it would again be taken up at the sixth meeting of that Committee, from 15 to 19 March 2004, where the outcome of any deliberations on the matter by the Conference of the Parties to the Convention on Biological Diversity would also be considered.

82. The Sub-Working Group considered the Chair's draft text under this agenda item at its 3rd and 4th meetings, on 3 December 2003.

83. At its 6th meeting, on 4 December 2003, the Sub-Working Group continued its discussion of the Chair's draft recommendations under this agenda item.

84. The Sub-Working Group approved the Chair's draft recommendations, as orally amended, for transmission to plenary as draft recommendation UNEP/CBD/WG-ABS/2/L.3.

Action by the Working Group

85. At the 6th plenary session of the meeting, on 5 December 2003, the Working Group took up draft recommendation UNEP/CBD/WG-ABS/2/L.3 and adopted it as recommendation 2/5. The text of the recommendation as adopted is contained in the annex to the present report.

ITEM 7. NEEDS FOR CAPACITY-BUILDING IDENTIFIED BY COUNTRIES TO IMPLEMENT THE BONN GUIDELINES

86. Agenda item 7 was taken up by Sub-Working Group II at its 1st meeting, on 2 December 2003. In considering the item, the Sub-Working Group had before it the draft Action Plan on Capacity-building for Access to Genetic Resources and Benefit-sharing, prepared by the Open-ended Expert Workshop on Capacity-building for Access and Benefit-sharing (UNEP/CBD/ABS/EW-CB/1/3).

87. In introducing the item, the representative of the Secretariat referred to section V of document UNEP/CBD/WG-ABS/2/2. He recalled that, pursuant to decision VI/24 B, paragraph 1 of the Conference of the Parties, an Open-ended Expert Workshop on Capacity-building for Access to Genetic Resources and Benefit-sharing had been held in Montreal from 2 to 4 December 2002. He said that the Draft Action Plan on Capacity-building for Access to Genetic Resources and Benefit-sharing, as elaborated by the Expert Group, was to be found in an annex to the report of the Expert Group (UNEP/CB/ABS/EW-CB/1/3).

88. Following the introduction, statements were made by the representatives of Italy (on behalf of the European Community, its member States and the acceding countries) and Spain.

89. During the continued discussion of agenda item 7 at the 2nd meeting of the Sub-Working Group, on 2 December 2003, statements were made by the representatives of Argentina, Brazil, Canada, China,

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Colombia, Japan, Jordan, Malaysia, Mexico, Nepal, Niger, Norway, Pakistan, Senegal, the United Republic of Tanzania and Yemen.

90. Statements were also made by the representatives of the Institute for Advanced Studies of the United Nations University (IAS/UNU) and the United Nations Development Programme (UNDP).

91. The representative of the Global Environment Facility (GEF) requested that the report of the meeting reflect his view that the activities mentioned in paragraph 37 of document UNEP/CBD/ABS/EW-CB/1/3 went beyond the activities mandated by paragraph 2.1 of the memorandum of understanding between the Conference of the Parties to the Convention and the GEF Council (decision III/8, annex). According to the memorandum, the Conference of the Parties would determine the policy, strategy programme priorities and eligibility criteria for access to and utilization of financial resources available through the financial mechanism. He noted that the GEF Council would operationalize the guidance, support projects and report back to the Conference of the Parties.

92. The representative of the Canadian Indigenous Biodiversity network also made a statement.

93. The Chair announced that, based on the comments made in the initial discussion on the agenda item and in collaboration with the Secretariat, he would prepare a Chair's draft text for subsequent submission to the Sub-Working Group.

94. At its 5th meeting, on 4 December 2003, the Sub-Working Group considered the Chair's draft recommendations under this agenda item.

95. At its 6th meeting, on 4 December 2003, the Sub-Working Group approved the Chair's draft recommendations, as orally amended, for transmission to plenary as draft recommendation UNEP/CBD/WG-ABS/2/L.2.

Action by the Working Group

96. At the 6th plenary session of the meeting, on 5 December 2003, the Working Group took up draft recommendation UNEP/CBD/WG-ABS/2/L.2 and adopted it as recommendation 2/6. The text of the recommendation as adopted is contained in annex I to the present report.

ITEM 8. OTHER MATTERS

97. At its 5th plenary meeting, on 4 December 2003, the Working Group heard from the representative of the United Nations Permanent Forum for Indigenous Peoples, who congratulated the Working Group for its efforts on behalf of Indigenous Peoples. He also recalled the recommendations at paragraphs 36 and 45 of the Permanent Forum on Indigenous Issues Report of its second session (E/2003/43-E/C.19/2003/22), which had reiterated the need to create a three-year working group on free, prior informed consent and research guidelines, under the aegis of the Forum, with the participation of the stakeholders concerned, namely the Governments, indigenous peoples' organizations, corporations and States and the United Nations System. In the name of the Permanent Forum on Indigenous Peoples, he expressed his satisfaction with the support of the Executive Secretary, the Parties and other organizations for aiding the participation of indigenous peoples at the second meeting of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing.

98. At its 6th plenary meeting, on 5 December 2003, one representative expressed the hope that all of the documentation in Arabic would be available at the same time as the documentation in the other languages.

ITEM 9. ADOPTION OF THE REPORT

99. The present report was adopted at the 6th plenary session of the meeting, on the basis of the draft report prepared by the Rapporteur (UNEP/CBD/WG-ABS/2/L.1) and the reports of the two sub-working groups (UNEP/CBD/WG-ABS/2/L.1/Add.1 and Add.2).

ITEM 10. CLOSURE OF THE MEETING

100. After the customary exchange of courtesies, the meeting was closed at 1:55 p.m. on Friday, 5 December 2003.

Annex

**RECOMMENDATIONS ADOPTED BY THE AD HOC OPEN-ENDED WORKING GROUP ON
ACCESS AND BENEFIT-SHARING**

<i>Recommendation</i>	<i>Page</i>
2/1. Consideration of any available reports or progress reports arising from decisions VI/24 A-D, including on experience gained from the use of the Bonn Guidelines	16
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2/5. Measures, including consideration of their feasibility, practicality and costs, to support compliance with prior informed consent of the Contracting Party providing genetic resources and mutually agreed terms on which access was granted in Contracting Parties with users of such resources under their jurisdiction	24
2/6. Needs for capacity-building identified by countries to implement the Bonn Guidelines	28

2/1. Consideration of any available reports or progress reports arising from decisions VI/24 A-D, including on experience gained from the use of the Bonn Guidelines

The Ad Hoc Open-ended Working Group on Access and Benefit-sharing,

Recalling the evolutionary character of the Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of Benefits Arising out of their Utilization and the need to keep their implementation under review,

Recognizing that the Guidelines are making a useful contribution to the development of national regimes and contractual arrangements for access and benefit-sharing and to the implementation of the objectives of the Convention,

Recognizing further that some developing countries have encountered some constraints due to inadequate capacity to fully utilize the guidelines in the formulation of their national legislation of access and benefit sharing and related arrangements,

1. *Notes* the progress already accomplished and the need for further experience in the implementation of the Guidelines;
2. *Invites* Parties, Governments, indigenous and local communities and all relevant stakeholders to continue to promote the wide implementation of the voluntary Bonn Guidelines;
3. *Encourages* Parties, Governments, indigenous and local communities and all relevant stakeholders to further submit information on relevant experience and lessons learned, including successes and constraints, in the implementation of the Guidelines;
4. *Requests* the Executive Secretary to make this information available through appropriate means, including the clearing-house mechanism of the Convention.

2/2. Use of terms, definitions and/or glossary, as appropriate

The Ad Hoc Open-ended Working Group on Access and Benefit-sharing

Recalling the voluntary nature of the Bonn Guidelines,

Noting that the terms as defined in Article 2 of the Convention shall apply to the Bonn Guidelines on Access and Benefit Sharing in accordance with paragraph 8 of the Bonn Guidelines,

Noting further that a number of other relevant terms not defined in the Convention may need to be examined,

Bearing in mind the difficulties faced by some developing countries with respect to information technology and related infrastructure,

Recommends that the Conference of the Parties:

(a) *Invites* Parties, Governments, relevant organizations, indigenous and local communities, and all relevant stakeholders, according to a format provided by the Secretariat, to submit to the Executive Secretary:

- (i) Information on existing national definitions or other relevant definitions of the following terms: access to genetic resources, benefit sharing, commercialization, derivatives, provider, user, stakeholder, *ex situ* collection, and voluntary nature (as contained in annex II of document UNEP/CBD/COP/6/INF/4);
- (ii) Views on whether additional terms need to be considered, such as arbitrary restrictions;

(b) *Requests* access and benefit-sharing national focal points within Governments to facilitate the process of gathering and submitting relevant information to the Secretariat, taking into account the need to consult widely, including with indigenous and local communities;

(c) *Requests* the Executive Secretary to gather and compile the information referred to above and distribute this information through available means, including through the clearing-house mechanism of the Convention;

(d) *Requests* the Executive Secretary to submit this compilation to the next meeting of the Ad Hoc Open Ended Working Group on Access and Benefit-sharing for its consideration and *requests* the Working Group to further examine the issue of use of terms not defined in the Convention including the possible establishment of an expert group to determine the need for definitions or a glossary, and to report back to the Conference of the Parties.

2/3. Other approaches, as set out in decision VI/24 B

The Ad Hoc Open-ended Working Group on Access and Benefit-sharing,

Recognizing that a package of measures may be necessary to address the different needs of Parties, Governments, relevant organizations, indigenous and local communities and all relevant stakeholders in the implementation of access and benefit-sharing arrangements,

Acknowledging that existing other approaches could be considered to complement the Bonn Guidelines and are useful tools in assisting implementation of access and benefit-sharing provisions of the Convention,

Stressing the need to further examine other approaches set out in decision VI/24 B, and additional approaches such as interregional and bilateral arrangements as well as an international certificate of legal provenance/origin/source, in particular the operational functionality and cost effectiveness of such an international certificate,

Recommends that the Conference of the Parties:

(a) *Invites* Parties, Governments, relevant organizations, indigenous and local communities and all relevant stakeholders, to submit to the Secretariat their views and relevant information on additional approaches as well as regional, national and local experiences on existing approaches, including on codes of ethics;

(b) *Requests* the Executive Secretary to further compile information on existing complementary measures and approaches, and experiences with their implementation, and to disseminate such information to Parties, Governments, relevant organizations, indigenous and local communities and all relevant stakeholders through, *inter alia*, the clearing-house mechanisms of the Convention;

(c) *Requests* the Open-ended Working Group on Access and Benefit-sharing to further consider the issue of additional approaches, in a cost effective way at an appropriate time and, to this end, *requests* the Executive Secretary to prepare a report on the basis of the submissions received.

2/4. International regime on access to genetic resources and benefit-sharing

The Ad Hoc Open-ended Working Group on Access and Benefit-sharing,

[*Reaffirming* that the fair and equitable sharing of the benefits arising out of the utilization of genetic resources is one of the objectives of the Convention on Biological Diversity, in accordance with Article 1 of the Convention],

[*Reaffirming* the sovereign rights of States over their natural resources and that the authority to determine access to genetic resources rests with the national Governments and is subject to national legislation, in accordance with Article 3 and Article 15, paragraph 1, of the Convention],

[*Reaffirming* the commitment of Parties in Article 15, paragraph 2 of the Convention to “endeavour to create conditions to facilitate access to genetic resources for environmentally sound uses by other Contracting Parties and not to impose restrictions that run counter to the objectives of this Convention”],

Recalling paragraph 44 (o) of the Plan of Implementation of the World Summit on Sustainable Development, which calls for action to “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”,

Further recalling resolution 57/260 of 20 December 2002, adopted by the United Nations General Assembly at its fifty-seventh session, inviting the Conference of the Parties to take appropriate steps with regard to the commitment made at the World Summit on Sustainable Development “to 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”,

Recalling the recommendation of the Inter-Sessional Meeting on the Multi-Year Programme of Work of the Conference of the Parties up to 2010 inviting the Ad Hoc Open-ended Working Group on Access and Benefit-sharing “to consider the process, nature, scope, elements and modalities of an international regime on access to genetic resources and benefit-sharing and to provide advice to the Conference of the Parties at its seventh meeting on this issue”,

Noting the Bonn Guidelines on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization, adopted at the sixth meeting of the Conference of the Parties, “as a useful first step of an evolutionary process in the implementation of relevant provisions of the Convention related to access to genetic resources and benefit-sharing”,

Recalling also paragraph 44 (n) of the Plan of Implementation of the World Summit on Sustainable Development which calls for action to promote the wide implementation of and continued work on the Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of Benefits arising out of their Utilization, as an input to assist the Parties when developing and drafting legislative, administrative or policy measures on access and benefit-sharing as well as contract and other arrangements under mutually agreed terms for access and benefit-sharing”,

Recalling further the Millennium Development Goals and the potential role of access and benefit-sharing in poverty eradication and environmental sustainability,

Taking into account Articles 8(j), 15, 16, 17, 18, 19, paragraphs 1 and 2, 20, 21 and 22 of the Convention on Biological Diversity,

Reaffirming the commitment by Parties, subject to national legislation, to respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for conservation and sustainable use of biological diversity and promote

their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from their utilization,

Noting the work being carried out under the framework of the Convention by the Working Group on Article 8(j) and Related Provisions of the Convention,

[[*Mindful of* the work related to access to genetic resources and benefit-sharing carried out in other relevant international intergovernmental organizations,] [such as the Food and Agriculture Organization of the United Nations, the World Intellectual Property Organization, the World Trade Organization, and regional organizations and the need for mutual supportiveness,] [and recognizing that this work may form part of the international regime on access and benefit sharing];]

[*Recognizing also* the important contribution of international biodiversity related agreements, such as the FAO International Treaty for Plant Genetic Resources for Food and Agriculture, to access to genetic resources and benefit-sharing,]

[*Recognizing* that Parties and stakeholders may be both users and providers of genetic resources],

[*Recognizing further* that the regime should be transparent, [practicable, non discriminatory], [expeditious] and flexible, and support generation of environmental, social, and economic benefits to both users and providers, as well as being supportive to national legislative, administrative and policy measures, [and mutually supportive with rights and obligations under other international and regional agreements,]]

[*Noting* that there is a need for further analysis of existing national, regional and international legal instruments and regimes relating to access and benefit-sharing and experience gained in their implementation, including gaps and their consequences,]

Advising that the Working Group has identified possible components of an international regime, without prejudging the outcome,

1. *Recommends* that, at its seventh meeting, the Conference of the Parties mandate the Ad Hoc Open-ended Working Group on Access and Benefit-sharing with the collaboration of the Ad Hoc Open ended Working Group on Article 8(j) and related provisions, [ensuring the participation of indigenous and local communities, non-governmental organizations, industry and scientific and academic institutions, as well as intergovernmental organizations,] to elaborate and negotiate an international regime on access to genetic resources and benefit-sharing [as soon as possible] [to support the implementation of the three objectives of the Convention] and [taking into account the 2010 target], [with the aim of adopting a legally binding instrument that would effectively protect and guarantee the rights of countries of origin of genetic resources];

2. [*Recommends* that the Ad Hoc Open-ended Working Group on Access and Benefit-sharing should operate in accordance with the following terms of reference:]

or

2. [*Recommends* that, within the framework of the Convention on Biological Diversity and taking into account the Bonn Guidelines and outcomes of the Working Group on Article 8(j) and Related Provisions, the elaboration and negotiation shall be based on an examination of the following possible features of the international regime on the basis of whether they (a) are currently part of existing instruments, (b) require further analysis and/or (c) needs strengthening (add 2 (c) (ii) to (xv)).]

(a) [**Process:** to analyse existing national, regional and international legal as well as administrative and policy instruments relating to access and benefit-sharing and experience gained in their implementation, including enforcement, [and monitoring of access contracts], as well as any gaps and their consequences]

(b) [**Nature:** The nature of the international regime could be determined on the basis of the following parameters] [*inter alia*]:

/...

- (i) [Legally-binding and/or non-binding];
 - (ii) [Support generation of social, cultural economic and environmental benefits to both users and providers];
 - (iii) [Supportive to national legislative, administrative and policy measures];
 - (iv) [Taking into account customary law and traditional cultural practices of indigenous and local communities];
 - (v) [Consistent with Article 22 of the Convention];
 - (vi) [Composed of one or more instruments within a set of principles, norms, rules and decision-making procedures];
- (c) **Scope:** The international regime [could] [should], *inter alia*:
- (i) *Alternative 1* [Cover access to genetic resources and promote and safeguard fair and equitable sharing of benefits arising out of the utilization of genetic resources and [their products] [and derivatives]];

Alternative 2 [Facilitate access to genetic resources and promote and safeguard the fair and equitable sharing of the benefits arising out of the utilization of genetic resources and should cover genetic resources, [derivatives] and associated traditional knowledge, innovations and practices covered by the Convention on Biological Diversity and benefits arising from the commercial and other utilization of such resources, with the exclusion of human genetic resources;]
 - (ii) 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] [conservation and sustainable use of biological diversity];
- (d) **Elements:** The international regime could, [on the basis of the above mentioned gap analysis (paragraph 2a),] include the following elements, *inter alia*:
- (i) [Relevant existing instruments and processes, including :
 - Convention on Biological Diversity;
 - Bonn Guidelines;
 - The International Treaty on Plant Genetic Resources for Food and Agriculture of the Food and Agriculture Organization of the United Nations;
 - The Commission on Genetic Resources for Food and Agriculture of the Food and Agriculture Organization of the United Nations;
 - Current national legislative, administrative and policy measures implementing Article 15 of the Convention on Biological Diversity;
 - Outcomes of Working Group on Article 8(j);
 - The Agreement on Trade-related Aspects of Intellectual Property Rights and other World Trade Organization agreements;
 - World Intellectual Property Organization [conventions and treaties] [agreements];
 - Conventions of the Union for the Protection of New Varieties of Plants;
 - Regional agreements,;

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- Codes of conduct and other approaches developed by specific user groups or for specific genetic resources, including model contractual agreements;]
 - (ii) [To facilitate and] encourage collaborative scientific research, [including] [as well as] research for commercial purposes and commercialization, consistent with Articles 8(j), 10, 15, paragraph 6, paragraph 7 and Articles 16, 18 and 19 of the Convention;
 - (iii) To ensure the fair and equitable sharing of benefits from the results of research and development and the benefits arising from the commercial and other utilization of genetic resources in accordance with Articles 15.7, 16, 19.1, 19.2. of the Convention;
 - (iv) [Measures related to access and benefit-sharing which promote the achievement of the Millennium Development Goals, in particular on poverty eradication and environmental sustainability;]
 - (v) [To facilitate the functioning of the regime at the local, national, subregional, regional and international levels, bearing in mind the transboundary nature of the distribution of some genetic resources and associated traditional knowledge;]
 - [(vi) [Provisions] [Measures] to ensure compliance with [international law and] national legislations on access and benefit-sharing of [*inter alia*] countries of origin of genetic resources and associated traditional knowledge , including prior informed consent [(of [*inter alia*] countries of origin, provider countries and indigenous and local communities)] and mutually agreed terms;
 - (vii) Further promotion of [providers] and [measures by countries with users under their jurisdiction] [non-distortive] [user measures];
 - (viii) International certificate of origin/source of genetic resources and associated traditional knowledge/certificate of legal provenance/declaration of origin of genetic resources and associated traditional knowledge;
- Or*
- [International certificate of legal provenance of genetic resources and associated traditional knowledge;]
- (ix) Disclosure of country of origin/source/legal provenance of genetic resources and [related] [associated] traditional knowledge in applications for intellectual property rights;
- Or*
- [Disclosure of country of origin]]
- (x) Recognize and protect the rights of indigenous and local communities over their traditional knowledge associated to genetic resources subject to the national legislation of the countries where these communities are located;
 - (xi) Capacity-building measures based on country needs;
 - (xii) [Measures to ensure that the use of genetic resources, derivatives and associated traditional knowledge for bioprospecting purposes beyond the jurisdiction of countries of origin is in compliance with the Convention;]
 - (xiii) Measures for benefit-sharing including, *inter alia*, monetary and non-monetary benefits, and effective technology transfer and cooperation so as to support the generation of social, economic and environmental benefits;

- (xiv) [[Code of ethics] [Code of conduct] [Models of prior informed consent] addressing fair and equitable sharing of benefits with indigenous and local communities;]
- (xv) Means to support the implementation of the international regime within the framework of the Convention;
- (xvi) [Monitoring, compliance and enforcement mechanisms];
- (xvii) [Dispute settlement mechanisms, and/or arbitration mechanisms];
- (xviii) Institutional issues to support the implementation of the international regime within the framework of the Convention;
- (xix) [And any other features that are determined to be necessary to achieve the objectives of the regime];

(e) **Modalities:** The timeframe, [the type of instruments] and other modalities to be decided by the Conference of the Parties at its seventh meeting;

3. *Recommends* that the Conference of the Parties mandate the Ad Hoc Open-Ended Working Group on Access and Benefit-sharing to negotiate and elaborate the international regime on access and benefit-sharing and request the Executive Secretary to make the necessary arrangements for the Open-ended Ad Hoc Working Group on Access and Benefit-sharing to be convened as soon as [possible, at least twice a year, at a minimum] [practicable];

4 [Recommends that the international regime be elaborated in collaboration with the Food and Agriculture Organization of the United Nations, the World Trade Organization, the World Intellectual Property Organization, the Union for the Protection of New Varieties of Plants, and relevant regional agreements;]

5. [Encourages Parties, Governments, international organizations and all relevant stakeholders to provide the ways and means to allow for sufficient time to facilitate effective participation of indigenous and local communities in the development of an international regime;]

6. *Recommends* the promotion of the participation of all relevant stakeholders, including non-governmental organizations and the private sector, and indigenous and local communities.

2/5. Measures, including consideration of their feasibility, practicality and costs, to support compliance with prior informed consent of the Contracting Party providing genetic resources and mutually agreed terms on which access was granted in Contracting Parties with users of such resources under their jurisdiction

The Ad Hoc Open-ended Working Group on Access and Benefit-Sharing,

Recalling paragraph 8 of decision VI/24 A of the Conference of the Parties,

Recalling also Article 8(j), Article 15, paragraphs 1, 3 and 7, Article 16, paragraph 3, and Article 19, paragraphs 1 and 2, of the Convention,

Recalling further paragraph 16 (d) of the Bonn Guidelines on Access to Genetic Resources and Equitable Sharing of Benefits Arising out of their Utilization, which identifies a number of measures that could be taken by Contracting Parties with users of genetic resources under their jurisdiction, to support compliance with prior informed consent of the Contracting Party providing such resources and with mutually agreed terms on which access was granted,

Noting that a number of Governments have taken initiatives at the national and regional levels to establish measures to support compliance with prior informed consent of the Contracting Parties providing such resources, including countries of origin, in accordance with Article 2 and Article 15, paragraph 3, of the Convention, and of the indigenous and local communities providing associated traditional knowledge, and with mutually agreed terms on which access was granted,

Noting further the ongoing activities and processes in relevant international forums such as the World Intellectual Property Organization, the TRIPs Council of the World Trade Organization, and the Commission on Plant Genetic Resources for Food and Agriculture of the Food and Agriculture Organization of the United Nations acting as the Interim Committee for the International Treaty on Plant and Genetic Resources for Food and Agriculture, regarding measures to support compliance with prior informed consent,

Aware that further work is required on a number of issues, including analysis of: (i) specific measures to support compliance, in accordance with the sovereign rights of the country of origin of genetic resources, with the prior informed consent of the Contracting Parties providing such resources, including countries of origin, in accordance with Article 2 and Article 15, paragraph 3, of the Convention, and of the indigenous and local communities providing associated traditional knowledge; (ii) compliance measures existing in national laws; (iii) the extent and level of unauthorized access and misappropriation of genetic resources and traditional knowledge; and (iv) availability of remedies in user countries relating to non-compliance,

Recognizing that a number of critical issues, such as an international certificate of [origin/source/legal provenance], and disclosure of origin of genetic resources and associated traditional knowledge, need to be addressed to support compliance with national legislation of countries of origin and prior informed consent of the Contracting Parties providing such resources, including countries of origin, in accordance with Article 2 and Article 15, paragraph 3, of the Convention, and of the indigenous and local communities providing associated traditional knowledge, and with mutually agreed terms on which access was granted,

Recognizing further the need to ensure transparency in the international exchange of genetic resources and associated traditional knowledge,

Recalling paragraph 35 of decision VI/20 in which the Conference of the Parties recognized the leading role of the Convention on Biological Diversity in international biological diversity issues,

[*Noting in particular* the decision of the World Intellectual Property Organization General Assembly to extend the mandate of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, instructing it to focus on the international dimension of the issues, and urging it to accelerate its work,]

Noting with appreciation the Technical Study on Disclosure Requirements Concerning Genetic Resources and Traditional Knowledge prepared by World Intellectual Property Organization at the request of the Conference of the Parties in decision VI/24 C and considering the contents of the Technical Study to be helpful in the consideration of intellectual property-related aspects of user measures,

Recommends that the Conference of the Parties at its seventh meeting:

(a) *Takes note* of ongoing initiatives at national, regional and international levels regarding measures to support compliance with national legislation, including prior informed consent of the Contracting Parties providing such resources, including countries of origin, in accordance with Article 2 and Article 15, paragraph 3, of the Convention, and of the indigenous and local communities providing associated traditional knowledge, and with mutually agreed terms on which access was granted;

(b) *Invites* Parties and Governments to continue taking appropriate and practical measures to support compliance with prior informed consent of the Contracting Parties providing such resources, including countries of origin, in accordance with Article 2 and Article 15, paragraph 3, of the Convention, and of the indigenous and local communities providing associated traditional knowledge, and with mutually agreed terms on which access was granted. Such measures may include:

- (i) Exchange of information between users and providers regarding legislative, administrative and policy measures existing in their jurisdiction relating to access and benefit-sharing;
- (ii) Incentive measures, as referred to in paragraph 51 of the Bonn Guidelines, to encourage users to comply with national legislation, including prior informed consent and mutually agreed terms, such as publicly sponsored research grants and voluntary certification schemes;
- (iii) Development of model/standard contractual agreements for different user groups and different genetic resources;
- (iv) Aspects related to the import and export of genetic resources, including regulations when feasible and as appropriate;
- (v) Easy access to justice in cases of violation of legal provisions in provider and user countries;
- (vi) Administrative and judicial remedies, including penalties and compensation as provided by national laws;
- (vii) Monitoring;

(c) *Invites* Parties to recognize that traditional knowledge, whether written or oral, may constitute prior art;

(d) *Invites* Parties to establish national mechanisms to ensure compliance, when required by domestic law, with the obtaining of prior informed consent of indigenous and local communities regarding access to genetic resources and associated traditional knowledge;

(e) *Invites* Parties to put in place mechanisms to ensure fair and equitable benefit-sharing at the national level with relevant stakeholders and indigenous and local communities;

(f) *Requests* the Ad Hoc Open-ended Working Group on Access and Benefit-Sharing to address issues related to an international certificate of [origin/source/legal provenance], taking into account multilateral approaches to access to genetic resources and benefit-sharing, including issues such as feasibility, practicality and costs.

[(g) *Requests* the Ad hoc Open-ended Working Group on Access and Benefit-Sharing to identify issues related to the disclosure of origin of genetic resources and associated traditional knowledge in applications for intellectual property rights, including those raised by a proposed international certificate of [origin/source/legal provenance], and transmit the results of this examination to the World Intellectual Property Organization Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, and the Working Group on the Reform of the Patent Cooperation Treaty and other relevant forums].

[(h) *Invites* the World Intellectual Property Organization to address measures regarding the interrelation of access to genetic resources and disclosure requirements in intellectual property rights applications, while recognizing the leading role of the Convention on Biological Diversity in international biological diversity issues, in particular the intellectual property-related issues raised by a proposed international certificate of [origin/source/legal provenance], as part of the accelerated work under the renewed mandate of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, including:

- (i) Options for model provisions on proposed disclosure requirements;
- (ii) Practical options for patent application procedures with regard to the triggers of disclosure requirements;
- (iii) Options for incentive measures for applicants;
- (iv) Identification of the implications for the functioning of disclosure requirements in various World Intellectual Property Organization-administered treaties;]

[(i) *Further invites* WIPO to prepare a report for submission to Conference of the Parties at its eighth meeting on the progress of this work, taking into account, in particular, any issues that may be identified in the Ad Hoc Open-ended Working Group on Access and Benefit-Sharing in the interim.]

(j) *Requests* the Executive Secretary to gather information, with the assistance of Parties, Governments and relevant international organizations, and undertake further analysis relating to:

- (i) Specific measures to support and ensure compliance with national legislation, prior informed consent of the Contracting Parties providing such resources, including countries of origin, in accordance with Article 2 and Article 15, paragraph 3, of the Convention, and of the indigenous and local communities providing associated traditional knowledge, and with mutually agreed terms on which access was granted;
- (ii) Existing measures to support compliance with national, regional, and international legal instruments;
- (iii) The extent and level of unauthorized access and misappropriation of genetic resources and associated traditional knowledge;
- (iv) Access and benefit-sharing arrangements existing in specific sectors;
- (v) Administrative and judicial remedies available in countries with users under their jurisdiction and in international agreements regarding non-compliance with the prior informed consent requirements and mutually agreed terms;

- (v) Existing practices and trends with regard to commercial and other utilization of genetic resources and the generation of benefits;
- (vi) Measures which preserve and promote legal certainty for users over the terms and conditions of access and use;

and prepare a compilation of the information received and make this compilation available for the consideration of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing at its next meeting;

(k) *Requests* the Ad Hoc Open-ended Working Group on Access and Benefit-sharing to analyse the compilation prepared by the Executive Secretary in accordance with the preceding paragraph, and recommend to the Conference of the Parties at its eighth meeting further measures to support and ensure compliance with prior informed consent of the Contracting Parties providing such resources, including countries of origin, in accordance with Article 2 and Article 15, paragraph 3, of the Convention, and of the indigenous and local communities providing associated traditional knowledge, and with mutually agreed terms on which access was granted.

2/6. Needs for capacity-building identified by countries to implement the Bonn Guidelines

The Ad Hoc Open-ended Working Group on Access and Benefit-Sharing,

Recalling decision VI/24 A, paragraph 8, in which the Conference of the Parties requested, the Ad Hoc Open-ended Working Group on Access and Benefit-Sharing to advise the Conference of the Parties on needs for capacity-building identified by countries to implement the Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of Benefits Arising out of their Utilization,

Mindful that capacity-building activities related to access and benefit-sharing are a crucial element in achieving the fair and equitable sharing of the benefits arising out of the utilization of genetic resources, as well as the other two objectives of the Convention and the target to significantly reduce the rate of biodiversity loss by 2010,

Having considered the draft Action Plan on Capacity-building for Access to Genetic Resources and Benefit-sharing developed by the Open-ended Expert Workshop on Capacity-building for Access to Genetic Resources and Benefit-sharing further to decision VI/24 B, paragraph 1,

Having considered the work done during the ninth meeting of the Subsidiary Body on Scientific, Technical and Technological Advice, held in Montreal from 10 to 14 November 2003, in preparing a programme of work on technology transfer and cooperation for consideration by the Conference of the Parties at its seventh meeting,

Recognizing that the draft Action Plan represents an important framework for the identification of capacity needs, priority areas requiring capacity-building, sources of funding and implementation of the identified needs and priorities,

Underlining that capacity-building should be a flexible, demand- and country-driven process requiring international and regional cooperation, as appropriate, involving indigenous and local communities as well as all relevant stakeholders,

Underlining also that the implementation of an international regime on access and benefit sharing and of national legislation on access and benefit-sharing could require additional activities to build capacity,

Recommends that the Conference of the Parties at its seventh meeting:

(a) *Takes note with appreciation* of the report of the Open-ended Expert Workshop on Capacity-building for Access to Genetic Resources and Benefit sharing and its work;

(b) *Further reviews*, with a view to adopting, the draft Action Plan on Capacity-building for Access to Genetic Resources and Benefit-sharing;

(c) *Takes into consideration* the following specific elements in its review of the draft Action Plan:

- (i) Identification of responsibilities, needs and contributions of the various key actors;
- (ii) The Action Plan is to be implemented in accordance with the national legislation of the countries where the activities in relation with the draft Action Plan will take place;

- (iii) Concerns of Parties and indigenous and local communities with regard to inventories of traditional knowledge undertaken without their approval and involvement;
- (iv) In cases where indigenous and local communities are to be involved in capacity-building activities relating to assessment and monitoring of genetic resources and associated traditional knowledge, such activities need to be undertaken with the prior approval of these communities;
- (v) Specific capacities to negotiate material transfer agreements, including capacities and skills for indigenous and local communities to negotiate mutually agreed terms;
- (vi) Capacity-building for the transfer and adaptation of relevant technologies as well as cooperation;
- (vii) Mechanisms for technical support to build national capacities and to share available technology experience;
- (viii) Means for the implementation of the Action Plan, including funding;
- (ix) Coordination with other relevant programmes and action plans such as pertinent activities of the United Nations Development Programme and the Food and Agriculture Organization of the United Nations, such as the Leipzig Global Plan of Action for the Conservation and Sustainable Utilization of Plant Genetic Resources for Food and Agriculture;
- (x) Capacity-building to identify opportunities for benefits that enhance and promote biodiversity conservation and the development of new and existing sustainable uses of biodiversity;

(d) *Invites* Parties and Governments to use the Action Plan when designing and implementing national, regional and subregional plans and strategies to build capacities for access and benefit-sharing of genetic resources and related traditional knowledge;

(e) *Reiterates* its guidance to the Global Environment Facility, as the institutional structure operating the financial mechanism of the Convention, to provide financial resources for country-driven projects based on national priorities that assist with the implementation of the Action Plan in support of the implementation of the Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of Benefits Arising out of their Utilization, including capacity-building regarding the transfer of technologies which enables providers to fully appreciate and actively participate in benefit-sharing arrangements at the stage of granting access permits;

(f) *Urges* Parties and relevant organizations to provide financial and technical assistance to support developing countries, in particular, least developed countries, small island developing States, as well as countries with economies in transition, in implementing the Action Plan and the resulting national, regional and subregional plans and strategies;

(g) *Considers*, in cooperation with the Global Environment Facility, further ways and means of involving multilateral institutions, regional banks and other relevant funding bodies in the work of the Convention and in the efforts of Parties in its implementation, particularly with respect to capacity development for access and benefit-sharing;

(h) *Encourages* Parties and Governments to provide for the full and effective involvement and participation of indigenous and local communities and all relevant stakeholders in the development and implementation of national capacity-building plans and strategies;

(i) *Requests* Parties and Governments to make information available through the clearing-house mechanism and to include information in national reports regarding their implementation of capacity-building measures on access to genetic resources and related traditional knowledge, and benefit-sharing;

(j) *Requests* the Executive Secretary to facilitate, including through the clearing-house mechanism, the sharing of relevant information among donor Parties and organizations to assist coordination, reduce duplication and identify gaps relevant to the implementation of the Action Plan.
