

Roundtable on Compliance of ABS mechanism

Paris, 3-4 November 2005

IDDRI CPDR-UCL UNU/IAS

Day one - 3 November 2005

Session 1 – Introductory session

Chairman: Laurence Tubiana (IDDRI)

Compliance may mean many things to many people. It can be argued to include issues such as compliance with treaty obligations to adopt national measures on ABS, benefit sharing, and technology transfer, it may also mean compliance with contractual obligations and the need to ensure compliance with sovereign and moral rights over genetic resources and traditional knowledge. In order to explore the breadth of the concept of compliance two keynote presentations will be made by experienced negotiators on ABS issues, representing developing and developed countries with rich biological and cultural diversity. This session will seek to set the stage for the meetings deliberations.

Keynote speakers: Lovemore Simwanda (Zambia); *Tim Hodges* (Canada)

Session 2 – Changing face of Biotrade: Scope for infringement

Chairman: Professor Zakri (UNU-IAS)

In order to identify existing and potential mechanisms for ensuring compliance with the an international regime on ABS, ABS agreements and protection of sovereign and community rights, it is important to have as clear a picture as possible of the magnitude of the trade in biological and genetic resources and associated traditional knowledge, and the extent of access to and use of genetic resources for scientific and commercial purposes. A panel of speakers representing a varied group of interest will present information on patenting trends, the changing nature of the trade in bioinformatics, initiatives to respond to biopiracy and industry's approach to securing equitable benefit sharing.

Keynote speaker: Paul Oldham

Panel: Bronwyn Parry (QMUL), *Seizo Sumida* (JBA), *Manuel Ruiz* (SPDA-Peru).

Day 2 – 4 November 2005

Session 3 – Enforcement

One of the most contentious issues which arose during the negotiation of amendments to the Bonn Guidelines during COP 6, was the issue of access to justice. Developing countries took the opinion that unless user countries commit to assisting in policing compliance with agreements and to providing avenues for access to justice for developing countries and in particular local and indigenous communities, national ABS laws and ABS agreements will not ensure fair and equitable benefit sharing. This session will explore what measures already exist under national and international law to provide for access to justice, through enforcement of contracts and provision of remedies for misappropriation of resources and knowledge. The Session will pay particular attention to discussing the role of international law in providing for access to justice and how this issue may be addressed in negotiation of an international ABS regime.

Fist part: Contract law and benefit sharing

Chairman: Joshua Rosenthal (ICBG)

Contracts are envisioned to be the principal tool for governing relations relating to access to and use of genetic resources and traditional knowledge for scientific and commercial purposes. Contracts are however perceived very differently from jurisdiction to jurisdiction and enforcement and remedies for breach are likely to depend upon where an action is taken. This session will discuss the nature of contracts as a tool for protecting rights over resources and knowledge, consider the role of existing international law on contracts for ensuring recognition and enforcement in a foreign jurisdiction and discuss the opportunities and impediments to obtaining justice in cases of breach. The session will include consideration of compliance with benefit sharing in the broad sense including issues relating to technology transfer.

Keynote speaker: Roger Chennel (South Africa)

Panel: Christine Noiville (CNRS), *Jorge Cabrera* (INBio.), *Bernard Worrle* (ProBenefit), *Per Stromberg* (Cambridge)

Second part: Patents, misappropriation and torts

Chairman: Kent Nnadozie

Patents are often perceived as the principal tool of biopiracy, and the prohibitive costs of challenging patents crates the impression that developing countries will not be able to effectively contest bad patents. The case for local and indigenous peoples is even more alarming. This session will seek to throw light on the practical implications arising in a challenge to a patent, costs, legal burdens of proof, and the potential remedies which may be obtained. The session will explore the potential of the notion of misappropriation drawn from unfair competition law and of torts to provide a basis for legal action to prevent or seek remedies for infringements of sovereign or community rights.

Keynote speaker: Michael Gollin (PIIPA)

Panel: Malathi Lakshmikumar (India). *Monica Rosell* (Andean Tribunal), *Padmashree Gel Sampath* (INTECH), *Cyril Lombard* (Phytotrade Africa)

Session 4 – Alternative dispute resolution

*Chairman: **Birthe Ivars** (Norway)*

The costs, delay and other inconveniences related to seeking justice through the court system, has led to an ever increasing use of alternative dispute resolution mechanisms. While arbitration is perhaps the most widely recognized system for resolution of conflicts, there is also a growing use of ombudsman's offices at both the national and regional level. At the same time there is an increasing awareness of the need for mechanisms to resolve interstate disputes in the absence of a functioning international legal system. The Dispute Resolution Mechanism of the World Trade Organisation is a notable example. This session will explore a variety of dispute resolution options with a view to identifying a range of potential mechanisms which may be considered in the development of an international regime. The session will consider not only sanction based schemes but also incentive based measures which can enhance opportunities for securing compliance with the CBD's objectives and the role of the international community in securing such compliance.

*Keynote speaker: **Marion Panizzon** (WTI)*

*Panel: **Maria Julia Oliva** (CIEL), **Edwini Kessie** (WTO), **Christian Wichard** (WIPO arbitration center), **Juan Carlos Vasquez** (CITES)*

Closing session

Summing-up: ***Geertrui Van Overwalle - Tom Dedeurwaerdere** (UCL)
/Brendan Tobin*

Panel: ***Shakeel Bhatti** (WIPO), Mathias Buck (EC commission), **Sem Shikongo** (Namibia), **Mattias Åhren** (Saami Council), Industry Representative.*

Closing remarks: ***Laurence Tubiana/ Professor Zakri***