

**SUMMARY OF THE SEVENTH MEETING  
OF THE WORKING GROUP ON ACCESS AND  
BENEFIT-SHARING OF THE CONVENTION  
ON BIOLOGICAL DIVERSITY:  
2-8 APRIL 2009**

The seventh 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 2-8 April 2009, at UNESCO headquarters, in Paris, France. The meeting continued the negotiation of an international regime on ABS, focusing on operational text on the objective, scope, compliance, fair and equitable benefit-sharing, and access.

In accordance with Decision IX/12 of the Conference of the Parties (COP), the Working Group is instructed “to finalize the international regime and to submit for consideration and adoption by the COP at its tenth meeting an instrument/instruments to effectively implement the provisions in Article 15 and Article 8(j) of the Convention and its three objectives, without in any way prejudging or precluding any outcome regarding the nature of such instrument/instruments.” COP 10 will be held from 18-29 October 2010, in Nagoya, Japan.

The Working Group encountered several procedural obstacles, most of which related to the structure of the negotiating document agreed upon at ABS 6 and ratified by CBD COP 9, consisting of sections on the main components, and lists of items “to be further elaborated with the aim of incorporating them in the international regime” in the case of agreement in principle (“bricks”), or “for further consideration,” in the case of disagreement or need for further clarification (“bullets”). Although this structure had assisted negotiations in the past, it provoked prolonged procedural debates in Paris, with regional groups accusing each other of trying to promote bullets to bricks through their textual proposals under different items. Two days before the end of the meeting, the Working Group agreed to abandon the bricks and bullets concept and work on textual proposals under the structure set out in the annex to COP Decision IX/12. With regard to substance, the most controversial debate concerned whether to include viruses and pathogens in the scope of the regime.

Although time and energy spent on the procedural “rules of engagement” has damaged the trust between negotiating groups, the outcome of the meeting, consisting of a streamlined working document on the objective, scope, compliance, benefit-sharing, and access, albeit highly bracketed, provides draft language on most items, and sets out parties’ preferences and points of divergence. This collective outcome will form the basis for negotiations at ABS 8, to be held from 9-15 November 2009, in Montreal, Canada, where delegates will address the nature of the regime, traditional knowledge associated with genetic resources, and capacity building.

**A BRIEF HISTORY OF THE CBD AND ABS**

Negotiated under the auspices of the UN Environment Programme, the CBD was opened for signature on 5 June 1992, and entered into force on 29 December 1993. There are currently 191 parties to the Convention, which aims to promote the conservation of biodiversity, the sustainable use of its components, and the fair and equitable sharing of benefits arising from the use of genetic resources.

Access to genetic resources, including facilitating access, prior informed consent (PIC), mutually agreed terms (MAT) and benefit-sharing are addressed by CBD Article 15, with related articles referring to access to and transfer of technology (Article 16.3), and handling and distribution of benefits of biotechnology (Article 19). The Convention’s work on ABS

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was initiated at COP 4 (May 1998, Bratislava, Slovakia), when parties decided to establish a regionally balanced expert panel on ABS, whose composition and agenda were discussed at an intersessional meeting on the operations of the Convention (June 1999, Montreal, Canada). The first meeting of the expert panel on ABS (October 1999, San José, Costa Rica) developed a set of recommendations including general conclusions and specific points on PIC, MAT, information needs and capacity building. COP 5 (May 2000, Nairobi, Kenya) established the Working Group on ABS to develop guidelines and other approaches on: PIC; MAT; roles, responsibilities and participation of stakeholders; benefit-sharing mechanisms; and the preservation of traditional knowledge. The second meeting of the expert panel on ABS (March 2001, Montreal, Canada) addressed: user and provider experience in ABS processes; approaches for stakeholder involvement; and complementary options to address ABS within the CBD framework, including possible elements for guidelines.

**ABS 1:** At its first meeting (October 2001, Bonn, Germany), 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 intellectual property rights (IPRs) in the implementation of ABS arrangements.

**COP 6:** At its sixth meeting (April 2002, The Hague, the Netherlands), the COP adopted the Bonn Guidelines on ABS and also considered the role of IPRs in the implementation of ABS arrangements, and the relationship with the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS) of the World Trade Organization.

**WSSD:** In the Johannesburg Plan of Implementation, the UN World Summit on Sustainable Development (WSSD) (September 2002, Johannesburg, South Africa) called for negotiation, within the CBD framework, of an international regime to promote and safeguard the fair and equitable sharing of benefits arising out of the utilization of genetic resources. The WSSD call was reaffirmed at the 57th session of the UN General Assembly (December 2002, New York) and the 2005 UN World Summit (September 2005, New York), as well as at the subsequent sessions of the UN General Assembly.

**ABS 2:** At its second meeting (December 2003, Montreal, Canada), the ABS Working Group debated the process, nature, scope, elements and modalities of an international ABS regime, and also considered measures to ensure compliance with PIC and MAT, and capacity building.

**COP 7:** At its seventh meeting (February 2004, Kuala Lumpur, Malaysia), the COP adopted the Action Plan on capacity building for ABS, mandated the ABS Working Group to elaborate and negotiate an international ABS regime and set out the terms of reference for the negotiations.

**ABS 3:** At its third meeting (February 2005, Bangkok, Thailand), the ABS Working Group produced a document with several options for the design of an international regime on ABS. It also addressed: additional approaches to complement the Bonn Guidelines on ABS, such as an international certificate of origin/source/legal provenance; measures to ensure compliance with PIC and MAT; and options for indicators for ABS.

**ABS 4:** At its fourth meeting (January-February 2006, Granada, Spain), the ABS Working Group continued talks on an international ABS regime and agreed on a draft text to serve

as the basis for future negotiations. The Working Group also considered an international certificate of origin/source/legal provenance, and measures to support compliance with PIC and MAT.

**COP 8:** At its eighth meeting (March 2006, Curitiba, Brazil), the COP instructed the ABS Working Group to complete its work with regard to the international ABS regime at the earliest possible time before COP 10, to be held in 2010, under the co-chairmanship of Fernando Casas (Colombia) and Timothy Hodges (Canada). Following a lengthy controversy over the status of the ABS 4 outcome, the COP decided to transmit it to ABS 5, along with the outcomes of a group of technical experts on a certificate of origin/source/legal provenance. The COP also requested the Working Group on Article 8(j) to contribute to the mandate of the ABS Working Group on issues relevant to traditional knowledge.

**EXPERT GROUP ON THE CERTIFICATE:** The group of technical experts on an internationally recognized certificate of origin/source/legal provenance (January 2007, Lima, Peru) discussed the feasibility, implementation challenges and potential costs and benefits of different options for a certificate of origin/source/legal provenance.

**ABS 5:** At its fifth meeting (October 2007, Montreal, Canada), the ABS Working Group considered substantive elements of an international regime on ABS. Delegates also discussed two informal documents tabled by the Co-Chairs, their notes on proposals made at the meeting and their reflections on progress made, and concluded they were under the sole authority of the Co-Chairs and would be circulated to parties as information documents.

**ARTICLE 8(J) WG 5:** At its fifth meeting (October 2007, Montreal, Canada), the Working Group on Article 8(j) did not reach agreement on a recommendation on inputs from the Working Group to the negotiation of an international regime on ABS, due to divergence of views with regard to both procedural and substantive issues.

**ABS 6:** At its sixth meeting (January 2008, Geneva, Switzerland), the ABS Working Group focused on the main components of the international regime, including fair and equitable sharing of benefits, access to genetic resources, compliance, traditional knowledge and genetic resources, and capacity building. The Working Group made considerable progress in producing a short and concise working document on the international regime, consisting of sections on the main components and lists of items "to be further elaborated with the aim of incorporating them in the international regime" in the case of agreement in principle, or "for further consideration," in the case of disagreement or need for further clarification.

**COP 9:** At its ninth meeting (May 2008, Bonn, Germany), the COP adopted a roadmap for the negotiation of the international regime, ensuring that the ABS Working Group will meet three times before the 2010 deadline for completion of negotiations. The COP also established three expert groups on: compliance; concepts, terms, working definitions and sectoral approaches; and traditional knowledge associated with genetic resources. It instructed the ABS Working Group to finalize the international regime and to submit an instrument/instruments for consideration and adoption by COP 10, and transmitted to ABS 7 the working document produced at ABS 6 as amended by the COP, as the basis for further negotiation.

## ABS 7 REPORT

On Thursday, 2 April 2009, ABS Working Group Co-Chair Timothy Hodges (Canada) welcomed delegates, and underscored that the Working Group has 21 days of negotiations left to complete its mandate, time which he described as limited but sufficient for the task. He reminded delegates about the specificity of Decision IX/12 that sets out the basis for negotiations, milestones, a deadline and precise goals.

Jochen Flasbarth, on behalf of the German Presidency of the COP, underscored the economic value of ecosystems and biodiversity that forms the background to the incumbent negotiations. CBD Executive Secretary Ahmed Djoghlaif stressed that this meeting is a pivotal juncture in the negotiations of the international regime on access and benefit-sharing. Walter Erdelien, Assistant Director-General for Natural Sciences, UNESCO, highlighted the long history of collaboration between UNESCO and the CBD. Bakary Kante, on behalf of UNEP Executive Director Achim Steiner, said UNEP has committed to contribute US\$1 million to the ABS process. All regional groups expressed their commitment towards a productive meeting and finalizing negotiations by COP 10. Monica Rosell (Peru) and Hiroji Isovaki (Japan), Co-Chairs of the group of legal and technical experts on compliance, reported on the outcomes of the meeting, held from 27-31 January 2009, in Tokyo, Japan (UNEP/CBD/WG-ABS/7/3). Desmond Mahon (Canada) and Pierre du Plessis (Namibia), Co-Chairs of the group of legal and technical experts on concepts, terms, working definitions and sectoral approaches, reported on the meeting held from 2-5 December 2008, in Windhoek, Namibia (UNEP/CBD/WG-ABS/7/2). Working Group Co-Chair Fernando Casas (Colombia) announced that the studies commissioned in accordance with COP Decision IX/12 are circulated as information documents and will be presented during side events.

**ORGANIZATIONAL MATTERS:** Working Group Co-Chair Hodges reminded delegates that the COP 9 Bureau serves as the meeting Bureau and nominated Damaso Luna (Mexico) as rapporteur. Delegates then adopted the meeting's agenda and organization of work (UNEP/CBD/WG-ABS/7/1 and Add.1/Rev.1). Co-Chair Hodges announced that each substantive item would be initially considered in plenary, and contact groups would be established as needed. Delegates agreed to negotiate on the basis of Annex 1 to COP Decision IX/12 (UNEP/CBD/WG-ABS/7/7), consisting of sections on the main components, and lists of items "to be further elaborated with the aim of incorporating them in the international regime" in the case of agreement in principle ("bricks"), or "for further consideration," in the case of disagreement or need for further clarification ("bullets"). They further agreed to draw on parties' submissions compiled by the Secretariat (UNEP/CBD/WG-ABS/7/4 and Add.1-3) as well as submissions tabled in plenary.

Plenary met every day to hold initial discussions on all agenda items, review progress achieved in contact groups and resolve procedural issues. On Friday, 3 April, plenary established a contact group on the objective and scope of the regime, co-chaired by Birthe Ivars (Norway) and David Hafashimana (Uganda), which met from 3-4 April and from Monday, 6 April to the early morning hours of Wednesday, 8 April. On Saturday, 4 April, another contact group was established to address compliance, benefit-sharing, and access, co-chaired by Pierre

du Plessis (Namibia) and René Lefeber (the Netherlands), which met from Saturday, 4 April to the early morning hours of Wednesday, 8 April. The procedural rules of engagement of the latter contact group provided for a three-step approach: identifying the basis for further work on each brick and bullet; consolidating parties' views; and negotiating text.

On Tuesday, 7 April, contact group Co-Chair Lefeber reported to plenary that the contact group had arrived at a deadlock over a brick on measures to ensure compliance, making it impossible to continue working on the basis of its current procedural rules of engagement. He said the group suspended work to convene a closed-door meeting with the main spokespersons of the negotiating groups to discuss the way forward. They considered a "minimalist approach" demoting the brick to a bullet, and a "maximalist approach" of removing the distinction between bricks and bullets throughout the documents on compliance, benefit-sharing and access. He reported that the majority of participants preferred the maximalist approach while some had to seek instructions from capitals. Canada, the European Union (EU), the Like-Minded Megadiverse Countries (LMMC), the African Group, New Zealand, Norway and Japan, among others, supported the maximalist approach. Contact group Co-Chair du Plessis underscored that the bricks and bullets illustrated the state of play at ABS 6, but that a new approach was needed to forge consensus by COP 10. Working Group Co-Chair Hodges and contact group Co-Chair Lefeber confirmed that the removal of the bricks and bullets results in all elements in the text having the same status. Lefeber explained parties could bracket text, but the structure as set out in the headings would be maintained.

This report outlines discussions and summarizes the outcome of negotiations of operational text on the objective of the international regime, its scope, compliance, benefit-sharing, and access.

## **INTERNATIONAL ABS REGIME: NEGOTIATION OF OPERATIONAL TEXT**

**OBJECTIVE:** The objective of the international regime was discussed in plenary on Thursday, 2 April, when delegates were invited to table additional proposals for operational text that had not been submitted in writing prior to the meeting. The operational text for the objective was negotiated in the contact group on the objective and scope from Thursday to Friday, 2-3 April, and on Monday, 6 April.

The EU, Japan, the Republic of Korea, New Zealand and Switzerland supported developing a short and precise objective, while Argentina, Egypt and the LMMC preferred a version setting out more details. Canada made a proposal to integrate the chapeau and more detailed points into one more concise paragraph, which was opposed by the LMMC and others, who preferred to keep a more detailed text. New Zealand, supported by Norway, proposed a text for the chapeau not referring to CBD provisions but rather naming the concepts enshrined in them, which was opposed by the LMMC.

The LMMC stressed all their submissions refer to a protocol on ABS. The African Group requested reference to biological resources along with genetic resources throughout the text, as well as to their derivatives and products. Argentina pointed to a lack of common understanding of derivatives and products, and Japan proposed deletion. References to biological resources, derivatives and products remain bracketed throughout the text.

Regarding the chapeau, which references the CBD objectives and a number of CBD provisions, delegates debated whether to state that the international regime should pursue all three CBD objectives, or just its third (benefit-sharing). Following lengthy debates, delegates agreed that the objective of the regime was to effectively implement relevant CBD provisions and to “pursue” the three CBD objectives. Delegates further debated whether to refer to specific CBD Articles in the objective, with delegates agreeing to references to Articles 15 (Access to Genetic Resources) and 8(j) (traditional knowledge), and remaining divided over whether to also refer to others: Article 1 (Objectives), Article 3 (Principles); Article 16 (Access to and Transfer of Technology) and Article 19.2 (access to results and benefits from biotechnologies).

Several developing countries called for the deletion of a sub-paragraph on facilitating access to genetic resources, their derivatives and associated traditional knowledge, noting that it goes against the intent of Article 15. Others argued that such language clarifies that the regime should specifically implement Articles 15.1 (sovereign rights of states over natural resources) and 15.2 (facilitating access for environmentally sound uses) so as to facilitate access. Many developing countries stressed the regime should implement benefit-sharing, rather than facilitate access. Many said that access should be regulated and transparent, but others opposed such a reference. Delegates agreed to merge two options to include a reference to the sovereign rights of states to their genetic resources, but remained divided over whether to state that access to genetic resources should be facilitated or regulated, with Argentina, Canada, the EU, Japan, the Republic of Korea and Switzerland favoring the former, and the African Group preferring the latter formulation. New Zealand, supported by the African Group, the LMMC and Norway, suggested replacing both references with a reference to “appropriate access,” but the issue remains unresolved. They debated whether to reference associated traditional knowledge, with Canada, the EU, and the Latin America and the Caribbean Group (GRULAC) arguing that Article 8(j) does not refer to facilitated access to traditional knowledge. Following a suggestion by Argentina, the reference was moved to the final paragraph dealing with traditional knowledge. The African Group reserved its right to address the issue in a separate sub-paragraph.

Regarding a sub-paragraph on ensuring fair and equitable sharing of benefits, many developed countries proposed to refer to the establishment of conditions for benefit-sharing, noting that these conditions will be set out mainly in contracts and mutually agreed terms (MAT). Many developing countries stressed that the international regime is intended to establish international rules and procedures that ensure fair and equitable benefit-sharing, rather than rely on contracts. Following lengthy discussions, delegates kept additional wording on “the establishment of enabling conditions for benefit-sharing” in brackets, but agreed to include associated traditional knowledge under “effective” benefit-sharing.

The LMMC, supported by many, suggested having a separate sub-paragraph on misappropriation and misuse. A number of developed countries, while acknowledging the importance of the issue, felt this should be addressed in the components of the regime, rather than its objective. Many developing countries recited cases of misuse and misappropriation, and considered

their prevention a key objective of the international regime. Others referred to the effectiveness of contracts, whereas developing countries pointed to cases where contracts had not been honored and misappropriation had occurred in the absence of contracts. New Zealand, supported by the African Group, Australia and Canada, but opposed by the LMMC, suggested that misuse and misappropriation be defined. On the suggestion by the African Group, a footnote was inserted stating that the terms “may need to be articulated.”

Regarding a sub-paragraph on securing compliance in user countries with national laws and requirements in provider countries, delegates discussed an EU proposal to refer to “compliance with domestic regulatory ABS frameworks,” so as to also address non-legal compliance measures such as awareness raising or voluntary codes of conduct. While many developed countries supported the proposal, developing countries generally opposed it, with many arguing that the proposal was too vague and that language on compliance should specifically focus on compliance with the international regime and enforcement of national ABS laws in provider countries. Several developed countries raised concerns about making reference to compliance under the regime’s objective, whereas the LMMC explained that addressing compliance across jurisdictions is at the heart of the international regime and should therefore be part of its objective. Regarding four possible options for the paragraph, delegates agreed to work on the basis of the most comprehensive text. Japan expressed concerns regarding the proposed requirement for user countries to secure compliance with laws in provider countries. The African Group said that language on securing compliance in user countries should include a reference to existing provisions in international law and refer to providers along with countries of origin. The EU, supported by Switzerland and Australia, but opposed by the African Group and the LMMC, proposed to replace “securing” compliance with “supporting” it, and called for reference to national laws and requirements rather than to domestic regulatory ABS frameworks.

Delegates also discussed a paragraph addressing rights over genetic resources, including the rights of indigenous and local communities, and ensuring compliance with prior informed consent (PIC), and included a reference to the UN Declaration on the Rights of Indigenous Peoples, with the specification “where appropriate” both in brackets.

During the closing plenary, the outcome document on objective was adopted without amendments.

**Final Outcome:** The outcome document on objective (UNEP/CBD/WG-ABS/7/L.2) remains heavily bracketed. The chapeau states that the objective of the international regime is to effectively implement the provisions in Articles 1, 3, 8(j), 15, 16 and 19.2 of the CBD and pursue its three objectives. Agreed references include Articles 8(j) and 15 and the three objectives. The following sub-paragraphs, which include alternative language and remain heavily bracketed, address:

- facilitating/regulating access to genetic resources/biological resources/derivatives and products, through a transparent regulatory framework for environmentally sound uses recognizing the sovereign rights of states over their natural resources and that the authority to determine access to genetic resources, their derivatives and products, rests with the national government and is subject to national legislation;

- ensuring fair and equitable sharing of benefits arising out of the utilization of genetic resources and associated traditional knowledge;
- preventing the misappropriation and misuse of genetic resources and/or associated traditional knowledge; and
- securing/supporting compliance in user countries with the international regime/national laws and requirements/domestic regulatory ABS frameworks in provider countries, including PIC and MAT of the country of origin providing such resources or of the party that has acquired those resources in accordance with the CBD.

The final paragraph addresses the rights over those resources or all sovereign rights of states over their natural resources, including the rights of indigenous and local communities, subject to national legislation, and the UN Declaration on the Rights of Indigenous Peoples, where appropriate.

**SCOPE:** The Working Group made general comments about the scope of the regime in plenary on Thursday, 2 April, and Wednesday, 8 April, and conducted two readings of the issue on Saturday, 4 April, and Tuesday, 7 April, in a contact group. Major issues included: what should be included in a paragraph on the overall scope; what should remain outside the scope; the regime's relationship to other international legal instruments; and whether pathogens should be included.

In plenary, the EU said that the scope should apply to access to genetic resources and the promotion of fair and equitable benefit-sharing in accordance with Article 15 as well as traditional knowledge in accordance with Article 8(j). With others, he stated that certain genetic resources should remain outside the scope of the regime, including: human genetic resources; genetic resources acquired before the CBD's entry into force; plant genetic resources covered by the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGR); marine genetic resources outside national jurisdiction; and genetic resources in the Antarctic Treaty area.

The African Group argued that the scope should include: genetic resources; biological resources; and derivatives and products. He proposed excluding exchange and use of traditional knowledge between indigenous and local communities. The LMMC stated that the regime should apply to genetic resources, derivatives and traditional knowledge, and reinforce the relationship between the CBD and the ITPGR.

Switzerland explained that its tabled proposals are meant to be inclusive and ensure the regime is applied to all genetic resources covered by the CBD, leaving room for existing international sectoral ABS instruments such as the ITPGR. Norway stressed the regime should be without prejudice to the ITPGR and should be implemented in harmony with it, and explained its submitted proposal was based on the provision on scope of the Bonn Guidelines on ABS.

Japan said that the regime should exclude: derivatives and products; plant genetic resources covered by the ITPGR; and marine genetic resources beyond national jurisdiction. He also called for special consideration of resources addressed under the World Health Organization (WHO) in relation to the multilateral framework for pandemic influenza preparedness regarding the sharing of influenza viruses. Canada pointed to additional language submitted regarding the regime's relationship with existing, current and future agreements.

The contact group worked on the basis of the option on scope included in the annex to COP Decision IX/12. On a paragraph on the overall scope of the regime, delegates debated whether to include reference to biological resources, with the African Group insisting on retaining and the LMMC and Chile requesting deletion. Japan proposed stating that the regime applies to genetic resources and deleting references to biological resources, derivatives and products. Peru added language that the international regime will also apply to genetic resources of migratory species that for natural reasons are found in the territories of parties.

On three sub-paragraphs setting out that the international regime apply to: benefits arising from utilization of genetic resources acquired after the CBD's entry into force; continuing benefits from utilization of resources accessed prior to the CBD's entry into force; and intellectual property rights (IPR) associated with research and technology arising from the use of genetic resources, Canada, supported by many and opposed by the African Group, suggested all three be deleted. The sub-paragraphs were retained in brackets.

Regarding pathogens, the EU, supported by Australia and Canada, proposed a footnote stating that it reserves its position because of ongoing internal discussions. This led to a protracted discussion on process. The African Group, the LMMC and GRULAC rejected the footnote, noting that the purpose of this stage of negotiation is to work on the text, and that the definition of "pathogen" is not well understood. The EU agreed to drop the footnote, but requested to reflect its concern in the report of the meeting.

During the last meeting of the contact group in the early morning hours of Wednesday, 8 April, delegates held a debate on pathogens, which resulted in the introduction and bracketing of text stating that the international regime applies to viruses and other pathogenic, as well as potentially pathogenic, organisms and genetic sequences regardless of their origin.

In the closing plenary, Co-Chair Ivars presented the work of the contact group on the objective and scope, describing it as a "frustrating process" and called on delegates to revisit their positions in order to advance before ABS 8. The outcome document on scope was adopted with minor amendments. The LMMC, the African Group and the EU made statements with regard to pathogens, which are reflected in this report under the section on the closing plenary.

**Final Outcome:** The outcome document (UNEP/CBD/WG-ABS/7/L.3) is heavily bracketed, including brackets around entire paragraphs and items within each paragraph.

The document addresses the following issues related to the scope of the regime, in brackets:

- The international regime applies to all genetic resources, biological resources, viruses and other pathogens, as well as potentially pathogenic organisms and genetic sequences regardless of their origin, derivatives and products, associated traditional knowledge, and genetic resources of migratory species;
- The international regime applies to: benefits arising from utilization of resources acquired after the entry into force of the CBD; continuing benefits arising from the utilization of genetic resources and associated traditional knowledge arising

- from commercial use taken prior to the entry into force of the CBD; and IPR associated with research and technology arising from the use of all genetic resources;
- The international regime does not apply to, *inter alia*: human genetic resources; genetic resources acquired before the entry into force of the international regime; genetic resources that a party decides to offer without access requirements or benefit-sharing; species/crops listed in Annex I of the ITPGR; genetic resources, including marine genetic resources in areas beyond national jurisdiction; biological resources located in the Antarctic Treaty Area; commodities in trade; and specific uses of pathogens;
  - Three options on the relationship of the international regime to other international agreements, including one stating the international regime should allow for the implementation and potential development of more specialized international ABS systems;
  - The relationship with the ITPGR and its Multilateral System, with agreed language stating that the international regime should reinforce the relationship between CBD and the ITPGR; and
  - The international regime will be implemented in harmony with other relevant treaties.

**COMPLIANCE:** Delegates addressed compliance in plenary from Thursday to Friday, 2-3 April, and in a contact group from Sunday to the early hours of Wednesday, 5-8 April. Delegates did not reach the stage of seeking agreement on text, but reviewed submissions and identified the basis for further work under each item according to the structure contained in the annex to the COP Decision IX/12, consolidated parties' views and worked on text making further textual proposals or bracketing text.

In plenary, the African Group explained their submission contains provisions for countries without national legislation, mandatory disclosure requirements and independent third party verification of certificates of compliance. Japan noted its submission was based on some of the options developed by the group of experts on compliance. The LMMC proposed an additional provision, that the governing body of the future protocol shall consider measures to support effective implementation, including by providing assistance to parties in litigation of cases of non-compliance. New Zealand submitted a proposal on measures to ensure compliance with customary law. The EU stressed the linkage between compliance measures for benefit-sharing and access, and the need to ensure fairness, equality and transparency by facilitating compliance measures across jurisdictions, such as internationally recognized certificates of compliance, especially to verify the PIC of the competent national authority. The International Indigenous Forum on Biodiversity (IIFB) congratulated the government of Australia for endorsing the UN Declaration on the Rights of Indigenous Peoples. He highlighted the need for parties to take measures to recognize the rights of indigenous peoples and local communities to genetic resources and associated traditional knowledge, and stated that certificates should reference community protocols and customary laws.

The contact group based its work on a non-paper compiling submissions made before and during the meeting, aiming to consolidate proposals first, and then revise the text, while deferring discussion on preambular text. They also agreed to remove all attributions to the parties who submitted the proposals

from the text, and use footnotes in cases where the location of a paragraph in the text requires further consideration. The African Group requested reference to biological resources along with genetic resources throughout the text.

Discussions began with tools to encourage compliance, already defined as bricks. The contact group considered each brick separately in order to decide on which submission to base the negotiations.

Regarding measures on awareness-raising activities, delegates agreed to base negotiations on text submitted by Japan. The LMMC proposed specifying that awareness raising is "an important supplementary tool which cannot substitute mandatory measures for benefit-sharing." Australia noted that lack of awareness about ABS frameworks is the key source of non-compliance. Japan emphasized help-desks for stakeholders and web-portals as key activities for awareness raising.

Delegates then discussed a Norwegian proposal concerning the development of tools to monitor compliance, and agreed to identify overlap with other provisions, and then decide on the most appropriate provision where its elements should be incorporated.

Following a brief discussion on mechanisms for information exchange, delegates agreed to work on the basis of the LMMC proposal that makes reference to an ABS clearing-house mechanism (CHM). Parties debated whether to locate a paragraph on competent national authorities and national focal points under a section on internationally recognized certificates or elsewhere in the document, without reaching agreement. Regarding internationally recognized certificates, delegates debated whether to use an African Group proposal containing a comprehensive range of elements, or a more general Norwegian proposal, and finally agreed to retain both options.

Regarding an international understanding of misappropriation/misuse, the EU noted that the sole text, submitted by Norway, did not entail a definition but rather stated the goal of preventing misappropriation. Regarding sectoral menus of model clauses for material transfer agreements, delegates agreed to work on the basis of the EU proposal, which includes references to inventories/catalogues of typical utilizations and legal procedures for developing model clauses. On requesting research funding agencies to oblige users to comply with specific ABS requirements, they agreed to use the sole LMMC proposal; and on tracking and reporting systems they agreed to use the sole proposal of the African Group, which provides for monitoring systems that identify breaches of contractual obligations or misappropriation.

On disclosure requirements, Norway and India withdrew their submissions and, following a discussion on process due to support from Japan and Argentina for the withdrawn Norwegian proposal, delegates agreed to keep a more elaborate LMMC proposal as the basis for further discussion.

On measures to ensure access to justice, delegates decided to: retain a proposal by the African Group on an international ombudsman; delete a similar but more detailed proposal by the IIFB; and move an LMMC proposal on providing support for litigation to this section. On alternative dispute resolution, delegates agreed to work on the basis of a proposal by the African Group providing for dispute resolution mechanisms to be guided by principles of equity drawn from a wide range of legal sources, including customary law and practices of indigenous

and local communities. On enforcement of judgments and remedies and sanctions, delegates agreed to retain all existing proposals since they are complementary. On measures to ensure compliance with customary law and on local systems of protection, delegates agreed to use text submitted by the African Group and New Zealand as basis for further negotiations.

A revised non-paper was drafted as a result of deliberations, which, as explained by contact group Co-Chair Lefeber, included: mention of both genetic and biological resources in brackets; neutral formulations with regard to the choice of instrument; and a footnote that the placement of paragraphs must be further considered under the items, which at the time were still divided into bricks and bullets. Delegates proceeded to further consolidate operational text.

On awareness-raising activities to encourage compliance, parties proposed additional tools, including: an ABS CHM; best-practice tools; measures to promote a wider understanding of the concept of misappropriation, misuse and biopiracy; and the recognition of the contribution made by indigenous and local communities to biodiversity. The African Group suggested that parties raise awareness to promote application of traditional knowledge by involving indigenous and local communities in various research and education activities.

Delegates bracketed all paragraphs under development of tools to monitor compliance. Parties made additional proposals on capacity-building measures to develop tools to monitor compliance, and on requiring compliance with national legislation in the country of origin and the MAT on which access was granted, including requirements for benefit-sharing. On mechanisms for information exchange, parties proposed adding references to: non-internet means; and facilitating funding, capacity building and participation in the ABS CHM. Regarding the types of information to be made available by parties, new paragraphs were added on: information about model ABS legislation and menus of model clauses; experiences in the development of electronic tools for the tracking of genetic resources; community protocols; and codes of conduct and best practices. The EU said that monitoring compliance should not be a CHM function, and proposed that the CHM support users of genetic resources in accessing information, and the exchange of information for non-commercial research.

Delegates then debated a section on the domestic competent authority, with the EU and others reiterating that the text should be placed in the document on access, and bracketing a reference to the issuance of certificates of compliance as part of the authority's functions. The EU proposed a new function on helping providers of genetic resources to obtain relevant information, including in cases of alleged infringements of provider country requirements in relation to PIC and MAT.

On an internationally recognized certificate of compliance, delegates discussed and made textual amendments on: both an elaborate option, including minimum information requirements, checkpoints, technologies to facilitate certification, and disclosure requirements in IPR applications; and a short option requiring provider parties to issue a certificate on the country of origin and compliance with national ABS legislation. Reference to provider countries was debated at length.

Delegates debated whether to refer to provider countries, or to quote CBD Article 15.3 referring to countries of origin or to countries that have acquired the resources in accordance with the Convention.

Regarding enforcement of national ABS legislation under a section on tools for compliance, Norway suggested additional tools, including compliance with PIC for import of genetic resources and documentation accompanying genetic resources for research and commercialization. Peru suggested a reference to safeguarding and respecting the genetic and traditional knowledge heritage of countries of origin in the granting of any right, in particular in relation to IPR and product approvals. Canada and the EU raised concerns that text introduced contained elements that had been classified as bullets. The EU subsequently introduced language on compliance with international access standards as a precondition for compliance with national ABS legislation; and Canada on facilitated access to genetic resources and ensuring non-discrimination among users accessing these resources. The LMMC and the African Group opposed the introduction of compliance with reference to international access standards, arguing that this would upgrade bullets into bricks. Following a lengthy discussion, parties supported a proposal by Co-Chair Lefeber to resolve the issue in a closed-door meeting with the spokespersons of negotiating groups. Following the late-night consultations, delegates agreed that the bricks and bullets structure should be removed. (See page 3 under Organizational Matters.)

The contact group then continued its deliberations addressing development of tools to enforce compliance. The group upheld a suggestion by Norway to move its proposal on development of tools to monitor compliance to this section. The EU proposed to entirely bracket provisions on: ensuring compliance with the national legislation of the country of origin; remedies and sanctions, which should be discussed together with their triggers; and cooperation in the investigation of alleged violations of national ABS legislation. Small island developing states (SIDS) suggested adding a new paragraph providing that user parties shall provide financial assistance for the settlement of legal disputes.

On tools to encourage compliance, Canada bracketed a paragraph on international understanding of misappropriation and misuse. On sectoral menus of model clauses for material transfer agreements, the African Group proposed that parties should also ensure binding compliance measures. Japan requested bracketing reference to sectoral menus and suggested that users and providers take into account the common elements of various sectors and the particularity of each sector. The LMMC bracketed the entire element and added language to ensure that access is addressed at the national level. Canada supported that parties submit a compilation of model clauses to the clearing-house mechanism. On codes of conduct for important groups of users, the African Group called for ensuring the communication of codes of conduct and best-practice standards to the relevant user groups.

On international access standards (that do not require harmonization of domestic access legislation) to support compliance across jurisdictions, the LMMC proposed moving all the text into the document on access. The EU stressed the need for a linking clause on access-related tools to enforce compliance and included an "open" cross-reference, which was subsequently bracketed by the LMMC.

Delegates discussed tools to monitor compliance. On tracking and reporting systems, Australia suggested language on information exchange, and including monitoring and tracking in

ABS contracts. New Zealand and Japan bracketed paragraphs on disclosure requirements, while the EU bracketed references to disclosure in product approval applications. On identification of checkpoints, the African Group introduced language requesting parties to establish checkpoints at IPR offices, market approval authorities and entities funding research, which should cover all uses.

Delegates then addressed tools to enforce compliance. On measures to ensure access to justice, SIDS introduced reference to Principle 10 of the Rio Declaration (participation and access to justice). Canada and the LMMC requested bracketing a paragraph on an international ombudsman. Canada also bracketed a section on alternative dispute resolution, suggesting that parties should encourage users and providers to use existing mechanisms.

On enforcement of judgments, the EU and Canada requested bracketing language on enforcing decisions of the courts of provider countries. On information exchange procedures between national focal points, the African Group provided text on the international ombudsman facilitating information exchange on infringement of PIC requirements. On remedies and sanctions, Japan requested bracketing a paragraph addressing IPR, while Canada and Australia bracketed paragraphs on systems to seek redress in cases of breach of contractual obligations or misappropriation, and on cooperation between parties on addressing infringements of ABS agreements. A third reading of the document was concluded during the early hours of Wednesday, 8 April.

During the closing plenary, Co-Chair du Plessis presented the outcome document and introduced editorial corrections, noting that some parties have reserved their right to propose text at a later stage.

The LMMC noted that sub-headings on domestic competent authority and internationally recognized certificates had not been agreed upon by the Working Group or the COP, and suggested they be deleted. With regard to footnotes referring to sub-headings on domestic competent authority and on development of tools to enforce compliance, he suggested adding a statement after the respective operational text, that the placement of the paragraphs must be further considered. The document was adopted with these amendments.

**Final Outcome:** The outcome document (UNEP/CBD/WG-ABS/7/L.4) is heavily bracketed, including brackets around entire paragraphs and items within each paragraph.

Under development of tools to encourage compliance, the document addresses:

- Awareness-raising activities, including stakeholder meetings, an ABS CHM, promotion of codes of conduct, and awareness raising regarding the wider application of traditional knowledge;
- An international understanding of misappropriation/misuse;
- Sectoral menus of model clauses for material transfer agreements, including on encouraging providers and users to consider relevant inventories/catalogues of typical utilizations and related benefits, identifying sectors for which model clauses and inventories should be developed; identifying issues to be addressed in model clauses; and encouraging the use of model clauses to be included in MAT for research not aiming at commercialization, research and development aiming at commercialization, and commercialization;

- Codes of conduct for important groups of users, including that parties support the development of ABS codes of conduct for users, and ensure communication, education and awareness;
- Identification of best-practice codes of conduct, including establishing a procedure for identifying and regularly reviewing ABS codes of conduct and guidelines that constitute best-practice;
- Research funding agencies to oblige users receiving research funds to comply with specific ABS requirements, including asking for the unique identifier code referred to in the certificate of compliance or evidence of compliance with relevant national law;
- Unilateral declaration by users; and
- International access standards (that do not require harmonization of domestic access legislation) to support compliance across jurisdictions.

Under development of tools to monitor compliance, the document addresses:

- Mechanisms for information exchange, including: collaboration to facilitate information exchange to monitor or support compliance with national ABS legislation, facilitate exchange of scientific, technical, environmental and legal information, facilitate adequate funding and capacity building, and assist parties to implementation; and an ABS CHM, information to be made available to it and its operation requirements;
- Internationally recognized certificate issued by a domestic competent authority, including on: designation of national focal points for ABS; designation of a national competent authority and its functions; and a certification system, including its aims, minimum information, checkpoints, facilitation of the certification process through the use of new technology and other measures;
- Tracking and reporting systems, including to identify breaches of contractual obligations or misappropriation;
- Information technology for tracking;
- Disclosure requirements, including on IPR and product approval applications, enforcement procedures and compliance with national legislation in the country of origin; and
- Identification of checkpoints, including on establishing supporting mechanisms for compliance and checkpoints at IPR offices.

Under development of tools to enforce compliance, the document addresses:

- Compliance with national legislation of the country of origin;
- Use for purposes consistent with the access terms and conditions;
- Rules for genetic resources covered by ITPGR;
- Sanctions and remedies;
- Cooperation in the investigation and follow up of cases of alleged violations of national ABS legislation in the country of origin; and
- Financial assistance for the settlement of legal disputes.

Further tools to enforce compliance include:

- measures to ensure access to justice with the aim of enforcing ABS arrangements, including measures to support effective implementation and an international ABS ombudsman;
- dispute settlement mechanisms, including on inter-state, private international law and alternative dispute resolution;

- enforcement of judgments and arbitral awards across jurisdictions, including on enforcement of the decisions of courts of the country of origin/provider countries;
- information exchange procedures between national ABS focal points to help providers obtain relevant information in specific cases of alleged infringements of PIC requirements, including through the international ombudsman;
- remedies and sanctions, including on development of systems to initiate actions to prevent, mitigate or seek redress in cases of breach of contractual obligations or misappropriation; and
- measures to ensure compliance with customary law and local systems of protection, including on recognizing the rights of indigenous peoples and local communities, and supporting the development of community protocols.

**FAIR AND EQUITABLE BENEFIT-SHARING:** The Working Group considered benefit-sharing in plenary on Friday, 3 April. The contact group addressed the issue on Sunday, 5 April, and Tuesday, 7 April.

In plenary, the LMMC proposed additional text linking access to benefit-sharing, stating that: PIC for access to genetic resources, their derivatives and associated traditional knowledge shall be obtained from the party of origin, in accordance with the CBD, through its competent authorities; and subject to national legislation, where access is sought to traditional knowledge, users shall obtain PIC from the indigenous and local communities in accordance with Article 8(j). The EU and Japan underscored that benefit-sharing should be subject to MAT. The EU suggested that model clauses and inventories could contribute to a level-playing field between providers and users. Switzerland suggested identifying three specific categories of activity: research not aiming at commercialization; research and development; and commercialization.

The contact group started discussions on the basis of a non-paper on benefit-sharing, compiling country submissions according to the structure of the annex to COP Decision IX/12, with delegates identifying the submissions to be used as a basis for further work.

On linkage of access to the fair and equitable sharing of benefits, delegates considered proposals on: PIC; measures to encourage benefit-sharing in MAT; and providing information to, and ensure compliance of, users of genetic resources with national legislation in the providing country. Discussions revolved around whether PIC should be dealt with under benefit-sharing, access, or both, with parties deciding to address the element under both. They also decided that the proposals were not mutually exclusive, and that they should be retained as separate paragraphs in the text.

On benefits to be shared under MAT, Switzerland supported an EU proposal referring to model clauses and inventories/catalogues of typical utilizations of genetic resources and related benefits when establishing MAT. The LMMC requested retaining its language on national legislative measures and the use of associated traditional knowledge and, with SIDS, suggested merging these proposals. The LMMC also suggested retaining a Norwegian proposal making reference to the indicative list of MAT contained in the Bonn Guidelines on ABS. Delegates agreed to merge the text of all proposals.

On monetary and non-monetary benefits, the EU, supported by the LMMC, suggested combining its own proposal stating that MAT may identify the types of monetary and non-monetary

benefits to be shared, with an Indian proposal providing for an indicative list of such benefits. Japan preferred a proposal by Norway making direct reference to the Bonn Guidelines. The Philippines, SIDS and the African Group asked to retain SIDS' language stating that benefit-sharing should include all forms of utilization of genetic resources, their derivatives and associated traditional knowledge. Delegates agreed to merge text from the proposals by the EU, India, SIDS and Norway.

On access to and transfer of technology, the EU and Canada supported retaining the EU proposal stating that parties requiring PIC for access to take measures to encourage providers and users to consider access to and transfer of technology making use of those resources. The LMMC argued that their proposal, calling for facilitating access to joint development and transfer of technologies to countries of origin, is a reflection of the Convention text. Delegates decided to retain both the EU and the LMMC proposals as two distinct options.

On sharing of results of research and development on MAT, delegates decided to retain both a more comprehensive LMMC proposal and an EU submission stating that parties requiring PIC for access should take measures to encourage providers and users to consider sharing of results of research and development when establishing MAT.

On mechanisms to promote equality in negotiations, delegates accepted merging an EU proposal regarding supporting the capacity of providers and users to negotiate MAT with a Norwegian proposal on ensuring participation by indigenous peoples and local communities in access procedures.

On an EU proposal on awareness raising, the LMMC observed that it duplicated text in the section on compliance, cautioning this could unbalance the text. Canada suggested that there could be similar awareness-raising instruments under compliance and benefit-sharing.

On measures to ensure participation of indigenous and local communities in MAT, and benefit-sharing with traditional knowledge holders, delegates agreed to merge the existing proposals by the LMMC, the African Group and Norway into a single text.

On development of menus of model clauses for potential inclusion in material transfer agreements, delegates agreed to maintain the EU and Swiss proposals as two alternative options. Regarding enhanced utilization of the Bonn Guidelines, the EU said they would rework its preambular language into operational text during the second reading.

On Tuesday, 7 April, delegates addressed a conference room paper (CRP) on benefit-sharing and proceeded to consolidate positions by proposing and bracketing text. On the linkage of access to the fair and equitable sharing of benefits, Canada bracketed provisions referring to: PIC, including for changes in use of genetic resources for which access has been previously granted, and unforeseen uses; indigenous and local communities; and measures requiring users to comply with ABS legislation of provider countries.

On benefits to be shared under MAT, Peru proposed language stating that the absence of MAT must not constitute grounds for the denial of benefit-sharing. Australia preferred reference to the party providing the resources, rather than the country of origin, while the LMMC favored the opposite. The IIFB called for reference to community protocols and customary laws along with national legislation.

On monetary and non-monetary benefits, Canada bracketed language on ensuring that benefit-sharing includes all forms of resource utilization. The African Group proposed that parties take measures to share the benefits of research and technology linked to conservation and sustainable use irrespective of access.

In the closing plenary, contact group Co-Chair du Plessis reported that many of the issues are interconnected and will remain bracketed until they are clarified. The outcome document was approved with minor editorial amendments.

**Final Outcome:** The outcome document (UNEP/CBD/WG-ABS/7/L.5) is heavily bracketed, including brackets around entire paragraphs and items within each paragraph.

The document addresses the following issues:

- Linkage of access to the fair and equitable sharing of benefits, including: PIC for access to genetic resources and associated traditional knowledge from the country of origin; PIC of indigenous and local communities holding traditional knowledge; stipulation of permitted uses in MAT; measures for the sharing of benefits arising from research and development, and commercialization; and mechanisms to provide information to users concerning their obligations regarding access;
- Benefits to be shared on MAT, including measures to encourage providers and users to provide for benefit-sharing in MAT, such as model clauses, sharing of results of research and development, and access to and transfer of technology;
- Monetary and/or non-monetary benefits, including those listed in Appendix II of the Bonn Guidelines, transfer of the technology developed using genetic resources, including biotechnology, and capacity strengthening to enable effective technology transfer;
- Access to and transfer of technology, including technologies relevant for the conservation of and sustainable use of genetic resources;
- Sharing of results of research and development on MAT, including facilitated access to the results of research and development, including technologies protected by patents and other IPRs;
- Effective participation and/or joint development in research activities, including measures to: strengthen research capability and ensure effective involvement of national counterparts, and ensure that the private sector facilitates joint development of technologies;
- Mechanisms to promote equality in negotiations, including by: making information available through the designated ABS focal point in a timely manner; supporting the capacity of providers and users; and adopting measures to ensure appropriate participation by indigenous peoples and local communities in access procedures;
- Awareness-raising, including measures to make available information about domestic ABS frameworks; steps to promote the international regime; organization of stakeholders meetings; establishment of helpdesks; and promotion of codes of conduct;
- Measures to ensure participation and involvement of indigenous and local communities in MAT and sharing of benefits with traditional knowledge holders, including: community protocols and *sui generis* systems for the protection of traditional knowledge; recognition of the rights of indigenous and local communities; and sharing of benefits

in accordance with Article 8(j) of the CBD, including benefits to humanity in general and benefits to indigenous and local communities;

- Mechanisms to encourage benefits to be directed toward conservation and sustainable use of biodiversity and socioeconomic development, in particular the Millennium Development Goals, in accordance with national legislation;
- Development of international minimum conditions and standards, including strengthening the situation of the less powerful party at all levels, not interfering with customary benefit-sharing mechanisms, and allowing participation in policy decisions;
- Benefit-sharing for every use;
- Multilateral benefit-sharing options when origin is not clear or in transboundary situations, including the development of: a multilateral system of exchange; and bilateral and multilateral agreements to ensure the sharing of the benefits arising from transboundary genetic resource;
- Establishment of trust funds to be administered by representatives of indigenous and local communities to address transboundary situations, in cases where the origin of traditional knowledge is unclear;
- Development of menus of model clauses for potential inclusion in material transfer agreements, including measures to: encourage providers and users to include them in MAT; identify sectors for which model clauses, inventories and catalogues of utilization should be developed; and enable the submission of compilations of model clauses to the ABS CHM; and
- Enhanced utilization of the Bonn Guidelines.

**ACCESS:** The Working Group considered access in plenary on Friday, 3 April. A contact group conducted a first reading of a non-paper on access on Sunday, 5 April, and a second reading on the basis of a CRP in the early morning hours of Wednesday, 8 April.

Major issues included linkage of access to fair and equitable sharing of benefits; and international access standards; and simplified access rules for non-commercial research.

In plenary, the LMMC presented additional text, stating that parties shall take the necessary measures to establish an appropriate national regulatory framework to protect their sovereignty over genetic resources, their derivatives and associated traditional knowledge, and to ensure benefit-sharing.

The EU explained that its submitted proposals build mainly on the Convention text, including Article 15.2, calling for specific measures to ensure legal certainty, clarity and transparency of national access frameworks. He stressed the link between access and compliance across jurisdictions, as well as the need for: simplified access rules for non-commercial biodiversity research; non-discrimination of access rules; and strengthening capacity for development of national ABS frameworks.

In the contact group, the IIFB said their proposal that access to genetic resources and associated traditional knowledge is subject to the free PIC of indigenous peoples and local communities should be included, and the African Group sponsored it.

On linkage of access to fair and equitable sharing of benefits, delegates agreed to merge proposals by the LMMC, the EU, the African Group and India, noting that similarities in parts of them will have to be streamlined during the second reading. On

legal certainty, clarity and transparency of access rules, delegates decided to retain proposals by the African Group, the EU and Norway in distinct paragraphs.

On both non-discrimination of access rules and international access standards to support compliance across jurisdictions, delegates agreed to work on the basis of EU proposals. On internationally developed domestic legislation, the group decided to merge proposals by the EU and Australia. On simplified access rules for non-commercial research, proposals by the EU and Norway were retained for further consideration.

In the closing plenary Co-Chair du Plessis reported on the work of the contact group on access and introduced editorial corrections. The plenary approved the outcome document as amended.

**Final Outcome:** The outcome document (UNEP/CBD/WG-ABS/7/L.6) is heavily bracketed, including brackets around entire paragraphs and items within each paragraph.

The document addresses the following issues related to access under the regime:

- The recognition of sovereign rights and the authority of parties to determine access, including that: parties have sovereign rights over their natural resources and the authority to determine access rests with their national governments; the role of indigenous and local communities in determining access to traditional knowledge related to genetic resources and the requirement for their free PIC; and domestic competent authority, including national focal points, references to their designation and procedures and handling of access applications;
- Linkage of access to fair and equitable sharing of benefits, including establishment of the necessary national regulatory framework to protect parties' rights over genetic resources; requirements for PIC and MAT, new uses of genetic resources, consequences for violations, and measures to facilitate access for environmentally sound uses and benefit-sharing;
- Legal certainty, clarity and transparency of access rules, including creation of conditions of legal certainty to facilitate access to genetic resources avoiding imposition of restrictions that run counter to the CBD objectives and procedures for countries of origin or other countries that have acquired the genetic resources in accordance with the CBD;
- Non-discrimination of access rules, providing that each party when applying its domestic ABS framework shall/should not arbitrarily discriminate between users from other contracting parties;
- International access standards (that do not require harmonization of domestic access legislation) to support compliance across jurisdictions aiming at the creation of conditions to support compliance with ABS-related obligations across jurisdictions, including clear rules on access, procedures for applying for PIC, simplified access for non-commercial research, information on domestic ABS frameworks, clear procedures for national competent authorities, and appeal procedures;
- Internationally developed model domestic legislation, including collection of examples of model provisions for domestic legislation, and compilation of model provisions consistent with international access standards;
- Minimization of administration and transaction costs; and

- Simplified access rules for non-commercial research, setting out specific possible procedures, use of electronic tools, and exchange of information on best practices.

### CLOSING PLENARY

The closing plenary convened at 3:00 pm on Wednesday, 8 April, to adopt the report of the meeting and the outcome documents regarding the objective of the regime, its scope, compliance, benefit-sharing and access. Contact group Co-Chairs du Plessis and Ivars presented the outcomes of their respective groups.

Working Group Co-Chair Hodges thanked delegates for their hard work and dedication and said in this meeting the Working Group made a "big leap" in elaborating the negotiating text for compliance, benefit-sharing and access. He clarified that the final documents (UNEP/CBD/WG-ABS/7/L.2-6) will constitute one single annex to the report and form the basis for future negotiation of those issues. He further clarified that ABS 8 will engage in negotiations on the nature of the international instrument, traditional knowledge and capacity building, on the basis of Annex 1 to COP Decision IX/12, and invited submission of views and proposals on these items. He also expressed his appreciation to the Global Environment Facility for its ongoing support of ABS capacity-building activities.

The LMMC stressed that while the bricks and bullets methodology was abandoned, the elements that parties had already agreed would form part of the regime would remain. The EU confirmed their understanding that following the removal of bricks and bullets, all text stands on an equal footing. The LMMC called for clarification on whether this implies putting into question elements already agreed upon, with the EU noting that the removal of bricks and bullets is a major step forward and does not imply a roll-back on the commitment to seriously negotiate towards COP 10.

The LMMC made a declaration regarding the ongoing negotiations under the auspices of the WHO on pandemic influenza preparedness, clarifying that China is still undergoing consultations regarding the endorsement of this declaration. He stressed, among other things that: the WHO negotiations are inconsistent with the scope of the CBD; the objectives and provisions of the CBD should be recognized; and those negotiations should not prejudice the outcome of negotiations under the CBD.

Egypt, on behalf of the African Group, expressed its support for the declaration made by the LMMC, noting a tendency to subordinate the CBD to international non-environmental instruments. He called for consideration of the interdependence of the three CBD objectives, the advancing rate of biodiversity loss, regression in sustainable use of, and scientific research on, biodiversity, and as a result regression in biodiversity's contribution to poverty reduction. He cautioned against sectoralizing the international ABS regime and expanding the list of exclusions from its scope, noting it risks being an empty instrument.

Venezuela reminded that there is no international instrument covering the exploitation of marine resources outside areas of national jurisdiction, and called for those resources to be covered by the international regime.

Rapporteur Damaso Luna (Mexico) introduced the meeting's report (UNEP/CBD/WG-ABS/7/L.1). The EU requested a clear statement regarding the possibility for additional submissions of

views and operational text for the next meeting of the Working Group, adding that all submissions must respect the state of play and expressed intent to make suggestions on tools to enforce compliance.

The Secretariat noted that an EU statement on scope had been inadvertently omitted from the report, which read that the EU reserved its position with regard to the exclusion of specific uses of pathogens of particular public concern for the health of humans, animals or plants from the scope of the international regime, and further indicated that they were consulting internally on how to address this issue and that they would present a proposal as soon as the internal consultations are completed.

The Secretariat also introduced text related to the proceedings of the contact group on compliance, stating that following discussions, the Working Group Co-Chairs confirmed the understanding that the distinction between bricks and bullets had outlived its usefulness and therefore would no longer be applied to the main components.

Brazil requested an amendment to a paragraph to properly reflect his statement that it is time to devise an effective instrument to recognize the rights of indigenous and local communities to their knowledge “as a tool to promote sustainable development.”

Discussions between the LMMC, the EU and others arose as to whether the report should include language referring to the removal of “the bricks and bullets methodology” instead of “the distinction between bricks and bullets.” Working Group Co-Chair Hodges agreed to consult with the contact group Co-Chairs to ensure that the report is factually accurate, and the term “methodology” was not added. Contact group Co-Chair du Plessis set out the compromise as elaborated in closed-door negotiations to: delete the headings referring to bricks and bullets; withdraw certain duplicative texts; and apply this approach to all three papers on compliance, benefit-sharing and access. He further asked to include a paragraph in the final report setting out his understanding that the bricks and bullets helped secure consensus at ABS 6, but the Working Group needed to move away from this in order to make progress at ABS 7. New Zealand asked to remove New Zealand and Norway from the list in the paragraph on support for removal of the bricks and bullets and to instead add a reference in the following paragraph setting out that New Zealand and Norway observed that what constituted duplication in this context was not always clear cut. Co-Chair Hodges stressed the importance of clarity on the final compromise as stated in the report, noting that “the Co-Chairs of the Working Group confirmed the understanding that the distinction between bricks and bullets had outlived its usefulness and therefore would no longer be applied to the main components.” The LMMC asked to add a further paragraph to the report to reiterate that the removal of the distinction between bricks and bullets refers to the removal of the methodology of bricks and bullets, but not to the reversal of the agreements reached at ABS 6 and ratified by COP Decision IX/12.

The report of the meeting was then adopted as amended.

Haiti, for GRULAC, emphasized the need to finalize an international instrument on ABS by COP 10. Ukraine, for Central and Eastern Europe, highlighted the need for preparatory work before the next meeting. Namibia, for the African Group, urged parties to prepare thoroughly in the intersessional period, with a view to engaging in good faith at ABS 8. The EU underscored

the future negotiating challenges and called on parties to engage with the work ahead. The LMMC expressed “cautious optimism” and suggested that constructive work on the outcome documents will assist progress at ABS 8.

The IIFB stated that indigenous peoples’ and local communities’ participation at the international, national and local levels is critical for securing recognition of their rights. She reminded that MAT are contingent on PIC and that respect for customary law is critical to this end.

John Scott, CBD Secretariat, thanked the Government of Spain for supporting capacity development work in the Latin American and Caribbean region. CBD Executive Secretary Ahmed Djoghlaif and representatives of the Women’s Biodiversity Network signed a Memorandum of Understanding to initiate a three-year strategy to build capacity for implementing Articles 8(j) and 15.

Djoghlaif described the meeting as a success, thanked the Co-Chairs of the Working Group and contact groups, and underscored his gratitude to the Global Environment Facility for its continued funding and Montréal International for its support of the CBD’s meetings held in Montreal.

Working Group Co-Chair Casas noted that despite progress made, pressure is building towards completing operational text on all the main components of the regime. He underscored the importance of regional and interregional consultations to advance the negotiations, and noted encouraging discussions with UNEP and donors to ensure funding for these consultations.

Working Group Co-Chair Hodges then gavelled the meeting to a close at 7:39 pm.

## A BRIEF ANALYSIS OF ABS 7

ABS 7 took another step forward in the negotiation of an international regime on access and benefit-sharing. In Paris, delegates undertook the first round of “real” negotiations on operational text regarding a number of the core components of the future regime – objective, scope, access, benefit-sharing and compliance – and adopted negotiating documents on these elements. However, in terms of negotiating spirit, it represents a rollback to ABS 5. While most delegates expressed the belief that some progress was achieved with regard to substance, the great majority expressed their concern about the repeated clashes between the major negotiating groups and the fact that most of the negotiating time was lost in protracted and, in the eyes of many, unnecessary procedural debates. This brief analysis assesses the outcome, revisits the negotiating dynamics that prevented further progress and explores the prospects for meeting the COP 10 deadline.

## STACKING BARGAINING CHIPS – FOR BETTER OR FOR WORSE

Most delegates arrived in Paris optimistic that the collaborative atmosphere that had prevailed during ABS 6 and COP 9 would continue. After all, ABS 6 had put the negotiating structure in place, and many hoped that the new insights and recommendations stemming from two intersessional expert meetings and numerous studies on technical and legal issues such as concepts, definitions and scope, compliance and monitoring, and tracking would give a boost to the negotiations. However this optimism quickly dissipated and the atmosphere notably soured as parties lost faith in each others’ goodwill.

Delegates staked out their negotiating positions in the text, and the main negotiating groups seemed to fall back on many issues into positions close to those they had put forward at the beginning of the process at ABS 3 and 4.

The African Group, for example, inserted language throughout the text to note that the regime's scope covers not only genetic resources but the broader concepts of biological resources, derivatives, and products. The African delegates also sought links to other CBD work programmes, such as funding for conservation work and protected area management, which others perceived as being clearly outside of the Working Group's mandate. The EU insisted on references to compliance with international access standards, and the LMMC inserted references to a future protocol, implying the instrument's legally binding nature, access in accordance with national legislation, and disclosure requirements in patent applications – all measures they knew the Working Group would not agree upon.

Most delegates explained this behavior as “stacking bargaining chips” as leverage for striking deals in future meetings, however many expressed concerns that the major negotiating groups were taking the game too far, which could lead to a collapse of the fragile progress made to date. Another aspect of this strategy was the introduction of new, widely divergent proposals into the regime's scope. Positions have always differed regarding the inclusion of derivatives and products, however during this meeting new gaps emerged on exemptions to the regime, with regard in particular to viruses and pathogens. An EU statement noting that they are still considering their position on the issue led to a passionate late-night debate in the contact group on scope, and a series of declarations during the closing plenary. The African Group, for instance, elaborated on the danger of “sectoralizing” the regime, meaning that more and more elements of the scope are referred to in other agreements such as the ITPGR or the World Health Organization's negotiation of a multilateral framework for the sharing of influenza viruses, which could lead not only to an “empty regime” but also to subordinating the CBD to non-environmental agreements. Even the generally agreed exception of human genetic resources was questioned in a similar way, giving the impression that positions on scope are drifting ever further apart.

The result of the ABS 7 deliberations is a set of documents that total 47 pages containing more than 2,000 brackets and numerous alternative proposals. As set out in the Bonn Roadmap adopted at COP 9, ABS 7 covered objective, scope, compliance, benefit-sharing and access, whereas ABS 8 should focus on nature, traditional knowledge and capacity building. On compliance, benefit-sharing and access, however, delegates will have an opportunity to submit further text proposals, resulting in an agenda that many described as a truly herculean task.

### **THE GRANADA SYNDROME AND THE CURSE OF THE BRICKS AND BULLETS**

The defining element of ABS 7 was the repeated and often painfully protracted discussions on procedure and the “rules of engagement” put forward by the different sets of Co-Chairs, which consumed the majority of negotiating time and prevented the meeting from moving into actual negotiations on substance.

Participants developed two complementary theories for explaining this problem: the “Granada Syndrome” and the “curse of the bricks and bullets.” The Granada Syndrome refers to the

endless debates on the status of the ABS 4 outcome document for further negotiations during COP 8 and ABS 5. While developing countries wanted to use a text compiling views expressed during ABS 4 as basis for negotiations, developed countries refused to accord the text such a status arguing that they were not yet prepared to enter formal negotiations on an international regime.

Ever since, delegates have been keen on maintaining control of the negotiating document and have repeatedly questioned the Working Group Co-Chairs' decisions on procedure, giving them little room to maneuver. The suspicion that any text coming out of a Working Group meeting could prejudge further discussions led the Co-Chairs to adopt a party-driven strategy and prevented bold moves, such as the tabling of a new Co-Chairs' text in order to move issues forward. This has created a collective need to keep confirming the procedural rules of engagement and secure negotiating positions under all possibly related items.

At past meetings, the Granada Syndrome arguably kept delegates trapped and unable to agree on a structure for a negotiating text, while the absence of such a structure prevented progress in the elaboration of the regime's future components. The invention of the system of bricks and bullets at ABS 6 made it possible to escape this vicious circle: in this way, delegates were able to list components they all agreed would form part of the regime (bricks), as well as components that required further consideration (bullets).

Notwithstanding its importance for breaking the deadlock in Geneva, the bricks and bullets approach haunted the discussion on operational text in Paris. From the outset it proved difficult to decide whether countries' submissions would be more adequately placed under bricks or bullets, since many text proposals cut across several issues, and interpretations as to what should be a brick and what should be bullet differed among groups. During the first half of ABS 7, delegates therefore engaged in intricate operations of moving text between bricks and bullets, often duplicating paragraphs.

The resulting debates about procedure and the adequate placement of text escalated inexorably into mutual accusations of attempting to undermine the Geneva agreement and graduate bullets into bricks “by stealth.” Delegates in the corridors began accusing each other of bad faith. As tensions rose, more and more participants realized that the bricks and bullets approach had outlived its usefulness and needed to be removed. Nevertheless, the dynamic of confrontation had begun to spiral out of control and resulted in a powerful clash between the LMMC and the EU. The crisis opened the way towards retiring the bricks and bullets approach and moving ahead with compiling and consolidating operational texts, but left many parties gravely concerned about the deterioration of the cooperative spirit and the impact on future negotiating dynamics. One delegate commented that “we have invested all this time at ABS 6 and COP 8 in building mutual understanding and collaborative relations among delegates, and now we seem to have squandered this capital.”

The parties who used to be reluctant to engage in the negotiations, such as Australia and Canada, seemed the most taken aback by these developments, since they came to Paris ready to participate more constructively. Yet, some had not expected to enter into negotiations on elements previously identified as bullets, and reacted by “blanket bracketing” entire

sections throughout the text and suggesting language that would make many of the regime's core components voluntary rather than binding.

**FINDING A WAY FORWARD?**

Taken together, the effect of the maximalist strategies pursued by the negotiating groups and the fallout of the meltdown over the bricks and bullets approach could place a significant burden on future negotiations. It will take time and effort to mend the working relationships among the negotiating groups. Both the stacking of bargaining chips and the removal of the bricks and bullets contributed to the adoption of negotiating document that is lengthy and confusing, as parties' strategies resulted in duplication of proposals and the proliferation of text.

Although the structure of elements remains, the text now contains brackets throughout and around entire paragraphs covering up a large number of potential pitfalls, as virtually none of the most controversial issues have been addressed so far, and a number of new ones have been added.

Two interpretations prevailed as delegates left Paris. Looking back, many welcomed the outcome as an important step towards a consolidated negotiating text, which, in view of the difficulties of agreeing to any outcome at past meetings, was perceived as a success in itself. Looking forward, others expressed strong doubts about the prospects of completing negotiations before COP 10, with some suggesting that COP 10 would have to establish a negotiating committee to sort out the details of the regime. One participant hoped delegates would not attempt to rush the negotiations towards COP 10, since the complexities of ABS require a careful and well balanced legal framework to ensure that the regime will be effective.

Opinions differ on whether the outcome of ABS 7 is more or less on track with the Bonn Roadmap. Many expressed doubts whether the negotiations will be completed on time, while others said it is too early to predict what outcome will be presented to COP 10. The quest now begins for a novel negotiating tool and hopefully a vision to allow for the development of a meaningful ABS regime.

**UPCOMING MEETINGS**

**ITPGR GB 3:** The third session of the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture will be held from 1-5 June 2009 in Tunis, Tunisia. For more information, contact: ITPGR Secretariat; tel: +39-06-570-53441; fax: +39-06-570-56347; e-mail: pgrfa-treaty@fao.org; internet: [http://www.planttreaty.org/meetings/gb3\\_en.htm](http://www.planttreaty.org/meetings/gb3_en.htm)

**EXPERT GROUP ON TRADITIONAL KNOWLEDGE ASSOCIATED WITH GENETIC RESOURCES:** The expert group on traditional knowledge associated with genetic resources, established within the framework of the negotiations for an international ABS regime, will take place from 16-19 June 2009 in Hyderabad, India. For more information, contact: CBD Secretariat; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: secretariat@cbd.int; internet: <http://www.cbd.int/meetings/>

**CGRFA 12:** The 12th regular session of the FAO Commission on Genetic Resources for Food and Agriculture (CGRFA) will be held from 19-23 October 2009, at FAO headquarters in Rome, Italy. For more information, contact: CGRFA Secretariat; tel: +39-06-570-55480; fax: +39-06-570-53057; e-mail: cgrfa@fao.org; internet: <http://www.fao.org/ag/cgrfa/>

**SIXTH MEETING OF THE CBD WORKING GROUP ON ARTICLE 8(J) AND RELATED PROVISIONS:** This meeting is scheduled to be held from 2-6 November 2009, in Montreal, Canada. For more information, contact: CBD Secretariat; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: secretariat@cbd.int; internet: <http://www.cbd.int/doc/?meeting=WG8J-06>

**ABS 8:** The eighth meeting of the CBD Working Group on Access and Benefit-sharing is scheduled to be held from 9-15 November 2009, in Montreal, Canada. For more information, contact: CBD Secretariat; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: secretariat@cbd.int; internet: <http://www.cbd.int/meetings/>

**ABS 9:** The ninth meeting of the CBD Working Group on Access and Benefit-sharing is scheduled to be held from 18-24 March 2010. The venue remains to be determined. For more information, contact: CBD Secretariat; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: secretariat@cbd.int; internet: <http://www.cbd.int/meetings/>

**CBD SBSTTA 14:** The fourteenth meeting of the CBD Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA) will be held from 13-21 May 2010. The venue remains to be determined. For more information, contact: CBD Secretariat; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: secretariat@cbd.int; internet: <http://www.cbd.int/meetings/>

**CBD WORKING GROUP ON REVIEW OF IMPLEMENTATION OF THE CONVENTION (WGRI 3):** This meeting will be held from 24-28 May 2010. The venue remains to be determined. For more information, contact: CBD Secretariat; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: secretariat@cbd.int; internet: <http://www.cbd.int/meetings/>

**CBD COP 10:** The tenth Conference of the Parties to the CBD will be held from 18-29 October 2010, in Nagoya, Japan. COP 10 is expected to: assess achievement of the 2010 target to reduce significantly the rate of biodiversity loss; adopt an international ABS regime; adopt an instrument on liability and redress in the context of the Cartagena Protocol on Biosafety; and celebrate the International Year of Biodiversity 2010. The High-level Segment will be held from 27-29 October 2010. For more information, contact: CBD Secretariat; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: secretariat@cbd.int; internet: <http://www.cbd.int/meetings/>

**GLOSSARY**

ABS	Access and Benefit-sharing
CBD	Convention on Biological Diversity
CHM	Clearing-House Mechanism
COP	Conference of the Parties
GRULAC	Latin American and the Caribbean Group
IIFB	International Indigenous Forum on Biodiversity
IPR	Intellectual Property Rights
ITPGR	International Treaty on Plant Genetic Resources for Food and Agriculture
LMMC	Like-minded Megadiverse Countries
MAT	Mutually Agreed Terms
PIC	Prior Informed Consent
SIDS	Small Island Developing States
WHO	World Health Organization