

SUMMARY OF THE EIGHTH CONFERENCE OF THE PARTIES TO THE CONVENTION ON BIOLOGICAL DIVERSITY

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Excerpts:

- ABS page 3
- 8(j) page 6

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The eighth Conference of the Parties (COP-8) to the Convention on Biological Diversity (CBD) convened from 20-31 March 2006, in **Curitiba, Brazil**, immediately following the third Meeting of the Parties (COP/MOP-3) to the Cartagena Protocol on Biosafety. Approximately 3,900 delegates representing parties and other governments, UN agencies, intergovernmental, non-governmental, indigenous and local community organizations, academia and industry participated in the meeting.

COP-8 adopted 36 decisions on a range of priority issues, including: island biodiversity; biodiversity of dry and sub-humid lands; the Global Taxonomy Initiative (GTI); access and benefit-sharing (ABS); Article 8(j) and related provisions (traditional knowledge); and communication, education and public awareness (CEPA). Participants also addressed strategic issues for evaluating progress or supporting implementation, including: progress towards implementation of the Convention and its Strategic Plan; implications of the findings of the Millennium Ecosystem Assessment (MA); review of the effectiveness and impacts of the Convention bodies, processes and mechanisms; scientific and technical cooperation and the Clearing-House Mechanism (CHM); technology transfer and cooperation; and cooperation with other conventions and private sector engagement. Participants also discussed the budget for the biennium 2007-2008, and financial resources and mechanism, and addressed a range of other substantive issues, including: forest, inland water, marine and coastal, and agricultural biodiversity; protected areas (PAs); incentive measures; invasive alien species (IAS); impact assessment; liability and redress; and biodiversity and climate change.

The meeting attracted the largest number of participants in the history of the Convention, with record participation of stakeholders, most notably the private sector, and an unprecedented series of side events. From a substantive point of view, however, negotiations were not as ambitious as in previous COPs. In terms of substantive achievements, the adoption of the new island biodiversity work

programme was hailed as a success by small island developing states (SIDS), while the decision to reaffirm the COP-5 ban on field testing of genetic use restriction technologies and reject case-by-case risk assessments was celebrated by many countries, NGOs and indigenous representatives. However, on the two topics that largely dominated the meeting's agenda, ABS and marine PAs, discussions focused on process. The decision on ABS focused on identifying future steps with regard to the negotiation of an international regime on ABS, while discussions on marine PAs sought to redefine the Convention's role in relation to high seas PAs. These and other decisions served to set priorities for the next biennium. It is now up to the intersessional working groups to move the substantive agenda forward.

A BRIEF HISTORY OF THE CBD

The CBD, negotiated under the auspices of the UN Environment Programme (UNEP), was adopted on 22 May 1992, and entered into force on 29 December 1993. There are currently 188 parties to the Convention, which aims to promote the conservation of biodiversity, the sustainable use of its components, and the fair and equitable sharing of benefits arising from the use of genetic resources.

COP-1: At the first COP (November - December 1994, Nassau, the Bahamas), delegates set the general framework for the Convention's implementation, establishing the CHM and the Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA), and designating the Global Environment Facility (GEF) as the interim financial mechanism.

COP-2: At the second COP (November 1995, Jakarta, Indonesia), delegates adopted a decision on marine and coastal biodiversity (the Jakarta Mandate) and established the Open-ended Ad Hoc Working Group on Biosafety (BSWG) to elaborate a protocol "on biosafety, specifically focusing on transboundary movement of any living modified organism (LMO) that may have an adverse effect on biological diversity."

COP-3: At its third meeting (November 1996, Buenos Aires, Argentina), the COP adopted work programmes on agricultural and forest biodiversity, as well as a Memorandum of Understanding with the GEF, and called for an intersessional workshop on Article 8(j) on traditional knowledge and related provisions.

COP-4: At its fourth meeting (May 1998, Bratislava, Slovakia), the COP established a panel of experts on ABS, and adopted a work programme on marine and coastal biodiversity, as well as decisions on: inland water, agricultural and forest biodiversity; Article 8(j); and cooperation with other agreements.

EXCOP: Following six meetings of the BSWG between 1996 and 1999, delegates at the first extraordinary meeting of the COP (ExCOP) (February 1999, Cartagena, Colombia) did not agree on a compromise package that would finalize negotiations on a biosafety protocol, and the meeting was suspended. The resumed ExCOP (January 2000, Montreal, Canada) adopted the Cartagena Protocol on Biosafety, and established the Intergovernmental Committee for the Cartagena Protocol on Biosafety to undertake preparations for the first COP/Meeting of the Parties (MOP). The Protocol addresses the safe transfer, handling and use of LMOs that may have

an adverse effect on biodiversity, taking into account human health, with a specific focus on transboundary movements.

COP-5: At its fifth meeting (May 2000, Nairobi, Kenya), the COP reviewed the work programme on agricultural biodiversity, and adopted a work programme on dry and sub-humid lands, and decisions on ABS, Article 8(j), the ecosystem approach, sustainable use, biodiversity and tourism, alien species, incentive measures and the GTI.

COP-6: At its sixth meeting (April 2002, The Hague, the Netherlands), the COP adopted the Convention's Strategic Plan, including the target to reduce significantly the rate of biodiversity loss by 2010. The meeting also adopted: an expanded work programme on forest biodiversity; the Bonn Guidelines on ABS; guiding principles for invasive alien species; and decisions on the Global Strategy for Plant Conservation, the GTI, incentive measures and Article 8(j).

COP-7: At its seventh meeting (February 2004, Kuala Lumpur, Malaysia), the COP adopted work programmes on mountain biodiversity, protected areas, and technology transfer and cooperation, and mandated the Working Group on ABS to initiate negotiations on an international regime on ABS. The COP also adopted: a decision, including targets and indicators, to review implementation of the Convention, its Strategic Plan and progress towards achieving the 2010 target; the Akwé: Kon guidelines for the conduct of cultural, environmental and social impact assessments; the Addis Ababa principles and guidelines for sustainable use; and decisions on CEPA, incentive measures, inland waters, and marine and coastal biodiversity.

COP-8 REPORT (Excerpts):

- **ACCESS AND BENEFIT-SHARING (ABS)**
- **CBD Art. 8 (j)**

ACCESS AND BENEFIT-SHARING (ABS)

Delegates addressed ABS (UNEP/CBD/COP/8/5 and 6) in WG-II, on Tuesday, 21 March, and Monday, 27 March. A contact group was established on Tuesday, 28 March, which met until Wednesday, 29 March, in the early morning when negotiations continued in a Friends of the Chair group. Informal groups were established to consider: indigenous participation in the ABS negotiations; and the bracketed list of potential rationale, objectives, features and implementation challenges of a certificate of origin/source/legal provenance, prepared by ABS-4. WG-II continued deliberations on the issue during the night of Thursday, 30 March, and into the early hours of Friday, 31 March, to resolve outstanding items, including the deadline for completion of negotiations on an international regime and reference to disclosure requirements in intellectual property right (IPR) applications.

Deliberations focused on: the process for developing an international regime; establishing an expert group on the certificate of origin/source/legal provenance; and measures to support compliance with prior informed consent (PIC) and mutually agreed terms (MAT).

On the process for developing an international regime, delegates initially debated the number of intersessional meetings for the ABS Working Group, and many suggested designating two permanent Co-Chairs. The document to form the basis for negotiations was also subject to intense debate, with most proposing using the ABS-4 outcome document, and others suggesting using also the gap analysis and other inputs. Australia recommended that COP-8 mandate the ABS Working Group to identify problems in national implementation. Norway, supported by others, requested the COP to convene an intergovernmental negotiating body with its own Chair and Bureau, participation of indigenous representatives and a timetable for concluding negotiations by COP-9. Tuvalu and the International Indigenous Forum on Biodiversity (IIFB) called for mechanisms for full and effective indigenous participation in the ABS negotiations.

The contact group debated the document to form the basis of the ABS Working Group negotiations. Two proposals were tabled to transmit to ABS-5: the ABS-4 outcome, the outcomes of the group of technical experts on the certificate of origin/source/legal provenance, and other national, regional and international ABS-related instruments, together with a compilation of information on an analysis of ABS-related instruments; or the ABS-4 outcome, along with other inputs, including the final version of the gap analysis and the matrix, a progress report on the work on genetic resources in national property legislation and other inputs as submitted by parties.

A debate followed on whether more information gathering would delay the negotiation process, and whether the ABS-4 outcome would be annexed or only referred to in the operative paragraphs of the decision. A small group was tasked with reaching agreement on the issue. Delegates finally agreed to annex the ABS-4 outcome to the decision and transmit it to ABS-5, together with the outcome of the group of technical experts on the certificate, a progress report on the gap analysis and the matrix, and other inputs submitted by parties, noting that the annex reflects parties' range of views. They also agreed on information gathering on existing instruments for ABS-5 consideration.

On the certificate, many supported establishing an expert group to provide technical input. Mexico said the expert group should address a description of a certificate's objectives and rationale, set of characteristics, different models, a qualitative and quantitative assessment, and implications for coordination with other forums. Australia said the group's deliberations should not prejudge whether such a certificate is desirable within an international regime. Norway called for indigenous participation in the expert group. Delegates debated the status of the bracketed list of objectives and features prepared by ABS-4, with Mexico and many developing countries noting its usefulness, and Australia, Canada and New Zealand proposing its deletion. Following informal group negotiations, they decided to delete it. In the contact group, delegates agreed to refer to "an internationally recognized certificate," and agreed on the composition and terms of reference of an expert group to address the issue before ABS-5.

On measures to ensure compliance with PIC and MAT, delegates debated references to disclosure of origin in IPR applications as part of the regime negotiations, with Australia, the EU, Japan and Canada opposing, developing countries supporting it, and Norway suggesting finding more precise wording. Delegates also debated reference to derivatives, with Australia and Canada opposing it, and Malaysia, India, Colombia, Peru and others supporting it.

On Friday, 31 March, Malaysia, on behalf of the G-77/China, reported on agreement reached on the deadline for negotiations on the international regime, noting a decision to instruct the Working Group on ABS to “complete its work at the earliest possible time before COP-10.” He also noted agreement to urge parties, governments and stakeholders to continue taking appropriate and practical measures to support compliance with PIC in cases where there is utilization of genetic resources or associated traditional knowledge, in accordance with Article 15 of the Convention and national legislation, and with MAT on which access was granted. The COP would also request the Working Group on ABS to ensure compliance with PIC in cases where there is utilization of genetic resources or associated traditional knowledge in accordance with CBD Article 15 and with national legislation, and with MAT on which access was granted. WG-II then approved the revised decision, as amended, as a package.

Following nominations by the G-77/China and the Western European and Others Group, the closing plenary elected by acclamation Fernando Casas (Colombia) and Timothy Hodges (Canada) as Co-Chairs of the ABS Working Group. Peru and Spain announced their intention to co-host the expert group on the certificate in Lima, Peru. The United Nations University announced an initiative to convene a meeting of indigenous representatives to discuss the issue of certificates, immediately prior to the expert group meeting, and Canada indicated financial support for the initiative.

Final Decision: The decision (UNEP/CBD/COP/8/L.34) includes sections on: the international regime; the Bonn Guidelines; other approaches, including consideration of a certificate of origin/source/legal provenance; measures to support compliance with PIC and MAT; and ABS indicators in the framework of the Strategic Plan.

On the international regime, the COP welcomes the progress made in the ABS Working Group to elaborate and negotiate an international regime, and decides to transmit the ABS-4 outcome document included in an annex to ABS-5, as well as, inter alia, the following inputs: the outcomes of the AHTEG on the certificate; a progress report on the gap analysis, and the matrix; and other inputs submitted by parties relating to ABS. It is noted that the annex reflects the range of parties' views at ABS-4. The COP also invites parties and others to provide information regarding the inputs on an analysis of existing legal and other instruments for ABS-5 consideration. It designates two permanent Co-Chairs for the ABS Working Group, and instructs the Working Group to complete its work at the earliest possible time before COP-10. It invites parties and others to submit to the Secretariat further information relevant to the gap analysis, and on the status of genetic resources in their national law. It finally requests the Executive Secretary to: make the necessary arrangements for the ABS Working Group to meet twice before COP-9; and prepare, for ABS-5, the final version of the gap analysis, bearing in mind that this work will

proceed in parallel and not hold up the work on the elaboration and negotiation of the international regime.

On the Bonn Guidelines, the COP urges parties to continue their implementation and share experiences and lessons learned, and invites them to submit reports for ABS-5 consideration.

On a certificate of origin/source/legal provenance, the COP establishes an expert group to explore and elaborate possible options, without prejudging their desirability, for the form, intent and functioning of an internationally recognized certificate, and analyze its practicality, feasibility, costs and benefits, with a view to achieving the objectives of Articles 15 and 8(j) of the Convention. The expert group, which shall be regionally balanced and composed of 25 experts nominated by parties and seven observers, shall provide technical input to the ABS Working Group, in accordance with the following terms of reference: consider the possible rationale, objectives and need for a certificate; define the potential characteristics and features of different options; analyze the distinctions between the options and the implications of each of the options; and identify associated implementation challenges, including mutual supportiveness and compatibility with the Convention and other international agreements. The expert group shall meet at least six months prior to ABS-5.

On measures to ensure compliance with PIC and MAT, the COP reaffirms that disclosure of origin/source/legal provenance of genetic resources in IPR applications is one element in the terms of reference included in Decision VII/19D (international regime), and notes discussions on disclosure in the World Intellectual Property Organization (WIPO) and the World Trade Organization (WTO) Doha work programme. It also notes the diversity of views on the possible measures to support compliance with PIC and MAT. It invites relevant forums to address or continue their work on disclosure requirements, taking into account the need to ensure that this work is supportive of, and does not run counter to, the CBD objectives, in accordance with Article 16.5 (influence IPRs in the implementation of the Convention); urges parties and others to continue taking appropriate and practical measures to support compliance with MAT, and PIC in cases where there is utilization of genetic resources or associated traditional knowledge, in accordance with CBD Article 15 and national legislation; requests the ABS Working Group to further consider such measures; and requests the Executive Secretary to renew the application for CBD observer status at the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Council.

On ABS indicators, the COP invites parties and others to submit their views for consideration of the issue at ABS-5.

ARTICLE 8(j)

Discussions on Article 8(j) (UNEP/CBD/COP/8/7) were held in WG-II on: Wednesday, 22 March; Tuesday, 28 March; and all night from Thursday to Friday, 30-31 March. A decision was approved by WG-II and adopted by plenary on Friday, 31 March.

Delegates debated mechanisms for full and effective indigenous participation in the work of the Convention, in particular the negotiations of an international ABS regime. While some developing countries asked to apply the Article 8(j) Working Group procedures for indigenous participation, others proposed to have the Article 8(j) Working Group elaborate traditional knowledge elements of the ABS regime. The majority of countries preferred more general references to indigenous participation. A number of delegates recognized indigenous PIC where indigenous resources are being used. Many requested to hold the fifth meeting of the Article 8(j) Working Group immediately prior to ABS-5.

Many delegates welcomed the recommendations of the Article 8(j) Working Group, including on the establishment of a voluntary fund to enable indigenous participation in CBD negotiations. Some developing countries preferred to narrow down selection criteria to indigenous representatives from developing countries and others supported indigenous participation in national delegations, but many asked not to preclude independent indigenous participation also from developed countries. The EU requested to conclude the negotiations on an ethical code of conduct prior to COP-9 and delegates discussed the level of involvement of the UN Permanent Forum on Indigenous Issues (UNPFII).

Some developed countries, opposed by others, suggested changing references to protection of traditional knowledge to the language of Article 8(j) to “respect, preserve and maintain” traditional knowledge. It was agreed to include a preambular paragraph stating that traditional knowledge protection must be interpreted in accordance with Article 8(j).

Australia requested clarifying that *sui generis* systems for the protection of traditional knowledge are not based on IPRs and deleting references to indigenous PIC. The deletion was opposed by many delegates and some also wanted to make establishment of registers subject to indigenous PIC. In late night negotiations, Australia insisted on deleting reference to PIC, and proposed to refer to approval of knowledge holders. Many opposed this as constituting a lower standard and deleted the reference in its entirety.

Delegates also debated the development of traditional knowledge-related indicators by the Article 8(j) Working Group. Some welcomed the contribution of the IIFB Working Group on Indicators.

During the closing plenary, Spain announced support for an expert meeting on indicators under Article 8(j).

Final Decision: In the decision (UNEP/CBD/COP/8/L.22), the COP addresses the implementation and in-depth review of the Article 8(j) work programme and integration of relevant tasks into thematic work programmes, underlining continued implementation and taking note of work carried out by other relevant international bodies. The COP requests parties who have not yet submitted information on the implementation of the work programme to do so in consultation with indigenous and local communities, as appropriate. The COP also: requests the Article 8(j) Working Group to address the timeframe to initiate work on the remaining tasks of the work

programme at its next meeting and to analyze work on the related provisions; and decides to hold the fifth meeting of the Article 8(j) Working Group prior to COP-9.

On the composite report, the COP requests the Executive Secretary to: further develop phase two of the composite report; explore the possibility of developing technical guidelines for recording and documenting traditional knowledge, and analyze potential threats of such documentation to the rights of traditional knowledge holders; and collaborate with parties in convening workshops to assist indigenous and local communities in capacity-building, education and training. The COP also recommends parties and governments bear in mind that registers are only one approach to the protection of traditional knowledge and that they should only be established with indigenous PIC, and urges countries to take appropriate measures to further advance the elements of the plan of action for the retention of traditional knowledge.

On the international regime on ABS, the COP requests the collaboration and contribution of the Article 8(j) Working Group to the mandate of the ABS Working Group, by providing views on the elaboration and negotiation of an international ABS regime relevant to traditional knowledge and where practicable to make arrangements to have one meeting of the ABS Working Group convened immediately following the Article 8(j) Working Group. The COP also invites parties and governments to increase participation of indigenous representatives in official delegations, without prejudice to the participation of indigenous representatives outside of delegations and, along with donor organizations, to facilitate sufficient preparation and participation of indigenous representatives in meetings of both working groups. The COP invites the Chairs to facilitate the effective participation of representatives of indigenous and local communities and to consult them, as appropriate, on issues related to traditional knowledge and associated genetic resources.

On mechanisms to promote the effective participation of indigenous and local communities, the COP adopted the criteria for the operation of the voluntary funding mechanism annexed to the decision and calls for voluntary contributions to the trust fund. The decision also addresses the role of the thematic focal point under the CHM.

On the development of *sui generis* systems for the protection of traditional knowledge, the COP urges parties and governments to develop, or recognize, national and local *sui generis* models for the protection of traditional knowledge with the full and effective participation of indigenous and local communities. The COP requests the Executive Secretary to further develop as a priority issue the possible elements of *sui generis* systems to be brought to fifth meeting of the Article 8(j) Working Group to identify priority elements. The COP recognizes the work being done with the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore of the WIPO and the ongoing discussions at the WTO to examine the relationship between TRIPS and the CBD and the protection of traditional knowledge.

On the elements of the ethical code of conduct to ensure the respect for the cultural and intellectual heritage of indigenous and local communities, the COP invites parties, governments, indigenous and local communities, relevant international

organizations and other stakeholders to submit written comments on the draft elements at least six months prior to the fifth meeting of the Working Group on Article 8(j) to seek the collaboration of the UNPFII in development of the code, and make the compilation of views and a revised draft of elements available at least three months prior to the fifth meeting of the Article 8(j) Working Group. The COP requests the Article 8(j) Working Group to further develop the draft elements of an ethical code of conduct and submit these for consideration at COP-9. The decision also contains an annexed list reflecting the views initially exchanged at the fourth meeting of the Article 8(j) Working Group.

On traditional knowledge indicators for assessing progress towards the 2010 biodiversity target, the COP considers that a more structured process is required to guide the Article 8(j) Working Group on further development of indicators for assessing the status of traditional knowledge, and invites the fifth meeting of the Working Group to engage in this activity. It also welcomes the initiative of the IIFB Working Group on Indicators to organize an international expert seminar on indicators relevant for indigenous and local communities and invites parties, the UNPFII, UNDP, UNESCO, IUCN, the 2010 Biodiversity Indicator Partnership and organizations with relevant expertise to support and collaborate with the Article 8(j) Working Group and the IIFB Working Group on Indicators.

The COP welcomes close cooperation between the CBD and the UNPFII.

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