



SUMMARY OF THE THIRD MEETING OF THE AD HOC OPEN-ENDED WORKING GROUP ON ACCESS AND BENEFIT SHARING: 14-18 FEBRUARY 2005

The third meeting of the *Ad Hoc* Open-ended Working Group on Access and Benefit Sharing (ABS) of the Convention on Biological Diversity (CBD) was held from 14-18 February 2005, at the United Nations Conference Centre, in Bangkok, Thailand. Convened immediately following the tenth meeting of the CBD's Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA-10), the meeting was attended by approximately 500 participants representing governments, UN agencies, intergovernmental and non-governmental organizations, indigenous and local community groups, academia and industry.

As mandated by the seventh Conference of the Parties (COP-7) to the CBD, the Working Group initiated negotiations on an international regime on ABS, in accordance with the terms of reference contained in an annex to Decision VII/19 on ABS. The mandate to elaborate an international regime on ABS reflects the call contained in the Johannesburg Plan of Implementation, adopted at the 2002 World Summit on Sustainable Development (WSSD), to "negotiate within the framework of the CBD, 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" (paragraph 44(o)). At its 57th session in 2002, the UN General Assembly reaffirmed the WSSD commitment and invited the CBD COP to take appropriate steps in this regard.

The Working Group also addressed: the use of terms not defined in the CBD; additional approaches to complement the Bonn Guidelines on ABS, such as an international certificate of origin/source/legal provenance; measures to ensure compliance with prior informed consent (PIC) of Parties providing genetic resources and of indigenous and local communities providing associated traditional knowledge, and with mutually agreed terms (MAT) for granting access; and options for indicators for ABS, to be used for evaluating progress in the implementation of the CBD's Strategic Plan.

The meeting's discussions focused on the international ABS regime and, expectedly, initiating negotiations was an arduous task. The complexity of the matters, such as the interlinkages with intellectual property rights (IPRs), the difficulty to develop a common vision regarding the nature of the regime or even its necessity, and the unclear international framework indicate the long road ahead. Nevertheless, the meeting was considered to be a success, as a brainstorming session to allow for consolidation of country and regional positions, and to prepare for the next Working Group session. Some options were identified under the scope and potential objectives of the regime, while its potential elements were grouped according to their subject matter, to set the groundwork for more structured deliberations in the future. A matrix was also developed to identify and analyze the gaps in international instruments and indicate ways to address them. Finally, the meeting made specific calls for government submissions on the matrix and broader ABS regime, which many see as crucial to further clarify positions and set the baseline for the Working Group's fourth meeting to be held prior to the next COP in Brazil in 2006.

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A BRIEF HISTORY OF THE CBD AND ACCESS AND BENEFIT SHARING

The CBD, negotiated under the auspices of the UN Environment Programme, was opened for signature at the Earth Summit in Rio de Janeiro in June 1992, and entered into force on 29 December 1993. With 188 Parties to date, the CBD is a multilateral treaty, which aims to promote “the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of benefits arising out of the utilization of genetic resources.” A landmark in international environmental law, the CBD covers all ecosystems, species and genetic resources, and recognizes the principle of national sovereignty over natural resources.

The Convention contains provisions on ABS, which address users and providers of genetic resources, in Articles 15 (Access to Genetic Resources), 16.3 (access to and transfer of technology that makes use of genetic resources), 19.1 (participation in biotechnological research on genetic resources) and 19.2 (access to results and benefits from biotechnologies). In addition, Article 8(j) encourages the equitable sharing of benefits arising from the utilization of knowledge, innovations and practices of traditional and local communities.

COP-2: At its second meeting (Jakarta, Indonesia, November 1995), the COP requested the CBD Executive Secretary to further elaborate a survey of measures taken by governments to implement Article 15, and compile an annotated list of studies on the social and economic valuation of genetic resources. It also requested a preliminary study on the impact of IPRs on the conservation and sustainable use of biodiversity and equitable benefit sharing.

COP-3: At its third meeting (Buenos Aires, Argentina, November 1996), the COP requested the Executive Secretary to prepare a note on national legislative, administrative and policy measures for activities covered by Article 15, on the basis of information received by governments.

COP-4: At its fourth meeting (Bratislava, Slovakia, May 1998), the COP addressed matters related to benefit sharing, including measures to promote and advance the distribution of benefits from biotechnology in accordance with Article 19, and the compilation of Parties’ views on possible options for developing national measures to implement Article 15. The COP established a regionally balanced Panel of Experts on ABS, appointed by governments and composed of representatives from the private and public sectors, and indigenous and local communities, with the mandate to develop a common understanding of basic concepts and to explore options for ABS on MAT. The COP also decided that the first Intersessional Meeting on the Operations of the Convention (ISOC) should hold a preparatory discussion on ABS to provide input into COP-5.

ISOC: The ISOC (Montreal, Canada, June 1999) conducted preparatory discussions on ABS arrangements to provide guidance to COP-5. The meeting made recommendations for the preparation, composition and agenda of the Expert Panel on ABS and for future work to develop a common appreciation of the relationship between IPRs and relevant provisions of the

Agreement on Trade-Related Aspects of IPRs (TRIPS) of the World Trade Organization, and the CBD.

ABS EP-1: The first meeting of the Expert Panel on ABS (San José, Costa Rica, October 1999) focused on: ABS arrangements for scientific and commercial purposes; legislative, administrative and policy measures at the national and regional levels; regulatory procedures and incentive measures; and capacity building. Significant discussion revolved around issues of IPRs, and the use and terms of contractual ABS agreements. The Panel developed a set of recommendations, which included general conclusions and specific points on PIC, MAT, information needs and capacity building.

COP-5: At its fifth meeting (Nairobi, Kenya, May 2000), the COP adopted Decision V/26, which established an *Ad Hoc* Open-ended Working Group on ABS to develop guidelines and other approaches on: PIC; MAT; roles, responsibilities and participation of stakeholders; aspects of *in situ* and *ex situ* conservation and sustainable use; mechanisms for benefit sharing; and the preservation and maintenance of traditional knowledge. COP-5 also decided to reconvene the Expert Panel on ABS to conduct further work on user and provider experience in ABS, and stakeholder involvement. Decision V/26 also addressed *ex situ* collections acquired prior to the CBD’s entry into force, and IPRs and relevant provisions of the TRIPS Agreement.

ABS EP-2: The second meeting of the Expert Panel on ABS (Montreal, March 2001) produced a report and conclusions on: user and provider experiences in ABS processes; approaches for stakeholder involvement; and complementary options to address ABS within the CBD framework, including possible elements for guidelines. The Panel’s report and conclusions were forwarded to the first meeting of the Working Group on ABS.

ABS-1: At its first meeting (Bonn, Germany, October 2001), the Working Group on ABS developed the draft Bonn guidelines on ABS and also: identified elements for a capacity-building action plan; called for an open-ended workshop on capacity building for ABS; and considered the role of IPRs in implementation of ABS arrangements.

COP-6: At its sixth meeting (The Hague, the Netherlands, April 2002), the COP adopted Decision VI/24 which addresses: the Bonn Guidelines on ABS; other approaches, including capacity building; the role of IPRs in the implementation of ABS arrangements; the relationship with TRIPS; cooperation with other relevant intergovernmental organizations; information related to ABS arrangements; and *ex situ* collections acquired prior to the CBD’s entry into force and not addressed by the FAO Commission on Genetic Resources for Food and Agriculture.

MYPOW: The Open-ended Intersessional Meeting on the Multi-Year Programme of Work (MYPOW) for the CBD COP up to 2010 (Montreal, March 2003) discussed the WSSD call to negotiate, within the CBD framework, an international regime for benefit sharing, and recommended that the Working Group on ABS consider the process, nature, scope, elements and modalities of an international regime on ABS at its second meeting, on the basis of governments’ submissions.



ABS-2: At its second meeting (Montreal, December 2003), the ABS Working Group adopted recommendations on: experience with the Bonn Guidelines; an international ABS regime; use of terms; other approaches for implementing the CBD provisions on ABS; measures to ensure compliance with PIC and MAT; and capacity building. Although much time and effort was devoted to debating the process, nature, scope, elements and modalities of an international ABS regime, a heavily bracketed text was forwarded to COP-7.

COP-7: At its seventh meeting (Kuala Lumpur, Malaysia, February 2004), the COP adopted Decision VII/19, which addresses: the Bonn Guidelines; the use of terms and the need for definitions and/or glossary; other approaches to complement the Bonn Guidelines; measures to support compliance with PIC and MAT; capacity building for ABS; and negotiations of an international ABS regime. The COP adopted the Action Plan on capacity building for ABS, and further decided to mandate the ABS Working Group to negotiate an international ABS regime and agreed on the terms of reference for such negotiation, including the process, nature, scope and elements for consideration. The COP also mandated the CBD's Working Group on Article 8(j) to: further develop elements for *sui generis* systems of protection for traditional knowledge; assess the role of registers and databases; review the relevance of the Bonn Guidelines on ABS; and make recommendations regarding an international ABS regime.

REPORT OF THE MEETING

Suboh Mohd Yassin, Deputy Secretary-General of the Ministry of Natural Resources and Environment of Malaysia, on behalf of Sri Haji Adenan Haji Satem, Minister of Natural Resources and Environment of Malaysia and President of the Conference of the Parties (COP) to the Convention on Biological Diversity (CBD), opened the meeting on Monday, 14 February 2005. He expressed his appreciation to Thailand for hosting the meeting in difficult times, following the tsunami tragedy. He said that initiating negotiations on an international regime on access and benefit sharing marks a new phase in the CBD implementation.

Suwit Khunkitti, Minister of Natural Resources and Environment of Thailand, shared his experiences with the areas affected by the tsunami, and highlighted the importance of achieving progress in the negotiations on an international ABS regime.

Following a traditional opening ceremony, Hamdallah Zedan, CBD Executive Secretary, outlined the agenda, stressing the need to respond to the mandate agreed at the World Summit on Sustainable Development (WSSD) by successfully negotiating an international regime.

Nehemiah Rotich, United Nations Environment Programme (UNEP), cautioned that there are contradictions between the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) of the World Trade Organization (WTO) and the CBD that have to be resolved, and that intellectual property rights (IPRs) applied to life forms under TRIPS run counter to the CBD objectives. He added that the private property regime

established by TRIPS undermines implementation of the CBD's provisions on ABS.

Delegates adopted the agenda (UNEP/CBD/WG-ABS/3/1), with an amendment to hold an initial discussion on the international regime in plenary, and established two sub-working groups, as proposed in the annotated agenda (UNEP/CBD/WG-ABS/3/1/Add.1/Rev.1). Delegates then elected Khunkitti as Working Group Chair, Sem Taukondjo Shikongo (Namibia) and Geoff Burton (Australia) as Co-Chairs of Sub-Working Group I (SWG-I), and Birthe Ivars (Norway) and Orlando Rey Santos (Cuba) as Co-Chairs of Sub-Working Group II (SWG-II).

The Netherlands, on behalf of the European Union (EU), suggested that discussions focus on a gap analysis to clarify the regime's objectives, measures to facilitate access and a certificate of origin/source/legal provenance. Egypt, on behalf of the African Group, highlighted the need for technology transfer and recognition of the rights of indigenous people. Ecuador, on behalf of Latin America and the Caribbean, and Mongolia, on behalf of Asia and the Pacific, stressed the importance of reaching agreement on an international regime on ABS. India, on behalf of the Like-Minded Megadiverse Countries (LMMC), reported on a Ministerial- and Expert-level meeting of the LMMC recently held in New Delhi, India.

The UN Food and Agriculture Organization (FAO) noted the recent entry into force of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGR). The World Intellectual Property Organization (WIPO) reported on progress achieved in response to COP-7 requests regarding IPRs and genetic resources. The International Union for the Protection of New Varieties of Plants (UPOV) cautioned that the ABS regime should not create barriers to access to genetic resources for plant breeding. The WTO drew attention to country views on ways to address the relationship between the TRIPS Agreement and the CBD, particularly regarding the need for PIC and benefit sharing. The UN University-Institute of Advanced Studies outlined its biodiplomacy initiative.

The International Indigenous Forum on Biodiversity (IIFB) underscored the rights of indigenous peoples over their traditional knowledge and the genetic resources to which it is inextricably linked. The Third World Network called for legally enforceable disclosure requirements and limits to patent broadness. The International Chamber of Commerce said unrealistic royalties and unclear obligations in national access regimes often discourage genetic resources use.

During the week, the plenary convened on Monday afternoon, to hold a discussion on the international ABS regime, and reconvened on Friday to adopt recommendations and the report of the meeting. The two sub-working groups met from Tuesday to Friday morning. SWG-I addressed the international ABS regime. SWG-II addressed: the use of terms; other approaches to complement the Bonn Guidelines, including an international certificate of origin/source/legal provenance; measures to support compliance with PIC and MAT; and options for indicators for ABS. Friends of the Co-Chairs groups were also established to address outstanding issues. This report summarizes discussions and recommendations on each agenda item.



REPORTS ON IMPLEMENTATION OF THE BONN GUIDELINES

On Monday, the plenary heard reports on the implementation of the Bonn Guidelines and other relevant developments. The Secretariat introduced a compilation of reports submitted by Parties, organizations and stakeholders (UNEP/CBD/WG-ABS/3/INF/1 and Add.1).

Australia drew attention to an intergovernmental agreement implementing the Bonn Guidelines in its federal states. China reported on specific national ABS activities and consideration of options for national legislation. Several European countries and the European Community reported on national and regional implementation activities and said the Bonn Guidelines should be considered as a basis for an international ABS regime. Norway highlighted amendments in its patent law to ensure compliance with the CBD, draft legislation on access to, and handling of, genetic material, and training sessions for users of genetic resources on the Bonn Guidelines. Switzerland stressed its implementation of the Bonn Guidelines and the ITPGR in the short and medium term.

Canada reported on a series of workshops and a ministerial working group on ABS, and said that national and regional ABS measures are the precursors to negotiating the binding components of an international regime. Japan highlighted national and regional activities on promoting the dissemination of the Guidelines. The US outlined national experiences to indicate the importance of the Guidelines' flexibility, and capacity-building exercises.

The LMMC stressed the Guidelines have not created an enabling environment to ensure compliance with PIC and benefit sharing. Brazil highlighted its national legislative framework on ABS, noting that the Guidelines do not provide for sanctioning users outside national jurisdiction. The Gambia acknowledged the usefulness of the Guidelines, but stressed that they do not prevent violations of national legislation.

A summary of these discussions is available online at: <http://www.iisd.ca/vol09/enb09307e.html>.

INTERNATIONAL REGIME ON ABS

On Monday, delegates expressed general views on the international regime in plenary. Uganda, on behalf of the African Group, said the regime should be legally binding and, *inter alia*: ensure compliance with PIC of the country of origin and indigenous and local communities; take into account products and derivatives of genetic resources; and ensure disclosure of origin of genetic resources.

The LMMC said the regime should include: PIC of the country of origin and MAT between the country of origin and the user country; and mandatory disclosure of origin of genetic resources in IPR applications, including sanctions in case of failure.

Argentina stressed the importance of technology transfer, capacity building and infrastructure improvement. Mexico underscored that the international regime should complement, not substitute, national legislation on access. The Philippines

highlighted that the CBD is the primary framework to address ABS issues and that it is necessary to address the conflicts between TRIPS and the CBD.

The EU said that the international regime should consist of a number of mutually supportive instruments, including existing ones. New Zealand supported further clarifying the negotiation process and, with Australia, Canada, the EU and Switzerland, called for ensuring participation of indigenous communities. The EU, Canada and Switzerland stressed the need to analyze the relationship with other relevant international instruments and processes, with Switzerland prioritizing close cooperation with the ITPGR and WIPO.

SWG-I addressed the nature, scope, potential objectives and elements of the international regime from Tuesday to Friday. On Tuesday, SWG-I considered an overview of existing international instruments and analysis of gaps (UNEP/CBD/WG-ABS/3/2), and views on the international regime submitted by Parties and stakeholders (UNEP/CBD/WG-ABS/3/3). On Wednesday, delegates discussed a Co-Chairs' text. On Thursday, they discussed a conference room paper (CRP) based on the revised Co-Chairs' text, containing a draft recommendation and an annex including sections on: nature; scope; potential objectives; elements of the regime clustered by subject matter; additional elements identified; and a matrix for gap analysis. On Friday, SWG-I addressed a revised CRP, containing various options on the scope, objectives and the clustering of elements.

NATURE: On Wednesday, the LMMC, the African Group and other developing countries supported a legally binding regime, with many noting that such a regime may also include non-binding elements. The EU, Canada, Japan and Australia retained an open position, noting that benefit sharing can be addressed by several instruments at different levels. Palau and the Russian Federation stressed that the substance of the regime should be defined before deciding upon its nature.

On Thursday, delegates agreed to retain language in Decision VII/19, noting that the international regime could be composed of one or more instruments within a set of principles, norms, rules and decision-making procedures, that could be legally-binding and/or non-binding. Following extensive discussions, delegates also agreed that Parties' views, regarding keeping options open and affirming the need for the core part of the regime to be legally binding, would be recorded in the report of the meeting.

SCOPE: On Tuesday, the EU stated that the regime should comprise multiple instruments at different levels and, with other developed countries, supported completing a gap analysis as a prerequisite for defining the scope.

The African Group and the LMMC opposed a gap analysis, stressing that the international regime must be legally binding and that its scope is defined by Decision VII/19 on ABS. The LMMC also said the regime should apply to access, the fair and equitable sharing of benefits from the use of genetic resources and their derivatives, and the protection of associated traditional knowledge. Mexico called for a regime based on a certificate of legal provenance. Norway said the regime should cover user



country measures. The IIFB emphasized the relationship between the protection of traditional knowledge and human rights concerns.

Other suggestions by developing countries included: addressing the relationship with other international instruments and processes, such as the ITPGR, the WTO, and the WIPO; and covering all activities leading to commercial use and all biodiversity elements within the jurisdictional scope of the CBD.

On Thursday, delegates discussed whether to retain only the text as stated in Decision VII/19 or to also reflect other options presented by Parties. The debate focused on references to a legally binding instrument, with the LMMC stressing that they should be retained. Developing countries also supported references to derivatives and products of genetic resources, which developed countries opposed. Following consultations in a Friends of the Co-Chairs' group, delegates agreed to divide the section in two parts retaining the language on scope from Decision VII/19 and adding additional options presented by Parties' on the scope and potential objectives for consideration at the next meeting of the Working Group (ABS-4).

OBJECTIVES: On Tuesday, the LMMC said the objectives should be to: prevent the continued misappropriation and misuse of genetic resources and their derivatives; ensure that benefits flow to countries of origin; protect the rights of indigenous and local communities over traditional knowledge; and reinforce national legislation. The African Group said the regime should consider rights and obligations of both users and providers, as well as indigenous and local communities.

The EU and Canada stressed the need for an analysis of gaps and other instruments that relate to benefit sharing. Many developing countries underlined that benefit sharing is not adequately addressed by international instruments; with South Africa noting that some existing instruments even undermine benefit sharing. Developing countries also proposed compliance and enforcement at the international level in support of national legislation.

On Wednesday, many delegates requested narrowing down the objectives listed in the Co-Chairs' text. Some delegates suggested that the objectives should relate directly to those of the CBD, while others said they should stay within the framework of the CBD and the mandate of the Working Group.

During Thursday's discussion of the CRP, Thailand and the EU proposed that the international regime should ensure or guarantee the fair and equitable sharing of benefits arising out of the use of genetic resources, rather than prevent their misappropriation and misuse. Japan and the EU suggested deleting reference to derivatives of genetic resources. Gabon and Ecuador proposed that the regime also ensure transfer of technology.

ELEMENTS: On Tuesday, delegates discussed how to structure the deliberations, with some favoring prioritization and others clustering. They agreed to group the elements annexed to Decision VII/19 into clusters and to include potential additional elements separately. Developing countries proposed options for additional elements, including measures to: ensure compliance with national regulations for ABS, PIC and MAT; mobilize

resources for implementation, including capacity building; ensure the disclosure of origin/source/legal provenance in patent applications; and guarantee technology transfer to the country of origin. The EU and Norway suggested measures for collaborative research and environmentally sound uses of biodiversity.

On Wednesday, delegates made suggestions on additional issues that had not been addressed in the Co-Chairs' text or in previous discussions. Suggestions included an element on communication, education and public awareness and measures to ensure the disclosure of origin as a precondition for the registration of new products.

Regarding activities during the intersessional period, many delegates supported inviting Parties to submit views on the regime to be compiled by the Secretariat. The EU suggested completing a gap analysis before ABS-4. Developing countries proposed holding regional meetings or electronic consultations.

On Thursday, delegates agreed to retain the wording of the elements as stated in Decision VII/19 and to amend only the titles of the clusters. Delegates agreed to consider additional elements at ABS-4. New elements include: measures to promote research and development, and joint ventures in the country of origin; measures to ensure non-discriminatory access; and nationally recognized certificates of origin/source/legal provenance as well as rules of customary law.

On Friday, noting that alternative options had been included in the revised CRP, the EU requested moving them to the section on potential additional elements, since they contain substantive changes to the elements included in COP Decision VII/19. The LMMC and the African Group opposed, noting that the Friends of the Co-Chairs had agreed to include additional options submitted by Parties. After informal consultations, delegates decided to move the options into the section on potential additional elements and to amend the title accordingly.

MATRIX: On Wednesday, the EU, Canada and Switzerland proposed using the matrix as a basis for the gap analysis. The EU and the Russian Federation, opposed by many, proposed establishing an expert group to complete the matrix before the next Working Group meeting. Brazil said the matrix should differentiate between instruments that ensure and those that promote benefit sharing. The FAO noted that the scope of the ITPGR is not limited to the annexed list of crops and that the Treaty addresses benefit sharing in a variety of cases that the group should consider.

On Thursday, the LMMC and the African Group requested removing the matrix from the annex and transmitting it as an additional document. The EU and Canada objected, saying that Decision VII/19 requires an analysis of each element against relevant agreements. Following informal consultations, delegates agreed to retain the matrix as Annex II and recognize it as an invaluable tool to identify gaps and determine how to address them. They decided to allow the inclusion of additional elements into the matrix, recognizing that they are not negotiated or agreed to.

DISCUSSION ON THE RECOMMENDATION: On Thursday, delegates discussed a CRP, including a draft recommendation. The EU proposed preambular language stating



that the annex contains a compilation of views and proposals on the international regime. On the operative part, delegates agreed to transmit the annex to ABS-4 for further elaboration and negotiation.

A Friends of the Co-Chairs group was established to redraft the operative clauses. Delegates agreed to: reaffirm that the ABS Working Group will continue working in accordance with the terms of reference set out in Decision VII/19; transmit the annex to ABS-4 for further elaboration and negotiation; invite Parties and others to submit comments and proposals on the annex; and request the Executive Secretary to compile and consolidate comments and proposals submitted by Parties and others. The IIFB suggested, and delegates agreed to, language ensuring collaboration between the Working Groups on ABS and Article 8(j) (traditional knowledge).

On Friday morning, SWG-I adopted the revised CRP as amended. The closing plenary adopted the recommendation without amendment.

A summary of these discussions is available online at: <http://www.iisd.ca/vol09/enb09307e.html>, <http://www.iisd.ca/vol09/enb09308e.html>, <http://www.iisd.ca/vol09/enb09309e.html>, <http://www.iisd.ca/vol09/enb09310e.html>

Recommendation: The final document (UNEP/CBD/WG-ABS/3/L.6) contains a recommendation on further intersessional work, and annexes on an international regime on ABS and a gap analysis.

In the recommendation, the Working Group: reaffirms that it will continue working in accordance with the terms of reference agreed at COP-7; transmits the structure of the regime (Annex I), including further options submitted by Parties, to ABS-4, as a basis for further elaboration and negotiation; and invites Parties and others to submit written comments and proposals on the items in Annex I, to be compiled and consolidated by the Executive Secretary for consideration at ABS-4 and the next meeting of the Working Group on Article 8(j).

The Working Group also invites Parties and others to provide information on the basis of the matrix contained in Annex II, to facilitate further analysis of gaps in existing legal instruments, which will be consolidated by the Executive Secretary and made available for consideration at ABS-4. It also encourages meetings and electronic forums for exchange of views, transmission of the outcomes to the Secretariat and their dissemination through the Clearing-House Mechanism (CHM), and the provision of funding.

Annex I on the international regime on ABS contains sections on: nature; scope; potential objectives; elements clustered by subject matter; potential additional elements and options identified; and analysis of gaps.

On nature, it states that the regime should be composed of one or more instruments within a set of principles, norms, rules and decision-making procedures, legally binding and/or non-binding. The text reiterates the terms of reference contained in Decision VII/19.

On the scope of the regime, the text reflects the terms of reference contained in Decision VII/19, on access to genetic

resources and promotion and safeguarding of fair and equitable sharing of the benefits arising out of the utilization of genetic resources, in accordance with relevant CBD provisions, and traditional knowledge, innovations and practices in accordance with Article 8(j). The document further contains six options submitted by Parties, including references to a legally binding or non-binding instrument(s), or instruments at different levels of implementation and of a different nature, and formulations on: benefit sharing; genetic resources and their derivatives and products; relationship of the regime to the ITPGR and other relevant international instruments; protection of traditional knowledge associated with genetic resources; and facilitation of access in a non-discriminatory fashion.

On potential objectives, the text includes six options with different combinations of and formulations on:

- preventing the unauthorized access and use of genetic resources, or the misappropriation and misuse of genetic resources and their derivatives;
- protecting: traditional knowledge; the rights of indigenous and local communities in relation to their traditional knowledge; traditional knowledge associated with genetic resources, their derivatives and products; or the rights of indigenous and local communities consistent with international human rights obligations;
- facilitating access to genetic resources or creating conditions to facilitate access for environmentally sound uses;
- supporting the implementation of, and compliance with, national legislation, or with national legislation and international law, or also ensuring compliance with PIC of providers and of indigenous and local communities and MAT;
- promoting the conservation and sustainable use of biodiversity, or contributing to the effective implementation of Articles 15 and 8(j) and the three objectives of the Convention; and
- ensuring mutual supportiveness with relevant existing international instruments and processes.

Elements to be considered for inclusion in the regime are clustered by subject matter, including elements on: access; ensuring benefit sharing; promoting benefit sharing; recognition and protection of rights of indigenous and local communities; derivatives; promotion and enforcement mechanisms of the regime and compliance with PIC and MAT; functioning of the regime; poverty eradication; and relevant elements of existing instruments and processes.

The section on potential additional elements and options includes submissions by Parties provided at the meeting.

The section on analysis of gaps reiterates the mandate of Decision VII/19 to elaborate and negotiate the nature, scope and elements of international regime on ABS, drawing on, *inter alia*, an analysis of existing legal and other instruments, and to examine whether and to what extent possible elements of the regime are part of these instruments and determine how to address the gaps. The text recognizes the utility of the matrix to identify gaps and determine how to address them, and supports employing the same analysis with respect to the potential additional elements and options to be identified.



Annex II contains a matrix to identify and analyze the gaps in international instruments and indicate ways to address them, by testing the elements of the regime, grouped in clusters, against relevant provisions of instruments at the national, regional and international levels, within and outside the CBD framework.

USE OF TERMS

SWG-II considered the use of terms on Tuesday and Wednesday, pursuant to Decision VII/19, which requests that Parties further examine the issue of terms not defined by the CBD.

On Tuesday, the Secretariat introduced a document on further consideration of the use of terms, definitions, and/or glossary (UNEP/CBD/WG-ABS/3/4). Many delegates said the discussion on the use of terms is premature, pending the outcome of deliberations on the international regime, and opposed the establishment of an expert group, which was suggested for consideration by Decision VII/19. Some delegates highlighted that definitions agreed under the CBD should not substitute those existing at the national level, while others cautioned against blindly importing definitions from other agreements.

On Wednesday, delegates discussed a CRP, including a draft recommendation on further consideration of the use of terms. Delegates debated a proposal by Brazil stating that the definitions on ABS will not substitute those in national legislation, which would prevail. Following informal consultations, they agreed to include a reference to CBD Articles 2 (Use of Terms) and 15 (Access to Genetic Resources). Delegates agreed not to specify additional terms that need to be considered.

Delegates also requested that the Executive Secretary prepare a consolidated glossary of existing and additional definitions for consideration at ABS-4.

A summary of these discussions is available online at: <http://www.iisd.ca/vol09/enb09308e.html> and <http://www.iisd.ca/vol09/enb09309e.html>.

The closing plenary adopted the recommendation without amendment.

Recommendation: In the final document (UNEP/CBD/WG-ABS/3/L.2), the Working Group:

- notes that only a few Parties have submitted the requested information on existing national definitions and other relevant terms and that further information gathering is necessary;
- reiterates the invitation to Parties and others to submit information on existing national and other relevant definitions, as well as their views on consideration of additional terms;
- urges Parties who have not already done so to submit the requested information; and
- requests the Executive Secretary to prepare a consolidated glossary of existing and any additional definitions for consideration at ABS-4.

OTHER APPROACHES, INCLUDING A CERTIFICATE OF ORIGIN/SOURCE/LEGAL PROVENANCE

SWG-II considered other approaches, including a certificate of origin/source/legal provenance, on Tuesday and Wednesday. On Tuesday, the Secretariat introduced a document on other

approaches (UNEP/CBD/WG-ABS/3/5). Many delegates acknowledged that other existing approaches could be considered to complement the Bonn Guidelines and could be useful tools in assisting implementation of ABS approaches. They also highlighted: full participation of provider countries in research and development activities; free PIC of indigenous and local communities; and the need for further analysis of Parties' views.

Delegates expressed general support for further elaboration of the concept of a legal certificate of origin/source/legal provenance, stressing that it should: serve the objectives of the international regime and support benefit sharing; be practical and cost-effective; be a standardized code accompanying biological material and its derivatives; and ensure that access complies with national legislation of the country of origin. Norway noted that a certificate of origin could facilitate enforcement of disclosure requirements in the patent application process.

Delegates said the certificate could be accommodated within IPR systems, and supported further work on its functionality, effectiveness, viability and cost, in consultation with indigenous communities, stakeholders and industry sectors. The IIFB expressed reservations regarding certification of traditional knowledge. Others added that traditional knowledge should not be part of the initial concept of a certificate.

On Wednesday, delegates considered a CRP on other approaches. They discussed technical options regarding the design of a certificate, for compilation and consideration at ABS-4. Additional references were suggested on participation of industry in compiling information on the design of a certificate, and inclusion of further studies and pilot projects in Parties' submissions. Delegates approved the CRP with these amendments.

A summary of these discussions is available online at: <http://www.iisd.ca/vol09/enb09308e.html> and <http://www.iisd.ca/vol09/enb09309e.html>.

During the closing plenary, delegates adopted the recommendation without amendment.

Recommendation: In the final document (UNEP/CBD/WG-ABS/3/L.3), the Working Group recalls that other approaches are useful tools in assisting implementation of ABS, and recognizes that an international certificate of origin/source/legal provenance could be an element of an international regime on ABS. It further invites Parties and others, in particular the private sector, to: prepare further studies and pilot projects, and report thereon to the Executive Secretary; and submit their views on the design of an international certificate, including, *inter alia*: its rationale, need and objectives; desirable characteristics/features; and the practicality, feasibility and costs at national and international levels. These views will be compiled and considered at ABS-4.

MEASURES TO SUPPORT COMPLIANCE WITH PRIOR INFORMED CONSENT AND MUTUALLY AGREED TERMS

SWG-II considered measures to support compliance with PIC of the contracting party providing genetic resources and MAT on which access was granted from Tuesday to Friday. A Friends of the Co-Chairs group met on Thursday evening to finalize the draft recommendation.



On Tuesday, delegates considered measures, including their feasibility, practicality and costs, to support compliance with PIC and MAT on the basis of an analysis of such measures (UNEP/CBD/WG-ABS/3/5). Delegates discussed: amendments to patent law; requirements for disclosure of origin/source/legal provenance in IPR applications; and the role of WIPO agreements. They debated mandatory disclosure requirements, with many opposed and awaiting further analysis. Others cautioned against using principles based on WIPO agreements, and suggested considering codes of conduct to support compliance with MAT. The IIFB emphasized indigenous peoples' right to free PIC.

On Wednesday, delegates considered a CRP and discussed, *inter alia*: international exchange of genetic resources and their derivatives; measures to address non-compliance with ABS arrangements in national jurisdiction; PIC of indigenous and local communities over the use of their genetic resources and traditional knowledge; and sources of pertinent documentation and its subsequent dissemination.

Noting that the development of measures to support compliance with PIC and MAT is at different stages in different countries, the EU urged Parties to continue implementation of the Bonn Guidelines, and provide information thereon. Delegates put forward proposals on: studying the occurrence, extent and cost of misappropriation of genetic resources and associated traditional knowledge, including the extent of non-compliance for those countries with relevant national legislation; and international and national measures to address illegal access and non-compliance, including penalties and compensation according to national law.

On Thursday, delegates continued consideration of the CRP, agreeing that discussion on this agenda item is without prejudice to the outcome of the negotiations on an international regime. Following a discussion, most preambular paragraphs on remedies in user countries and the role of legal certainty in facilitating access, were bracketed and subsequently deleted. Delegates agreed to focus national compliance measures on those listed in Decision VII/19 (Section E), and to use the same structure in their submissions to the Executive Secretary. They also agreed to invite Parties to provide funding for regional workshops on the implementation of compliance measures.

Delegates debated and bracketed all references to: disclosure of origin in IPR applications; collection, examination and dissemination of pertinent information, including with regard to WIPO and WTO; and misappropriation of genetic resources, including their derivatives, and traditional knowledge.

SWG-II Co-Chair Ivars established a Friends of the Co-Chairs group, which met in the evening to discuss the outstanding issues.

On Friday, SWG-II Co-Chair Ivars presented a revised CRP. She drew attention to a bracketed reference to derivatives, in the context of an invitation to Parties and others to undertake analytical work on misappropriation of genetic resources and traditional knowledge. Delegates agreed to the compromise reached in the Friends of the Co-Chairs group and approved the document.

Summaries of these discussions are available online at: <http://www.iisd.ca/vol09/enb09308e.html>, <http://www.iisd.ca/vol09/enb09309e.html> and <http://www.iisd.ca/vol09/enb090310e.html>.

During the closing plenary, delegates adopted the final text without amendment.

Recommendation: In the final document (UNEP/CBD/WG-ABS/3/L.4), the Working Group notes that this recommendation is without prejudice to the outcome of the negotiations of an international regime and that the development of measures to support compliance with PIC and MAT is at different stages in different countries. It invites Parties and others to:

- start or continue activities as spelled out in Decision VII/19 (Section E) and, as appropriate, the implementation of the Bonn Guidelines, and submit information, analysis and views thereon;
- consider the introduction of disclosure of origin/source/legal provenance of genetic resources and associated traditional knowledge in IPR applications and submit information on related issues to the Executive Secretary;
- provide or source funding for the organization of regional workshops; and
- undertake analytical work on: (a) the effectiveness, practicality and cost of measures to ensure compliance with PIC and MAT; (b) enforcement problems experienced under national access legislation; and (c) the occurrence, nature, extent and cost of misappropriation of genetic resources, and associated traditional knowledge including, for countries with relevant legislation, the extent of non-compliance with their national legislation on PIC and MAT.

A reference to misappropriation of derivatives of genetic resources remains bracketed.

The recommendation further requests the Executive Secretary to: compile and disseminate this information, through the CHM and other means, with a view to transmitting the results to relevant forums such as the FAO, UN Conference on Trade and Development, UNEP, UPOV, WIPO, and WTO; and to compile pertinent documentation circulated in these forums and make it available to the Parties in time for ABS-4.

INDICATORS FOR ABS

SWG-II considered possible options for indicators for ABS on Tuesday and Thursday.

On Tuesday, the Secretariat introduced a background document on the need and possible options for indicators for ABS (UNEP/CBD/WG-ABS/3/6), and noted that COP-7 decided to develop a framework to facilitate the assessment of progress towards the 2010 target, which covers seven focal areas, including benefit sharing. The Secretariat then requested delegates to consider whether the establishment of outcome- or process-oriented indicators is a priority at this time.

The EU supported process-oriented indicators for ABS and, with Brazil, called for Parties to submit their views and information on possible options for indicators to be considered at the next working group meeting. Malaysia and the IIFB supported both process- and outcome-oriented indicators.



Some delegates highlighted the need for specific indicators for benefit sharing, including the number of benefit sharing agreements, collaborative research activities, awareness-raising programmes and countries' capacity-building levels. Brazil proposed several possible options for outcome-oriented indicators, including the number of: accessions made with PIC; authorized access permits; and technologies that use genetic resources. Several delegates opposed indicators on the number of patents, as well as on "foreign" users, noting that the legal framework should not be discriminatory.

Mexico and Colombia stressed the need for further elaboration of the goal related to benefit sharing in the framework of the 2010 target, addressed at the tenth meeting of the CBD's Subsidiary Body on Scientific, Technical and Technological Advice.

On Thursday, delegates discussed a Co-Chairs' text. Colombia suggested referring to traditional knowledge-related indicators to the Working Group on Article 8(j). The EU proposed including targets on access to genetic resources.

Upon a proposal by Brazil, on ensuring that benefit sharing is one of the focal areas of the Strategic Plan, delegates agreed to amend preambular language, by: referring to the first paragraph of Decision VII/30 (focal areas of the Strategic Plan); stressing that benefit sharing is important for evaluating progress in the implementation of the Strategic Plan; and highlighting the need for further development of targets and indicators.

Delegates adopted the CRP as amended. A summary of these discussions is available online at:

<http://www.iisd.ca/vol09/enb09308e.html> and
<http://www.iisd.ca/vol09/enb09310e.html>.

The closing plenary adopted the document without amendment.

Recommendation: In the final document (UNEP/CBD/WG-ABS/3/L.5), the Working Group:

- recognizes the need for indicators for ABS and for further development of relevant targets and indicators;
- notes the limited number of views submitted, and invites Parties and others to submit their views and information on the need and possible options for ABS indicators and on the further consideration and review of targets under the goal on benefit sharing of the provisional framework for assessing progress towards the 2010 target; and
- requests the Executive Secretary to prepare a compilation of submissions for consideration at ABS-4.

CLOSING PLENARY

On Friday afternoon, Nisakorn Kositratna, Secretary-General, Ministry of Natural Resources and Environment of Thailand, on behalf of Working Group Chair Suwit Khunkitti, convened the closing plenary session.

SWG-I Co-Chairs Shikongo and Burton and SWG-II Co-Chairs Ivars and Santos reported on the work of the sub-working groups. Delegates adopted SWG-I report (UNEP/CBD/WG-ABS/3/SWG.I/L.1 and Add.1) and SWG-II report (UNEP/CBD/WG-ABS/3/SWG.II/L.1, Add.1 and Add.2), without amendment. New Zealand requested recording its reservation that Parties

retain the right to submit further proposals on the international regime and that these proposals will be of equal weight in the negotiations as those contained in the recommendation on the international regime.

The plenary then adopted the Working Group's recommendations with minor editorial amendments.

Under the agenda item on other matters, the IIFB, supported by the EU and Ethiopia, presented a proposal for enhancement of indigenous participation in the ABS Working Group through measures, including: timely and appropriate indigenous participation in negotiations, facilitated through administrative support; enhanced participation in contact and Friends of the Chair groups; and provision of advice to the Bureau. They requested that the proposal be considered and transmitted for adoption at COP-8. The EU, India, on behalf of the LMMC, Ethiopia, on behalf of the African Group, Norway, New Zealand, Namibia, the Philippines, Mexico, and Uganda supported the proposal. Canada, Australia, Malaysia and Jamaica stressed the need for further consideration. Chair Kositratna said the proposal will be submitted for consideration at ABS-4. The EU expressed disappointment, with Sweden requesting a note in the report of the meeting regarding its disagreement over the deferral of this proposal.

Delegates then considered the report of the meeting (UNEP/CBD/WG-ABS/3/L.1/Add.1), introduced by the Rapporteur Alexander Shestakov (Russian Federation). The EU stressed that it does not support the view of UNEP on the relationship between TRIPS and the CBD, as expressed by the UNEP representative during the opening plenary, and requested that this be recorded in the report of the meeting. Australia said that TRIPS and the CBD are mutually supportive, and with Japan, Switzerland, New Zealand and the US, supported the EU statement. The African Group said the report is an accurate reflection of both the meeting's proceedings and the relationship between TRIPS and the CBD. Brazil welcomed UNEP's statement. The Forum on Environment and Development, on behalf of several NGOs, said the UNEP statement reflects civil society's position on IPRs. The report was then adopted with minor amendments.

The plenary then heard regional and other statements. India, on behalf of the LMMC, noted that the meeting helped improve understanding of, and a vision for addressing, ABS issues, in particular the scope and objectives of the international regime. He stressed that the regime should have value-added to both users and providers of genetic resources, and expressed hope that Parties will be able to make specific recommendations at the next working group meeting.

Canada, speaking on behalf of JUSCANZ, stressed the needs for substantive preparation for ABS-4 and, on behalf of the Canadian Government, announced financial support to the meeting of the Working Group on Article 8(j).

Ecuador, on behalf of the Latin America and the Caribbean Group, reaffirmed its commitment to carry out the mandate given by COP-7 and to work towards a regime that would ensure benefit sharing.



The EU highlighted the constructive discussions that took place at the meeting, and said a good basis needs to be prepared for ABS-4 to ensure constructive negotiations. He also urged delegates not to lose sight of the 2010 target.

Kiribati, on behalf of Asia and the Pacific, called for establishing linkages between the Working Groups on ABS and Article 8(j), and for more resources for developing countries to continue the implementation of the Bonn Guidelines.

Ethiopia, on behalf of the African Group, expressed appreciation for the well-organized meeting.

As host of the fourth meeting of the Working Group on ABS, Spain announced its offer to host the next meeting of the Working Group on Article 8(j), back-to-back with the fourth meeting of the Working Group on ABS, in March 2006. Norway announced plans to organize an international expert workshop on ABS in September 2005, and France announced a high-level seminar on ABS in Paris, to be held in late 2005 or early 2006.

The US said the meeting laid a sound foundation for future negotiations, and urged Parties to draw upon processes on ABS in their home countries.

The International Chamber of Commerce noted that the divergence of views on ABS testifies to the magnitude of the challenge. The IIFB expressed its deep concern that the international ABS regime may result in violation of the rights of indigenous peoples. An NGO representative supported the call of the IIFB for full and effective participation in the ABS process. Opposing patents on life, he said IPRs should not restrict access to genetic resources.

Rapporteur Shestakov then presented a tribute to the government and people of Thailand (UNEP/CBD/WG-ABS/3/L.7), which was adopted by acclamation. CBD Executive Secretary Zedan noted that the negotiation of the regime will be a complex task, but the meeting represented an encouraging start. He expressed appreciation to the countries that provided funds to enable developing country participation and offered to host relevant intersessional meetings.

A UNEP representative clarified that the main message of its opening statement was the need for mutual supportiveness among multilateral environmental agreements, noting that views expressed earlier were duly taken, and reiterated UNEP's role in the ABS process.

Working Group Chair Kosiratna then gavelled the meeting to a close at 5:10 pm.

A BRIEF ANALYSIS OF THE MEETING

Delegates to the first meeting on negotiating an international regime on access and benefit sharing arrived in Bangkok armed with almost a decade of experience on ABS issues. The discussions were reminiscent of a battle between old, well-known rivals, where hugs and handshakes preceded heated debates and set a friendly atmosphere throughout the meeting.

Over the course of the week, however, some veteran negotiators of the CBD's ABS process, including the adoption of the Bonn Guidelines, were uncertain at times whether the issue was actually moving forwards or backwards. While many agreed that a certain amount of rhetoric can be expected in any

first round of negotiations on a new regime, many lamented the lack of focus in these discussions, noting that the third pillar of the CBD – ensuring the fair and equitable sharing of benefits arising out of the utilization of genetic resources – seems to be the most elusive. Many wondered if the reason for that lies in the somewhat revolutionary nature of this endeavor – seeking to channel benefit flows to developing nations – or rather in the fact that the booming biotechnological sector in some developing countries is rapidly changing their conventional role as solely providers of genetic resources. Such developments in the life sciences industry, combined with the fact that many countries – developing and developed alike – are both proud and protective of their existing national ABS-related legislation, further complicate the starting point for how an ABS regime should be structured.

This brief analysis revisits the first round of negotiations on the ABS regime, its promise, players and pitfalls, and provides some ideas on potential discussions in the near future.

A RACE BETWEEN HARES AND TURTLES – POINTS OF DIVERGENCE AND CONVERGENCE

While several countries are increasingly acting as both providers and users of genetic resources, a clear political demarcation between the two was still evident during the course of discussions. Those arguing the position of provider-countries (i.e., those countries that are sources of genetic resources) – mostly the Like-Minded Megadiverse Countries and the African Group – claim that the current state of affairs leads to unfair distribution of benefits, and seek to change it. Those regarded as user-countries (i.e., those with industries that commercialize genetic resources) – mostly industrialized countries – are quite content with the status quo, where access to genetic resources is arguably free. However, some within this group appear more open-minded to binding commitments, although it remains to be seen how this will affect the pace and substance of the negotiations.

DEFINING THE RACE TRACK FOR AN INTERNATIONAL REGIME

Points of divergence between the major groups were most visible in the treatment of access to genetic resources. Provider countries pushed for a regime that mostly addresses benefit sharing by preventing the misappropriation and misuse of genetic resources and their derivatives, to ensure that benefits flow to the countries of origin. They do not, however, support an international regime on access that overrides well-established national approaches to this matter. Users generally confront this position with pragmatism, saying that both sides need to have incentives, in order for negotiations to progress, and therefore, facilitated access should be part of the regime. Some observers commented, however, that the current scenario of virtually free and unregulated access to genetic resources in most of the developing world makes it difficult for the provider countries to have a strong negotiating position.

On the nature of the process, provider countries were quite coherent in their demand for a single, legally binding instrument that would ensure benefit sharing with countries of origin.



Counter-proposals suggested that the regime could consist of a series of instruments, both legally binding and non-binding. As some noted, the positions were less polarized than expected, and common ground may be found. Ultimately, the regime could turn out to be a complicated hybrid.

LINKAGES WITH OTHER PROCESSES – PLEASE MIND THE GAP

Parties also disagreed on the role of parallel processes such as those under the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGR), the TRIPS Agreement, and WIPO's Patent Cooperation Treaty and Committee on Intellectual Property and Genetic Resources, in the negotiation of the regime. While user countries pointed to the need for a further analysis of the gaps in the international legal system and the relationship between the CBD and these processes prior to establishing the nature and scope of the international regime, provider countries expressed concerns that such analysis may result in the blind "import" of concepts or a delay in negotiations. They furthermore stressed that there is no need for further preliminary analysis but rather for an ongoing follow-up on the development and identification of potential synergies with the "neighboring fields," such as TRIPS and ITPGR negotiations.

There was also a divergence in opinion on the degree of progress being achieved in these forums. While many celebrated the EU's move towards supporting mandatory disclosure of origin in patent applications, some doubted whether this shift will be sufficient to tip the scales in the existing rules under WIPO or WTO. There was a clear agreement, however, on the relevance of parallel negotiations to the ABS process, and a shared recognition that their outcomes will influence country positions. Some observers reckoned that deals may be struck across the board between different negotiating blocks and therefore it makes sense to closely follow the developments in these processes. Some provider countries also feared that the gaps would be so wide that the whole regime process might fall into them. The final agreement on developing a matrix sets out a proactive approach comparing potential elements of an ABS regime with existing international instruments, rather than simply starting a legal gap analysis from a blank slate.

TRADITIONAL KNOWLEDGE – A MIND GAME

Traditional knowledge was one issue where different voices converged, resulting in consistent calls for its protection and safeguarding within the scope of the regime.

Different options contained in the final document, however, reflect a divergence of views on whether indigenous and local communities should share benefits arising solely from the use of their traditional knowledge or also from the use of the genetic resources associated with such knowledge. There is a subtle, but significant, difference between these two options, since it is easier to monitor and control the use of genetic resources than the use of traditional knowledge. Hence, indigenous groups make the argument that traditional knowledge and resources should be inextricably linked. Opinions also differed on indigenous and local communities' participation in the negotiating process, which culminated in a passionate appeal by indigenous

representatives during the closing plenary to grant them the same footing in the ABS Working Group as they have in the Working Group Article 8(j).

CONCLUSIONS – WARMING UP FOR THE MARATHON

Few, if any, expected a rapid launch from the starting line for substantive negotiations on the regime during this first meeting. Many delegates regarded it as a "brainstorming session" – a prelude to what could evolve into a decade of painstaking negotiations.

DID HARES TAKE AN INTERSESSIONAL NAP? Many, however, expressed their surprise about the apparent absence of a clear champion pushing the process forward. While the LMMC was clearly expected to be out front given their role in creating the mandate to negotiate a regime at the WSSD and in their pre-meeting preparations, some delegates noted that the LMMC seemed to be as diverse in opinions on ABS as they are in biodiversity. Others contested that given the differences among the countries that are part of the group, their coordination *vis-à-vis* the objectives of the regime was sufficient for this "test run" and will continue to improve in the future.

INTERMEDIATE POSITIONS – IS THERE A "HURTLE" (A RARE HYBRID OF HARE AND TURTLE) IN THE RACE? During the negotiations, some countries were seen as trying to find a "middle way," one that takes the current system as the basis and proposes measures for its improvement, rather than seeking radical change. These proposals include better control and monitoring measures to improve benefit sharing, such as a certificate of origin or legal provenance for biological materials used for research; compulsory disclosure of origin in patent applications; and further promotion of compliance with, and enforcement of, PIC and MAT at the national level. The future development of the regime may well go along these lines. In the race for an ABS regime, it remains to be seen whether the "hurtles," or the compromise seekers, can break from the pack and overcome the rhetorical user-provider country divide.

GETTING READY FOR THE NEXT LAP: Shifting to the immediate next steps, the key issues in the run-up to the next ABS meeting are: the gap analysis, which may clarify the potential for benefit sharing in different sectors, such as pharmaceuticals or agriculture, and lead to a definition of the scope that will facilitate the negotiation process; further studies on the certificate of origin/legal provenance; and progress on the disclosure of origin in patent applications. These may well provide a practical basis on which to construct a regime.

Leaving aside individual views on the potential of this process to generate meaningful sharing of benefits associated with the use of genetic resources, this meeting's results set out the basic structural components to start negotiations on an ABS regime, while reflecting the diversity of ideas presented at the meeting. Therefore, it is a small but significant step forward in the process. Parties have a launching pad for further discussions and enough homework assignments to maintain their momentum and generate enthusiasm for the next meeting of the ABS Working Group to be held in Spain in 2006.



UPCOMING MEETINGS

23RD SESSION OF THE UNEP GOVERNING

COUNCIL/GMEF: The 23rd session of the UNEP Governing Council/Global Ministerial Environment Forum will be held from 21-25 February 2005, in Nairobi, Kenya. For more information, contact: Beverly Miller, Secretary for UNEP Governing Council; tel: +254-2-623431; fax: +254-2-623929; e-mail: beverly.miller@unep.org; internet: <http://www.unep.org/gc/gc23/index-flash.asp>

THIRD BORNEAN BIODIVERSITY AND ECOSYSTEM CONSERVATION INTERNATIONAL CONFERENCE:

This conference will be held from 22-24 February 2005, in Kota Kinabalu, Sabah, Malaysia, and will focus on the theme "Biodiversity Conservation as a Way of Life." For more information, contact: Daniel Pamin, Institute for Tropical Biology and Conservation; tel: +60-88-320-104; fax: +60-88-320-291; e-mail: bbec@sabah.gov.my; internet: <http://www.bbec.sabah.gov.my/overall/1stannouncement2005.htm>

FOURTH SESSION OF THE PERMANENT FORUM FOR INDIGENOUS ISSUES:

This meeting will convene from 16-27 May 2005, at UN headquarters in New York, to focus on the "Millennium Development Goals and Indigenous Peoples." For more information, contact: IPF Secretariat; tel: +1-917-367-5100; fax: +1-212-963-3063; e-mail: IndigenousPermanentForum@un.org; internet: <http://www.un.org/esa/socdev/unpffi/index.html>

FIRST MEETING OF THE WORKING GROUP ON

LIABILITY AND REDRESS: The first meeting of the *Ad Hoc* Open-ended Working Group on Liability and Redress under the Cartagena Protocol on Biosafety will convene from 25-27 May 2005, in Montreal, Canada. For more information, contact: CBD Secretariat; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: secretariat@biodiv.org; internet: <http://www.biodiv.org/doc/meeting.aspx?mtg=BSWGLR-01>

BIOSAFETY COP/MOP-2: The second Conference of the Parties to the CBD serving as the Meeting of the Parties to the Cartagena Protocol on Biosafety will meet from 30 May to 3 June 2005, in Montreal, Canada. For more information, contact: CBD Secretariat; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: secretariat@biodiv.org; internet: <http://www.biodiv.org/doc/meeting.aspx?mtg=MOP-02>

WIPO IGC-8: The eighth session of WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore will convene from 6-10 June 2005, in Geneva, Switzerland. For more information, contact: IGC Secretariat; tel: +41-22-338-8161; fax: +41-22-338-8120; e-mail: grtkf@wipo.int; internet: http://www.wipo.int/meetings/en/topic.jsp?group_id=110

FIRST MEETING OF THE WORKING GROUP ON

PROTECTED AREAS: The first meeting of the CBD *Ad Hoc* Open-ended Working Group on Protected Areas will be held from 13-17 June 2005, in Montecatini, Italy. For more information, contact: CBD Secretariat; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: secretariat@biodiv.org; internet: <http://www.biodiv.org/doc/meeting.aspx?mtg=PAWG-01>

CONFERENCE ON HEALTH AND BIODIVERSITY

2005: This conference will be held from 23-25 August 2005, in Galway, Ireland. For more information, contact: Elizabeth Dippie; tel: +353-9176-5640; fax: +353-9176-5641; e-mail: info@cohab2005.com; internet: <http://www.cohab2005.com/summary.htm>

FIRST DIVERSITAS OPEN SCIENCE CONFERENCE:

This conference will be held from 9-12 November 2005, in Oaxaca, Mexico, convening under the theme "Integrating biodiversity science for human well-being." For more information, contact: Diversitas Secretariat; tel: +33-1-45-25-95-25; fax: +33-1-42-88-94-31; e-mail: info@diversitas-osc1.org; internet: <http://www.diversitas-osc1.org/>

CBD SBSTTA-11: The eleventh meeting of the CBD Subsidiary Body on Scientific, Technical and Technological Advice is scheduled for 5-9 December 2005, in Montreal, Canada. For more information, contact: CBD Secretariat; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: secretariat@biodiv.org; internet: <http://www.biodiv.org/doc/meeting.aspx?mtg=SBSTTA-11>

FOURTH MEETING OF THE WORKING GROUP ON

ARTICLE 8(J) AND ABS-4: The fourth meeting of the CBD *Ad Hoc* Working Group on Article 8(j) and Related Provisions is scheduled to convene in March 2006, in Spain. It will be followed by the fourth meeting of the CBD *Ad Hoc* Open-ended Working Group on Access and Benefit Sharing. For more information, contact: CBD Secretariat; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: secretariat@biodiv.org; internet: <http://www.biodiv.org/meetings/default.aspx>

CBD COP-8 AND BIOSAFETY COP/MOP-3: The eighth meeting of the CBD Conference of the Parties is scheduled to meet from 8-19 May 2006, in Brazil. This meeting will be followed by the third meeting of the Conference of the Parties serving as the meeting of the Parties to the Biosafety Protocol, which will meet from 22-26 May 2006. For more information, contact: CBD Secretariat; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: secretariat@biodiv.org; internet: <http://www.biodiv.org/meetings/default.aspx>