

SPECIAL BULLETIN ON GLOBAL PROCESSES*

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SIXTH MEETING OF THE CONFERENCE OF THE PARTIES OF THE CONVENTION ON BIOLOGICAL DIVERSITY

7-19 April 2002; The Hague, Netherlands

SUMMARY: This is a special bulletin on the sixth meeting of the Conference of the Parties (COP) of the Convention on Biological Diversity (CBD). The meeting was held in The Hague, Netherlands, from April 7-19, 2002. This special bulletin is intended to give a brief overview on the meeting and its results to funders and interested civil society organizations with an emphasis on the significance of the meeting to poor communities worldwide. Even though a small number of representatives of local communities and indigenous peoples have been following these meetings for ten years now, effective protection of community rights over genetic resources, indigenous knowledge and practices and their control and management of biological and natural resources remains elusive. As reflected in the Hague decisions, the best we seem to be able to do is to move toward some agreement on non-binding, voluntary guidelines that leave most of the important decision-making at the level of national policies and processes which frequently are at odds with the interests of communities. The challenge is clear: How can we make global processes such as the CBD more responsive to community interests? How can this process be maximized to advance community rights in such a way that it can become a powerful platform to challenge the dominant paradigms on biodiversity utilization and intellectual property rights that are based solely on the commercial market value of products extracted, rather than on the conservation value of the resource under the precautionary principle.

Box 1 The Convention on Biological Diversity

The Convention on Biological Diversity (CBD) was adopted in June, 1992 during the United Nations Conference on Environment and Development in Rio de Janeiro, Brazil. It came into force on 23 December 1994 and has been ratified or acceded to by more than 180 governments (but not the United States). The three principal objectives of the CBD are: (1) conservation of biological diversity, (2) the sustainable use of its components, and (3) the fair and equitable sharing of the benefits arising out of the utilization of genetic resources.

The Conference of the Parties (COP) is the highest political decision making body of the CBD. It meets every two years to assess progress and to make decisions on how the Convention is to be implemented to meet its objectives.

Source: See www.biodiv.org for the history of the CBD, its full text and for documentation of all meetings of its Conference of Parties.

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Approximately 2000 participants representing 176 governments as well as intergovernmental, non-governmental, indigenous and local community and industry organizations attended the meeting. A full account and analysis of the meeting can be found in Earth Negotiations Bulletin, 22 April 2002, (www.iisd.ca/linkages/biodiv/cop6/). Outcomes of the meeting that are of high interest to local communities worldwide are:

- **The Bonn Guidelines on Access to Genetic Resources and Benefit Sharing.** The Conference adopted these guidelines on access to and benefit-sharing of genetic resources. While voluntary in nature, countries are expected to follow these guidelines in developing and implementing national policies. They are also significant because they are being seen as a first step towards legally binding international rules on genetic resources.
- **The Programme of Work on Forest Biological Diversity.** The negotiations on forests were the most intense in this meeting. While clearly inadequate in the face of the continuing degradation of forests worldwide, the adoption of the programme is considered a major step in the CBD (which has avoided serious discussions on forests for a long time) and a significant complement to other forest processes. Many observers see it, however, as inadequate because it does not set priorities as to what type of forests need urgent action and because no timetables are set to achieve specific objectives.
- **The Rights of Indigenous and Local Communities.** The implementation of Article 8 (j) of the CBD, which deals with the role of local and indigenous communities in conserving biodiversity and recognizes their rights to share in its benefits, continued to attract wide and vigorous debate among parties and interested stakeholders. Prior informed consent for conservation, as well as development activities within indigenous and local territories, the relationship between traditional knowledge and intellectual property rights (IPR), and compensation for and benefit sharing with communities remain contentious issues.
- **The Multi-Stakeholder Dialogue.** For the first time, the CBD attempted to convene a Multi-Stakeholder Dialogue, incorporating it into the official program. Unfortunately, the “dialogue” disappointed many stakeholders because of the manner it was organized, scheduled, and conducted.
- **The Cartagena Protocol on Biosafety.** The Protocol is expected to come into force in the next six months. During the COP, NGOs and communities stressed the urgency of dealing with potential contamination of centers of origin of biological diversity, as in the case of Mexico, by transgenic pollen coming from genetically modified organisms (GMOs), but governments did not take significant action on this issue.

THE BONN GUIDELINES

Working on a draft submitted from a meeting last October, 2001 in Bonn, governments negotiated and adopted the *"Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization"* All genetic resources covered by the CBD and benefits arising from the commercial and other utilization of such resources are covered, including traditional knowledge, innovations, and practices that are associated with

genetic resources such as indigenous medicinal and local farming practices. Human genetic resources are explicitly excluded.

The guidelines recognize that the involvement of relevant stakeholders is essential for the adequate development and implementation of genetic resource arrangements. This involvement can be promoted by providing information, especially regarding scientific and legal advice, in order for them to be able to participate effectively and by providing support for capacity building in order for the stakeholders to be actively engaged in various stages of access and benefit sharing negotiations. The development and establishment of voluntary certification schemes for institutions abiding by rules on access and benefit sharing is also recommended.

Box 2 Objectives of the Bonn Guidelines

Among the objectives of the Guidelines are:

- To contribute to the conservation and sustainable use of biological diversity;
- To provide Parties and stakeholders with a transparent framework to facilitate access to genetic resources and ensure fair and equitable sharing of benefits;
- To contribute to the development by Parties of mechanisms and access and benefit-sharing regimes that recognizes the protection of traditional knowledge, innovations and practices of indigenous and local communities, in accordance with domestic laws and relevant international instruments; and
- To contribute to poverty alleviation and be supportive to the realization of human, food, health, and cultural integrity, especially in developing countries.

Source: For the full text of the Bonn guidelines, see www.biodiv.org/decisions/default.asp?lg=0&m=cop-05&d=26.

The guidelines also elaborate the roles and responsibilities in access and benefit sharing with an emphasis on the distinct roles of provider states (countries of origin of genetic resources) and user states (those which seek to acquire genetic resources in accordance with the CBD).

Providers are:

- Urged to ensure objectivity and transparency in access decisions;
- Advised to establish mechanisms to ensure that their decisions are made available to relevant indigenous and local communities and relevant stakeholders; and
- Encouraged to support measures that enhance indigenous and local communities' capacity to represent their interests fully at access negotiations.

Users are:

- Urged to respect customs, traditions, values, and customary practices of indigenous and local communities, including responding to requests for information from them; and

- Encouraged to establish mechanisms to promote the disclosure of the country of origin of the genetic resources and of the origin of traditional knowledge, innovations and practices of local and indigenous communities in applications for IPRs.

Representatives from indigenous peoples attending the meeting lobbied strongly for the adoption of international norms on free and prior informed consent by communities in access decisions. They advocated powerfully for effective benefit sharing mechanisms and capacity building programs. The guidelines, however, by subjecting community rights to national legislation, do not go far enough in providing effective protection to community ownership of genetic resources and to control of their traditional knowledge and practices. The guidelines are also voluntary in nature and are not legally binding on countries although governments are expected to follow them in developing and drafting legislative, administrative or policy measures on access and benefit sharing. More importantly, the guidelines are a first step towards the negotiation and adoption of what many consider inevitable: legally binding rules at the international level on genetic resources perhaps through a protocol under the CBD. But how long will communities need to wait before such rules are finally adopted?

FOREST BIOLOGICAL DIVERSITY

The most difficult negotiations during the COP were on forest biological diversity. It took the two full weeks of the meeting for governments to reconcile their differences and adopt an expanded programme of work on forests. Discussions on what types of forests to cover (Should primary/ancient forests be prioritized given its significance to biodiversity?) and whether to adopt targets and timetables in priority actions were particularly intense. In the end, all forests will be covered while identifying priority actions for certain types of forests. However, time-bound targets were not adopted, to the disappointment of many.

The programme adopted a specific objective on indigenous and local communities and identified a number of activities to be undertaken under it (See Box 3).

Box 3 Forest Programme Objective on Indigenous and Local Communities

Objective: *Enable indigenous and local communities to develop and implement adaptive community-management systems to conserve and sustainably use forest biological diversity.*

Activities:

- Strengthen the capacity of, and provide incentives for, indigenous and local communities to generate opportunities for sustainable use of forest biodiversity and for access to markets;
- Strengthen the capacity of indigenous and local communities to resolve land rights and land use disputes;
- Provide incentives for the maintenance of cultural diversity as an instrument to enhance forest biological diversity; and
- Develop and implement education and awareness programs on traditional uses of forest biological diversity.

Sources: See www.biodiv.org/decisions/default.asp?lg=0&m=cop-05&d=04 for the full text of the programme.

The Programme also recognized:

- The important role that indigenous and local communities can play in its implementation and encourages the development of community-based approaches for the conservation and sustainable use of forest biological diversity;
- The vital role women in indigenous and local communities play in the sustainable use and conservation of forest biological diversity especially, but not limited to, the sustainable use and conservation of non-timber resources and values; and
- The full participation of and respect for the rights of indigenous and local communities and other relevant stakeholders in establishing protected forest areas networks.

Under other Programme objectives, the following activities are also included:

- Support activities of indigenous and local communities involving the use of traditional forest related knowledge in biodiversity management;
- Improve forest management and planning practices that incorporate socio-economic and cultural values to support and facilitate sustainable use;
- Encourage implementation of voluntary third-party credible forest certification schemes that take into consideration relevant forest biodiversity criteria and that would be audited, taking into consideration indigenous and local community rights and interests;
- Strengthen capacity of indigenous and local communities to negotiate benefit-sharing arrangements;
- Seek to resolve land tenure and resource rights and responsibility, including for local and indigenous communities; and,
- Implement effective measures to protect traditional knowledge and values in forest laws and planning tools.

The forest programme of the CBD is a work in progress. It does not change legal rights and obligations of countries with respect to forests. By not adopting time bound targets and not prioritizing the most vulnerable forests, it is probably, in the words of Ministers attending the meeting, “too little, too late”. The small victory in this decision is the incorporation of the programme objectives and activities related to community based approaches to forest management. The programme should be able to generate new resources for such approaches as well as pave the way for their acceptance into international forest policy.

THE RIGHTS OF INDIGENOUS AND LOCAL COMMUNITIES

Article 8(j) of the CBD recognizes the important role that indigenous and local communities in the conservation and sustainable use of biological diversity. Under this article, their rights – to

their traditional knowledge, innovations and practices, are recognized. However, the implementation of Article 8 (j) remains a challenge and a source of tension between those who want to move forward in recognizing community rights and those who want progress to be slower and subject to national priorities. Three issues particularly stand out in this debate: how to recognize and put into place free and prior informed consent mechanisms so that communities would have the right to participate in development and conservation decisions affecting them and their territories; the complex challenge of ensuring the integrity of traditional knowledge in the face of IPR trends; and, how to put into place mechanisms that would genuinely compensate or benefit communities for their role and for the costs that they bear in conserving biological diversity.

In The Hague, the COP acknowledged that it needed to further explore ways and means to enhance the full and effective participation of such communities in the Convention process. While indigenous and local community networks and organizations have been following the Article 8(j) process (78 participants in the COP identified themselves as representing indigenous and/or local community organizations), the impact of their participation remains unclear. This is most obvious in the prior informed consent debate where they have so far been unsuccessful in getting a decision that would impose this requirement on all governments and not subject it to national legislation (the present formula).

THE MULTI-STAKEHOLDER DIALOGUE

As part of the official agenda of the COP, a multi-stakeholder dialogue was convened. With the Minister from Netherlands, the President of the COP, as Chair, stakeholders were asked to present their views on various issues in the COP agenda, including on benefit sharing in the utilization of genetic resources, the role of the youth, and the role of women in biodiversity conservation. While this was laudable and a significant step forward for participation, the manner in which it was implemented disappointed many stakeholders who were hoping that such a dialogue would shed light on important issues as well as provide solutions on what could be done about them. Unfortunately, because the dialogue was scheduled on the penultimate day, a time of intense negotiations on remaining issues, it was conducted in a token manner – with only 30-45 minutes set aside in the morning and in the afternoon for each of its segment. The dialogue (or the semblance of it) was also postponed a number of times, resulting in very small audiences remaining in the plenary hall. In what was clearly a protest, albeit politely delivered, Nobel Prize laureate Rigoberta Menchu Tuum, the keynote speaker for benefit sharing, declined to read her statement, observing that “a dialogue requires mutual respect, a condition that was not present in the proceedings”.

To be successful, multi-stakeholder participation in global processes like the CBD needs to be designed in such a way as to maximize the interaction between governments and stakeholders. As such, it should be given priority in the official program and should not overlap with important negotiations. It should also be scheduled early in the process so that the exchange of views can have a positive impact on the negotiations.

THE CARTAGENA PROTOCOL ON BIOSAFETY

Biosafety (the safe transfer, handling, and use of genetically modified organisms or GMOs) was not a major item in the agenda of the COP as it was subject to a special meeting in the subsequent week. However, issues related to biosafety commanded attention during the COP. In particular, the issue of the potential contamination of centres of origin of biological diversity of transgenic pollen was extensively discussed. While there is scientific controversy on the methods used to detect this contamination in Mexico, the centre of origin for maize, this is a serious development which, if eventually confirmed by the Mexican government, threatens the integrity of the genetic diversity in a strategically important crop for current and future world food supply. International NGOs and indigenous and local communities from Mexico actively lobbied to put this agenda in the COP calling, among others, for binding norms to limit the uses of genetic engineering in corn and other cross-pollinated crops. Governments took notice of this but did not take action on this issue, effectively deferring it for future consideration perhaps when the Cartagena Protocol on Biosafety comes legally into force. Unfortunately, this would be probably too late to avoid other major contamination events.

Box 4 The Cartagena Protocol on Biosafety

Background: The Cartagena Protocol on Biosafety is expected to serve as the international regulatory framework for the transboundary movement of “living modified organisms” or genetically modified organisms “that may have adverse effects on the conservation and sustainable use of biological diversity, taking also into account risks to human health.” As such, the Cartagena Protocol is expected to have a major impact on the development of modern biotechnology and the trade of products based on such technology. It has been ratified by 18 countries and is expected to come into force sometime in late 2002 or early 2003 when at least 50 ratification instruments are deposited with the United Nations..

Objective of the Protocol: In accordance with the precautionary approach contained in Principle 15 of the Rio Declaration on Environment and Development, the objective of this Protocol is to contribute to ensuring an adequate level of protection in the field of the safe transfer, handling and use of living modified organisms resulting from modern biotechnology that may have adverse effects on the conservation and sustainable use of biological diversity, taking also into account risks to human health, and specifically focusing on transboundary movements.

Scope of the Protocol: This Protocol shall apply to the transboundary movement, transit, handling and use of all living modified organisms that may have adverse effects on the conservation and sustainable use of biological diversity, taking also into account risks to human health.

Source: For the history and the text of the protocol, see www.biodiv.org/biosafety/protocol.

The Intergovernmental Committee on the Cartagena Protocol (ICCP) met for one week after the COP (April 22-26, 2002). The ICCP is mandated to prepare the way for implementing the Protocol once it takes effect. Negotiations focused on issues related to compliance, liability and redress for damage resulting from the transboundary movement of living modified organisms, and the handling, transport, packaging and identification (the labeling issue) of living modified organisms. These are difficult issues that need to be addressed and while there was a frank exchange of views in The Hague, governments were not able to come to a conclusion on these issues. A full account of the ICCP meeting can be found in the Earth Negotiations Bulletin, 29 April 2002 (www.iisd.ca/linkages/download/pdf/enb09244e.pdf).

CONCLUSION

The Hague meeting of the Conference of the Parties of the CBD was significant in two respects: First, it marked the transition from what observers called “the policy setting” stage to the implementation phase of the convention. Second, governments, as reflected in The *Hague Ministerial Declaration* as well as many of the decisions of the COP, are finally recognizing the linkage between the challenge of biodiversity degradation and the problem of poverty and other development concerns.

The CBD has now put into place various programmes and processes covering a wide range of areas: there are programmes on coastal and marine biological diversity, agricultural biological diversity, alien invasive species and now forest biological diversity. There are ongoing processes on access to and benefit sharing of the utilization of genetic resources, the role of indigenous and local communities in conservation of biodiversity, the establishment and management of protected areas in the face of global change, and many other issues. The Parties to the CBD have adopted a protocol on biosafety. They have put into place a system of national reports as the principal mechanism to review implementation. A clearinghouse mechanism for exchange of information and to facilitate technology transfer is operational. The challenge is to make this set of policies and mechanisms work not only for the viability of life but for the good of human societies as well.

The *Hague Ministerial Declaration* (www.biodiv.org/doc/meetings/cop/cop-06/other/cop-06-min-decl-en.pdf) is significant to communities because it reflects an understanding of how biodiversity underpins sustainable development in many ways: poverty eradication, food security, and provision of fresh air, soil conservation, and human health. More specifically, the COP, in its input to the World Summit on Sustainable Development, acknowledges that the world’s poor, particularly the rural poor, are often expected to bear much of the cost of maintaining biodiversity. Unless the poor are fully involved in decision making and benefit sharing, governments recognized that it is unlikely that long-term solutions to the problem of biodiversity loss can be found. They also recognized that issues of gender and social structure have to be properly addressed in developing mechanisms to ensure involvement of all stakeholders in the tasks at hand.

Finally, the Ministers present in The Hague acknowledged that biodiversity continues to be destroyed by human activities and that we must face up to an “*inescapable reality: “the challenges of sustainability simply overwhelm the adequacy of our responses. With some honourable exceptions, our responses are simply too few, too little, and too late.”*” They acknowledged that “life is on the line” and resolved to strengthen efforts to put into place measures to halt biodiversity loss by 2010. The decisions in The Hague are a modest beginning to meet this target but they are clearly inadequate and the measures taken need to be further strengthened if the goal is to be met.

This inadequacy is particularly evident in the failure of the CBD process to provide effective recognition of community ownership and control of biological and genetic resources, including the protection of traditional knowledge and practices. The best that the CBD has achieved are

non-binding, voluntary guidelines that leave most of the important decision-making at the level of national policies and processes that frequently are at odds with the interests of communities. The challenge is clear: How can we make global processes such as the CBD more responsive to community interests? How can this process be maximized to advance community rights in such a way that it can become a powerful platform to challenge the dominant paradigms (based on commercial value) on biodiversity utilization and intellectual property rights? The solution is in more participation by community stakeholders, participation that is strategic and focused on long term gains, and participation that is linked to and complement parallel efforts in other forums such as the World Trade Organization and the Food and Agriculture Organization (FAO) where many of the same issues are being debated and negotiated.

The meeting ended on what appeared to be a sour note. Australia formally objected to a footnote that referred to the precautionary approach in a decision dealing with alien invasive species. In doing so, Australia explained that it could not accept the footnote because of trade considerations. After fruitless negotiations, the Chairperson of the Conference ruled that the decision was adopted by consensus, effectively laying down the principle that consensus did not require unanimity. While some observers lamented the harm done to the international process by both Australia and the Chair's decision, the acknowledgement that environmental decisions have an impact on international trade and the acceptance of a new concept of global consensus are welcome developments to an increasingly predictable and static international environmental process.