

**SUMMARY OF THE SIXTH MEETING  
OF THE WORKING GROUP ON ACCESS AND  
BENEFIT-SHARING OF THE CONVENTION  
ON BIOLOGICAL DIVERSITY:  
21-25 JANUARY 2008**

The sixth 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 21-25 January 2008 at the Palais des Nations in Geneva, Switzerland. In a continuation of its fifth meeting, held in October 2007, the Working Group proceeded with the elaboration and negotiation of an international regime on ABS, under the co-chairmanship of Fernando Casas (Colombia) and Timothy Hodges (Canada).

Discussions 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 new, 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 cases where there was agreement in principle, or “for further consideration,” in cases of disagreement or need for further clarification. The outcome of the Working Group’s deliberations will be submitted for consideration by the Conference of the Parties (COP) to the CBD at its ninth meeting, to be held from 19-30 May 2008, in Bonn, Germany, where delegates will have to take critical decisions on the future of the ABS negotiations, with the 2010 deadline for completion rapidly approaching.

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

The CBD, negotiated under the auspices of the UN Environment Programme (UNEP), was opened for signature on 5 June 1992, and entered into force on 29 December 1993. There are currently 190 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 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.

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**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: other approaches, including capacity building; 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 (WTO).

**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.

**MYPOW:** Following the WSSD call, the Open-ended Intersessional Meeting on the Multi-Year Programme of Work for the CBD COP up to 2010 (March 2003, Montreal, Canada) recommended that the ABS Working Group consider the process, nature, scope, elements and modalities of an international regime on ABS.

**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. It also adopted recommendations on experience with the Bonn Guidelines and other approaches for implementing the CBD provisions on ABS.

**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 recommendation and a draft text to serve as the basis for future negotiations. The Working Group also considered additional approaches to complement the Bonn Guidelines, including 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), 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, for the further elaboration of an international ABS regime. 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, including: access to genetic resources; fair and equitable sharing of benefits; compliance with PIC and MAT; an internationally recognized certificate of origin/source/legal provenance; traditional knowledge and genetic resources in the context of ABS; indicators; and capacity building. Delegates also discussed two informal documents tabled by the Co-Chairs and debated whether they should be appended to the report of the meeting: the Co-Chairs' notes on proposals made at the meeting; and their reflections on progress made. The report of the meeting states that the Co-Chairs' notes on proposals made at the meeting and their reflections on progress made were the sole responsibility and under the sole authority of the Co-Chairs and would be circulated to parties as information documents (UNEP/CBD/WG-ABS/6/INF/1 and 2).

## ABS 6 REPORT

On Monday, 21 January 2008, Working Group Co-Chair Timothy Hodges opened the meeting highlighting that there are now points of intersection from which to move forward. Brazil, on behalf of their Environment Minister and COP 8 President Marina Silva, stressed that negotiation of an ABS regime is a priority for developing countries and requires the collective effort of all countries. CBD Executive Secretary Ahmed Djoghlafl reminded delegates of the pivotal role of this meeting in the process of developing an international ABS regime by COP 10 in 2010.

**ORGANIZATIONAL MATTERS:** Delegates adopted the agenda (UNEP/CBD/WG-ABS/6/1) without amendment. Working Group Co-Chair Casas recalled that the COP Bureau would serve as the Bureau for the Working Group and that Mary Fosi (Cameroon) would act as Rapporteur.

The Working Group met in plenary throughout the week. A contact group on the objective and main components of the international regime met from Tuesday to Friday afternoon under the co-chairmanship of René Lefeber (the Netherlands) and Pierre du Plessis (Namibia). A contact group on the draft COP decision met on Wednesday and Thursday, under the co-chairmanship of François Pythoud (Switzerland) and Linus Spencer Thomas (Grenada). The closing plenary convened on Friday afternoon to adopt the Working Group's recommendation to the COP, including an annex on the international regime, and the meeting's report.

This report summarizes the meeting's discussions and outcome with regard to the nature, scope, objectives and main components of the international regime, as well as with regard to the draft COP decision.

**INTERNATIONAL ABS REGIME**

**NATURE:** The Working Group had a general discussion on the nature of the international ABS regime in plenary on Tuesday. The Co-Chairs then compiled a non-paper on the basis of the discussions and a revised non-paper on the basis of parties' submissions. Since there was no time to consider the section on nature in depth in plenary or in the contact group on the objective and main components, five different options based on parties' submissions and the recommendation of the Co-Chairs as included in the non-paper were included in the annex.

The African Group supported a legally binding regime, based on cooperative enforcement between user and provider countries. The Like-Minded Megadiverse Countries (LMMC), supported by many developing countries, favored a single legally binding regime, in line with the mandate agreed at the WSSD and decisions of the UN General Assembly, in order to promote legal certainty and transparency, include user measures and prevent misappropriation. Many argued that the regime must strengthen the capacity of providers to negotiate ABS contracts, protect their rights and provide access to justice. Brazil added that the regime should include technology transfer and information sharing. Ethiopia stressed the need for an international body on compliance, and Algeria and El Salvador emphasized the need to strengthen the principle of national sovereignty. A number of countries noted that voluntary measures and contracts are not sufficient to implement benefit-sharing.

Norway said some elements should be legally binding, and called for a protocol under the CBD. The EU drew attention to its submission regarding a range of binding and voluntary measures, mechanisms and tools and, with Canada, Switzerland and New Zealand, called for progress on substance before discussing the regime's nature. Australia, Canada and New Zealand said the regime could comprise both legally binding and non-legally binding measures, in line with Decision VII/19D on the terms of reference for the elaboration of the regime, including reference to the Bonn Guidelines, model contracts, and a new element on traditional knowledge. Switzerland supported a framework or umbrella regime, in harmony with other international instruments and, with Canada, said it should build on existing approaches. Supporting a contract-based approach, Japan called for developing domestic ABS laws on the basis of the Bonn Guidelines and model contracts on the basis of national law.

**Final Outcome:** In the annex to the recommendation (UNEP/CBD/WG-ABS/6/L.2), the section on nature contains a recommendation of the Working Group Co-Chairs with three general options, namely: one legally binding instrument; a combination of legally binding and non-binding instruments; or a non-binding instrument. In addition, it lists five options as set out in party submissions.

- The international regime should be legally binding. In addition, it should stress more cooperative enforcement between parties and not refer conflicts primarily to private international law, which is not only expensive, but also a strain on resource poor countries.
- The regime can include: one legally binding instrument; a combination of legally binding and/or non-binding instruments; or a non-binding instrument.

- The international regime shall be composed of a single legally binding instrument containing a set of principles, norms, rules and compliance and enforcement measures.
- The nature should be discussed after deliberations on the substance on the international regime are completed. The international regime could be composed of one or more non-binding instruments within a set of principles, norms, rules and decision-making procedures.
- The international regime should be composed of one or more legally binding and/or non-binding instruments within a set of principles, norms, rules and procedures, legally binding and non-binding.

**SCOPE:** The Working Group considered the scope of the regime in plenary on Monday and Tuesday. The Co-Chairs then compiled a non-paper on the basis of the discussions and a revised non-paper on the basis of parties' submissions. Since there was no time to consider the section on scope in depth in plenary or in the contact group on the objective and main components, seven different options based on parties' submissions and the Co-Chairs' recommendation as included in the non-paper were included in the annex.

Major issues included: the inclusion of derivatives in the scope of the regime; the relationship to the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGR); and the need for definitions.

There was general agreement that human genetic resources should be excluded. The EU, Canada and Australia noted that Decision VII/19D on the terms of reference for the elaboration of the international regime establishes its scope. Australia said the scope should neither: extend to materials acquired prior to the CBD's entry into force or derivatives; intrude in the mandate of other treaties; nor address the Antarctic Treaty area or areas beyond national jurisdiction. The EU added that derivatives and products must be excluded from specific obligations for parties under the regime. The LMMC stressed that the regime would be undermined if derivatives were omitted. Guinea Bissau suggested the regime allow countries to negotiate bilateral benefit-sharing agreements on genetic material transferred before the CBD's entry into force.

The African Group called for biological resources, genetic resources, traditional knowledge and derivatives to be covered and, with Norway and Cuba, for the exclusion of species contained in the ITPGR's multilateral system only when used for food and agriculture. Norway suggested flexibility to allow for future expansion of the ITPGR Annex I, which contains the list of crops and forage species covered by the ITPGR multilateral system. Colombia and Peru stressed the complementarity between the international regime and the ITPGR. Brazil said that the regime would not preclude ITPGR provisions. ITPGR Secretary Shakeel Bhatti provided an overview of the ITPGR's nature, scope and objectives, stressing that its scope covers all plant genetic resources for food and agriculture. The FAO asked delegates to take into account the Multi-Year Programme of Work of its Commission on Genetic Resources for Food and Agriculture (CGRFA), which covers all genetic resources for food and agriculture and pays special attention to food security and poverty eradication.

Switzerland stressed the need to agree on an interpretation of the CBD definition of genetic resources, and said that the regime should be without prejudice to the work under other bodies.



Mexico and China called for a clear definition of derivatives, and Thailand stated that the regime should apply to all genetic resources and derivatives, so long as derivatives are clearly defined. Canada also called for clear definitions of genetic resources and derivatives.

Croplife International said the regime should support national implementation based on the Bonn Guidelines with a view to increasing global biotrade. The Intellectual Property Owners Association cautioned against extending the scope of the regime beyond the scope of the CBD and argued against a single definition of derivatives. The Asian, Arctic and African Indigenous Peoples Caucuses called for recognizing the human rights of indigenous peoples as enshrined in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). Other indigenous representatives reaffirmed indigenous peoples' ownership of their traditional knowledge, underscoring their right to opt out of the provisions of the regime.

**Final Outcome:** In the annex to the recommendation (UNEP/CBD/WG-ABS/6/L.2), the section on scope includes a compilation of proposals, including a recommendation from the Working Group Co-Chairs and seven options based on countries' submissions. The Co-Chairs' recommendation suggests that that scope covers "all genetic resources, and associated traditional knowledge covered under the CBD and the benefits resulting from their use."

Option 1 proposes that the scope include, among others, all biological and genetic resources, derivatives, products and associated traditional knowledge and benefits arising from their commercial and other uses before and after the entry into force of the CBD, within national jurisdiction and of a transboundary nature, and excluding species listed in ITPGR Annex I unless used beyond the purposes of that treaty.

Option 2 proposes that the regime apply to all genetic resources and associated traditional knowledge covered by the CBD, subject to other international obligations, with the exclusion of human genetic resources and genetic resources beyond national jurisdiction.

Option 3 proposes that the regime cover access to genetic resources and fair and equitable sharing of benefits in accordance with relevant CBD provisions, excluding genetic resources acquired before the entry into force of the CBD and human genetic resources; and lists items for special consideration related to the mandate of other bodies and treaties.

Option 4 proposes that it cover all types of genetic resources and their derivatives excluding human genetic resources and any traditional knowledge associated with genetic resources and their derivatives, noting that the regime will not preclude the benefit-sharing provisions of the ITPGR.

Option 5 proposes that all genetic resources and associated traditional knowledge covered by the CBD and benefits arising from their commercial and other utilization should be covered, with the exclusion of human genetic resources.

Option 6 proposes that all genetic resources, derivatives and associated traditional knowledge provided derivatives must be clearly defined within the scope of the CBD.

Option 7 proposes that the regime should foresee, in accordance with national and international laws and obligations, the conditions to facilitate access to and transboundary utilization of genetic resources for environmentally sound uses, and associated traditional knowledge; and for fair and equitable

sharing of the monetary and non-monetary benefits. It should be without prejudice to the ITPGR and take into account the work of the World Intellectual Property Organization (WIPO) and CGRFA. Materials that should be excluded include human genetic resources, genetic material acquired prior to the national ratification of the CBD and since then cultivated *ex situ*, and genetic material already made freely available by the country of origin.

**OBJECTIVES:** The Working Group considered the objectives of the regime in plenary on Monday and in the contact group on the objective and main components on Tuesday and briefly on Wednesday. In plenary, the African Group, mirrored by the LMMC, suggested the regime: promote benefit-sharing; prevent misappropriation of genetic resources; and control and enforce compliance with the CBD. The EU and Canada supported objectives in accordance with Decision VII/19D on the terms of reference for the elaboration of the regime, namely to implement CBD Articles 15 and 8(j) and support the Convention's three objectives. Australia expressed readiness to work on areas of convergence to set out the components and objectives of the regime, as long as they support national implementation. Switzerland recalled that the overall objective of the regime is to create certainty regarding ABS regulation, and Norway suggested using the objectives of the Bonn Guidelines as a starting point for developing text. Other countries emphasized fair and equitable benefit-sharing, preventing misappropriation and ensuring that benefits flow to countries of origin. Indigenous representatives expressed concern about parties' lack of attention to indigenous rights and called for an objective protecting these rights.

In the contact group on the objective and main components, delegates proposed and made amendments to the draft objectives as contained in the non-paper prepared by the Working Group Co-Chairs. The EU, Canada, Norway, Switzerland, Australia, Japan and New Zealand supported using the text of the non-paper which read: "effectively implement the provisions in Article 15 and Article 8(j) of the Convention and its three objectives, specifically by facilitating access to genetic resources and ensuring the fair and equitable sharing of benefits arising out of their utilization." The LMMC and the Latin American and Caribbean Group (GRULAC) suggested the objective: "ensure the effective, fair and equitable sharing of monetary and non-monetary benefits arising from the use of genetic resources, derivatives and associated traditional knowledge, by preventing their misappropriation and misuse, and by securing compliance in user countries with national laws and requirements, including PIC and MAT of the country of origin providing such resources, or of the party that has acquired such resources in accordance with the CBD."

The African Group proposed that the regime should: "effectively implement the provisions in Articles 15, 8(j), 1, 16, and 19.2 of the Convention and its three objectives, specifically by regulating transparent access to genetic resources and associated traditional knowledge and derivatives and products, and ensuring the conditions and measures for the fair and equitable sharing of benefits arising out of their utilization, and prevent their misappropriation and misuse." The International Indigenous Forum on Biodiversity (IIFB) proposed an alternative text that takes into account the rights of indigenous and local

communities. Pointing to the rules of procedure, the Co-Chairs requested formal support by a party for the IIFB proposal, which was provided by Haiti, and the text was retained.

The options were consolidated into one bracketed text. Delegates attempted to remove brackets around individual elements without substantive progress, and then agreed to forward the text to plenary as bracketed.

**Final Outcome:** In the annex to the recommendations (UNEP/CBD/WG-ABS/6/L.2), the provision on the objective contains a number of bracketed references, including:

- a number of CBD provisions, including Articles 15, 8(j), 1, 16 and 19.2, and the CBD's three objectives;
- facilitating or regulating transparent access to genetic resources, and access in general;
- derivatives and products of genetic resources, and associated traditional knowledge;
- misappropriation and misuse;
- the conditions and measures for benefit-sharing;
- securing compliance in user countries with national laws and requirements, including PIC and MAT of the country of origin; and
- rights over those resources, including the rights of indigenous and local communities.

**MAIN COMPONENTS:** The Working Group discussed the main components of the international regime in plenary on Monday and in the contact group on the objective and main components from Wednesday to Friday. On Thursday, contact group Co-Chairs Lefeber and du Plessis tabled their paper on the main components for the regime, containing sections on: fair and equitable benefit-sharing; access to genetic resources; compliance; traditional knowledge; and capacity building. Each substantive section had two subsections: one on components for further elaboration that contained "bricks," describing the main elements for an international regime as distilled by the Co-Chairs from submissions and interventions; and one on components for further consideration, into which delegates could decide to move elements from the section above if they could not agree on them, thereby converting them into "bullet points." The Co-Chairs explained that they had distilled parties' submissions into concise building blocks by removing: any reference to the nature of the regime, such as whether the element would be legally binding or not; and any reference to the scope of the regime, for example if derivatives would be covered or not. The Co-Chairs then proposed the following working method, consisting of three questions: whether delegates could accept this text as the basis for future work; whether delegates agreed that the concept enshrined in each "brick" should form part of the regime; and whether they agreed with the wording.

Following regional consultations, delegates agreed to work on the basis of the text prepared by the Co-Chairs, using the proposed working method. The LMMC asked that the record reflect their understanding that good-faith engagement required that once parties agreed to an element under a "brick," there would be no attempts to remove that element in future negotiations.

**Fair and equitable sharing of benefits:** The contact group on the objective and main components discussed benefit-sharing from Wednesday to Friday. The EU suggested a number of measures including:

- developing model clauses for potential inclusion in material transfer agreements (MTAs);
- developing information technology tools to create transparency of obligations and to facilitate transactions;
- exploring the role of private international law to ensure compliance with MAT in contracts;
- involving indigenous and local communities in setting up MAT and in establishing PIC when traditional knowledge associated with genetic resources is accessed; and
- raising awareness.

The African Group proposed, among others: international minimum standards; stipulating benefit-sharing through MAT; and directing benefits towards genetic resource holders. Australia added that non-binding guidelines on benefit-sharing should be used, and referenced the CBD's key provisions and the Bonn Guidelines as guidance for national implementation.

Following a late-night discussion on Thursday evening, on Friday morning, the contact group discussed the benefit-sharing elements contained in the contact group Co-Chairs' compilation paper. Discussion focused on whether and how to incorporate in the international regime a reference to the Bonn Guidelines, and language articulating that MAT must be negotiated for every new use. On the Bonn Guidelines, Peru noted existing procedural implementation problems, and the EU highlighted that they prejudice the nature of the regime. On MAT for every use, the EU and New Zealand required more clarification, and the LMMC and African Group favored existing language, explaining their understanding that if a genetic resource was obtained and then put to a different application the terms would have to be renegotiated.

**Final Outcome:** In the annex to the recommendation (UNEP/CBD/WG-ABS/6/L.2), delegates agreed to the following benefit-sharing related components to be further elaborated:

- linkage of access to the fair and equitable sharing of benefits;
- benefits to be shared on MAT;
- monetary and/or non-monetary benefits;
- access to and transfer of technology;
- sharing of results of research and development on MAT;
- effective participation in research activities, and/or joint development in research activities;
- mechanisms to promote equality in negotiations;
- awareness raising; and
- measures to ensure participation and involvement of indigenous and local communities in MAT and sharing of benefits with traditional knowledge holders.

Delegates noted the following components for further consideration:

- development of international minimum conditions and standards;
- benefit-sharing for every use;
- benefits directed towards conservation and sustainable use of biodiversity and socioeconomic development;
- multilateral benefit-sharing options when origin is not clear;
- establishment of trust funds to address transboundary situations;
- development of menus of model clauses and standardized benefits for potential inclusion in MTAs; and
- enhanced utilization of the Bonn Guidelines.

**Access to genetic resources:** The contact group on the objective and main components discussed access from Wednesday to Friday.

The EU stated that international access standards would facilitate access, raise transparency and predictability, and should include, *inter alia*: international guidance on national access legislation, for example model legislation; specific rules on PIC requirements or the existence of other norms for obtaining PIC; clear legal status and rules on ownership of genetic resources found *in situ* and *ex situ*; availability and accessibility of information on how to obtain PIC; existence of a procedure for simplified access for non-commercial research; and international commitment to ensure that national access rules apply in a non-discriminatory way. The African Group proposed access for environmentally sound uses and called for the protection of traditional knowledge and indigenous practices, subject to benefit-sharing and PIC.

**Final Outcome:** In the annex to the recommendation (UNEP/CBD/WG-ABS/6/L.2), the section on access contains the following components for further elaboration:

- recognition of the sovereign rights and authority of parties to determine access;
- linkage of access to fair and equitable sharing of benefits; and
- legal certainty, clarity, and transparency of access rules.

The section also contains the following components for further consideration:

- non-discriminatory access rules;
- international access standards (that do not require harmonization of domestic legislation) to support compliance across jurisdictions;
- internationally developed model domestic legislation;
- minimization of administration and transaction costs; and
- simplified access rules for non-commercial research.

**Compliance:** The Working Group discussed compliance in plenary on Monday, and in the contact group on the objective and main components from Wednesday to Friday.

The EU emphasized: international standards on national access law and practice; developing an international definition of misappropriation and elements for standard MTAs in specific sectors, to support compliance with PIC and MAT; steps to promote codes of conduct for users and to identify and establish a mechanism for identifying those codes regarded as best practice; and disclosure of origin or source of genetic resources and traditional knowledge in patent applications to be further discussed under WIPO.

The African Group proposed: enforcement in user countries; disclosure of origin of genetic resources and associated traditional knowledge; certificates of origin and of compliance with national law; and reporting, monitoring and tracking. Australia proposed a voluntary certificate of compliance with domestic ABS regulations issued by a domestic authority; and model contracts as the primary mechanism to ensure compliance.

Peru suggested that the report of the meeting of the Group of Technical Experts on an Internationally Recognized Certificate of Origin/Source/Legal Provenance constitute a solid basis for the development of such certificates. India highlighted the need for both a legally binding certificate and disclosure requirements in patent applications. Indonesia added that the international regime should set minimum standards for obtaining a certificate. Costa Rica said the certificate must be simple and verifiable.

Switzerland suggested focusing on minimum requirements to ensure compliance, and underscored the utility of an international certificate, disclosure requirements in patent applications and an internationally agreed definition of misappropriation.

New Zealand urged delegates to address the practicability of compliance measures. Canada stressed that contracts offer the best balance between flexibility and compliance with MAT, and questioned the ability of mandatory disclosure requirements to ensure compliance with PIC. On the certificate, he called for: a cost-benefit analysis and an impact assessment on financial and human resources; identifying checkpoints and new technologies; and assessing capacity needs. Japan emphasized the importance of: identifying the certificate's objectives; measuring the expected benefit; verifying its effectiveness; and implementing a cost-benefit analysis. IUCN recommended that the Working Group agree on and test a model certificate.

On Friday morning, the contact group had a lengthy discussion about whether international access standards should be listed under a sub-section on tools to enforce compliance. The LMMC, GRULAC and the African Group considered the item to be misplaced and requested its removal from the section on compliance. The EU explained that international access standards are required in order to ensure compliance in courts and enforcement of judgments, and requested the item be retained. Following informal consultations, the LMMC presented a compromise proposal to the closing plenary, namely to place the item on international access standards under the tools to encourage compliance, removing it from the list of tools to enforce compliance. The EU accepted the compromise, but a number of statements on the issue were reflected in the report of the meeting, as highlighted in the closing plenary.

**Final Outcome:** In the annex to the recommendation (UNEP/CBD/WG-ABS/6/L.2), the section on compliance includes the following components to be further elaborated: awareness-raising activities as a tool to encourage compliance; and mechanisms for information exchange and an internationally-recognized certificate issued by a domestic competent authority as tools to monitor compliance.

Components for further consideration include tools to encourage compliance, such as:

- international understanding of misappropriation/misuse;
- sectoral menus of model clauses for MTAs;
- codes of conduct for important user groups;
- identification of best-practice codes of conduct;
- obliging users receiving research funds to comply with specific ABS requirements;
- a unilateral declaration by users; and
- international access standards.

Tools to monitor compliance for further consideration include:

- tracking and reporting systems;
- information technology for tracking;
- disclosure requirements; and
- identification of check points.

Tools to enforce compliance for further consideration include:

- measures to ensure access to justice;
- dispute settlement mechanisms;
- enforcement of judgments and arbitral awards across jurisdictions;



- information exchange procedures between national ABS focal points to help providers obtain relevant information in specific cases of alleged infringements of PIC requirements; and
- remedies and sanctions.

Measures to ensure compliance with customary law and local systems of protection are also listed as components for further consideration.

**Traditional knowledge and genetic resources:** Delegates discussed issues relating to the inclusion of traditional knowledge in the regime in plenary on Monday and in the contact group on the objective and main components from Wednesday to Friday.

In plenary, the EU identified the protection of the rights of indigenous and local communities to traditional knowledge as one of the objectives of the international regime, and listed issues to be addressed with input by indigenous experts, including: a certificate of compliance; the potential relevance of UNDRIP and the draft ethical code of conduct; and communities' capacity-building needs. New Zealand suggested: using traditional knowledge only with the approval of knowledge holders; identifying individuals or organizations to grant approval on behalf of a community; resolving conflicts between rights holders at the national level; and recognizing existing customary rights. Canada said access to traditional knowledge should be granted by its holders in accordance with community procedures. Brazil said the regime should recognize and protect communities' rights to their traditional knowledge associated with genetic resources and derivatives. Algeria drew attention to complementarity between the CBD, WIPO and WTO, while Japan noted a number of unresolved technical issues dealt with by WIPO.

The African Group underscored the linkages between genetic resources and traditional knowledge, and suggested that the certificate should specify both the knowledge associated with the genetic resource and the knowledge holders. The IIFB suggested that the meeting establish an intersessional process to address the relationship between the regime, genetic resources and traditional knowledge.

In the contact group, the EU suggested work on best practices to ensure respect for traditional knowledge in ABS-related research and model clauses for potential inclusion in MTAs. On principles for traditional knowledge protection, New Zealand asserted indigenous and local communities' rights over traditional knowledge and called for the uncoerced approval of knowledge holders as a precondition to access. The African Group proposed a certificate identifying the origin and holders of traditional knowledge and recognition of holders' rights to control the future use of their knowledge. Australia proposed a set of non-binding guidelines to: encourage equitable sharing of benefits arising from utilization of traditional knowledge related to genetic resources; ensure that access to genetic resources under the ownership or control of indigenous and local communities is undertaken with the approval of the community that owns or controls such resources under domestic law; and ensure the sharing of benefits with indigenous and local communities under such circumstances through MAT.

The EU and representatives from indigenous and local communities supported a reference to "PIC of traditional knowledge holders when traditional knowledge is accessed," which was supported by the African Group with the addition of a reference to MAT, but opposed by Canada. Brazil proposed, and

delegates agreed, to have an element for further elaboration on measures to ensure fair and equitable benefit-sharing arising out of the use of associated traditional knowledge in accordance with Article 8(j).

**Final Outcome:** In the annex to the recommendation (UNEP/CBD/WG-ABS/6/L.2), the section on traditional knowledge contains the following components for further elaboration:

- measures to ensure fair and equitable sharing with traditional knowledge holders of benefits arising out of the utilization of traditional knowledge in accordance with Article 8(j);
- measures to ensure that access to traditional knowledge takes place in accordance with community-level procedures;
- measures to address the use of traditional knowledge in the context of benefit-sharing arrangements;
- identification of best practices to ensure respect for traditional knowledge in ABS-related research;
- incorporation of traditional knowledge in development of model clauses for MTAs;
- identification of the individual or authority to grant access in accordance with community-level procedures;
- access with approval of traditional knowledge holders; and
- no engineered or coerced access to traditional knowledge.

The section also contains the following components for further consideration:

- PIC of and MAT with traditional knowledge holders, including indigenous and local communities, when traditional knowledge is accessed;
- internationally developed guidelines to assist parties in the development of their domestic legislation and policies;
- declaration on the internationally recognized certificate as to whether there is any associated traditional knowledge and who the owners of traditional knowledge are; and
- community-level distribution of benefits arising out of traditional knowledge.

**Capacity building:** This item was discussed in plenary on Monday and in the contact group on the objective and main components on Wednesday and Thursday. In plenary, many delegates emphasized capacity building for implementing national ABS frameworks and monitoring ABS activities. They called for a number of different approaches and programmes, including: providing sufficient, reliable and sustainable financial resources; developing guidelines for best practices and implementation; legal training; awareness-raising; transferring technology; establishing a clearing-house mechanism to ensure compliance and knowledge dissemination; and focusing on elements of the CBD Capacity-Building Action Plan. Many delegations and indigenous groups called for capacity building for indigenous and local communities, with Malawi calling for capacity building for users who infringe provider countries' legislation.

In the contact group on the objective and main components, delegates called for: targeted measures to support provider countries in developing national access frameworks that meet international access standards; an international capacity-building mechanism; assistance with developing national ABS legislation and preventing biopiracy; and enhancing stakeholders' negotiating capacity.

**Final Outcome:** In the annex to the recommendation (UNEP/CBD/WG-ABS/6/L.2), components for further elaboration include:

- national capacity self-assessments to be used as a guideline for minimum capacity-building requirements;
- measures for technology transfer and cooperation;
- special capacity-building measures for indigenous and local communities; and
- capacity-building measures at all relevant levels for: developing national legislation; participating in negotiations, including contract negotiations; information and communication technology; developing and using valuation methods; bioprospecting, associated research and taxonomic studies; monitoring and enforcing compliance; and using ABS for sustainable development.

The establishment of a financial mechanism remains a component for further consideration.

#### **DRAFT COP DECISION**

On Tuesday, the Working Group Co-Chairs tabled a non-paper containing possible elements for inclusion in a draft decision to be considered by COP 9. On Wednesday, delegates established a contact group, co-chaired by Linus Spencer Thomas (Grenada) and François Pythoud (Switzerland), to work on the basis of this non-paper. The contact group met briefly in the evening to collect delegates' comments and proposals for incorporation into a revised draft recommendation to be considered on the following day.

On Thursday, the contact group on the draft decision discussed the revised draft recommendation prepared by its Co-Chairs, incorporating all proposals received. Discussion focused on: appropriate references to existing legal instruments to guide the Working Group's future work; provisions for a meeting of technical experts; the number and timing of future Working Group meetings; indigenous participation; the role of the Global Environment Facility (GEF) in ABS; and the Clearing-House Mechanism (CHM).

On references to existing legal instruments to guide the Working Group's future work: Canada requested that the COP "take note" rather than "welcome" the UNDRIP, and opposed by Brazil, requested deleting a reference stating it will guide parties' understanding of their CBD commitments; the EU and Australia favored referencing Decision VII/19D (terms of reference for the elaboration of the international regime), while the LMCC and the African Group favored Decision VIII/4A (international ABS regime, including the ABS 4 outcome as an annex); and Japan, supported by New Zealand and opposed by Brazil and the African Group, proposed text inviting parties to fully utilize the Bonn Guidelines.

Delegates were in disagreement about the number and timing of ABS Working Group meetings between COP 9 and 10, and decided to retain options for the Working Group's seventh meeting either in 2008, or as soon as possible after COP 9, subject to availability of financial resources.

On a suggestion to convene a group of technical experts, delegates agreed that the language was overly prescriptive and agreed instead to an EU proposal to replace the paragraph with a note to insert necessary language on the establishment of a technical expert group or groups at COP 9, with clear terms of reference. Delegates also agreed to delete alternative paragraphs requesting the Executive Secretary to either commission a study or convene a group of technical experts to examine the feasibility, practicability and costs of a certificate of origin/legal provenance.

Norway endorsed a proposal by indigenous and local communities noting the importance of indigenous and local communities' participation in the negotiations and supported stating it in an operational clause. The EU, Canada and Brazil preferred placing the reference in the preamble. On indigenous participation generally, Canada and Colombia supported a paragraph on ensuring sufficient preparation and facilitating the effective participation of indigenous and local communities in the negotiation of the regime. While Brazil suggested adding a reference to COP Decision VII/19D, the EU preferred referencing the paragraph on indigenous participation contained in COP Decision VIII/5C (Article 8(j)). The IIFB proposed an additional paragraph requesting the Executive Secretary to convene an international seminar on traditional knowledge prior to the next meeting of the ABS Working Group and to support national and regional meetings to feed into the international expert meeting.

The African Group presented new text, inviting the GEF to: strengthen efforts to implement its strategic programme on capacity building for ABS in order to enable parties to elaborate, negotiate and implement the international regime; mobilize available resources of the fourth replenishment; and provide appropriate resources in its fifth replenishment. The EU also added text urging parties to make full use of GEF programmes, including for the full implementation of the ABS-related articles of the Convention. Delegates agreed to these additions.

The African Group highlighted the capacity deficit of developing countries in accessing the CHM, and delegates agreed to add text inviting the Executive Secretary and others to take further measures to build the capacities of parties for access to and use of the CHM.

**Final Outcome:** The recommendation of the Working Group (UNEP/CBD/WG-ABS/6/L.2) contains heavily bracketed text as well as alternative options on possible elements of a COP decision on ABS. In the preamble, the Working Group recommends that the COP, *inter alia*:

- recall its decisions: VII/19D and VIII/4 A-E on benefit-sharing, VIII/5C on collaboration, and the Bonn Guidelines;
- recognize the potential role of UNEP and others in further contributing to awareness raising and capacity-development;
- acknowledge the potential role of the CHM; and
- recognize the importance of the participation of indigenous and local communities in the elaboration and negotiation of the regime.

The preamble contains bracketed text recommending that the COP, *inter alia*:

- either "welcome" or "take note of" the UNDRIP; and
- acknowledge the importance of awareness-raising and note the potential contribution of the work programme on communication, education, and public awareness.

The operative paragraphs contain bracketed text and multiple options for many of the issues addressed.

On the COP's instruction to the ABS Working Group, the Working Group recommends, with heavily bracketed text, that the COP reiterate that the group complete either its "mandate" or "work" at the earliest possible time before COP 10.

The Working Group also recommends that the COP, *inter alia*:

- welcome the outcome of the meeting of the Group of Technical Experts on an Internationally Recognized Certificate of Origin/Source/Legal Provenance;



- decide both on the number of meetings and their timing between COP 9 and 10, and that each of these meetings should be preceded by two days of informal consultations;
- invite the GEF to strengthen its efforts to implement its strategic programme on capacity building for ABS and urge parties to make full use of GEF programmes;
- invite UNEP and others to support or continue supporting and facilitating, as appropriate, regional and interregional consultations, to carry out capacity-development activities and contribute to awareness raising; and
- invite parties to make optimal use of the ABS component of the CHM in order to facilitate exchange of information related to ABS, and request the Executive Secretary and invite parties and others to take further measures to build the capacity of parties for access to, and use of the CHM.

The remainder of the draft decision is entirely bracketed, contains additional brackets within bracketed text, and contains multiple options on many of the items addressed. In these paragraphs, the Working Group recommends that the COP, *inter alia*:

- [welcome the progress made in the ABS Working Group in the elaboration and negotiation of the international regime and take note of [annex I to] the report of the Working Group at its sixth meeting [on the objective[, nature and scope] and main components of the international regime]] or, as a second option, [welcome the progress made in the ABS Working Group and decide to transmit to ABS 7 [annex I to the report of ABS 6 on the objective, nature, scope, and main components of the international regime], for the purpose of continuing to elaborate and negotiate the international regime];
- [decide that ABS 7 [should be convened as soon as possible after COP 9, subject to the availability of financial resources] [shall be convened in 2008] [and ABS 8 in the first half of 2009];
- [instruct ABS 7 to draft the [legal] [legally binding] provisions of the international regime on ABS, on the basis of the annex to the ABS 6 report and in accordance with decisions VII/19D and VIII/4A of the Conference of the Parties, [taking full advantage of the annex to decision VIII/4A (“the Granada text”) and as a means of speedily implementing the third objective of the Convention]] or, as a second option, [instruct ABS 7 to draft non-legally binding or a mix of legally binding and non-legally binding provisions of the international regime on ABS, on the basis of the annex to the ABS 6 report, and in accordance with decisions VII/19D and VIII/4 A of the COP;]
- [invite parties and others to submit operative text for the international ABS regime and request the Executive Secretary to compile these submissions and make them available to parties sixty days prior to ABS 7];
- [request the ABS Working Group co-chairs to carry out bilateral and regional [and interregional] consultations during the intersessional period, in order to advance the negotiations and call upon the donor countries and relevant organizations to provide the financial resources necessary for such consultations and for the timely [and successful] completion of the [negotiations] [work]];
- [invite parties and others to contribute to provide the ways and means to facilitate sufficient preparation and participation of representatives of indigenous and local communities in

- the Working Groups on Article 8(j) and ABS] or [encourage parties and others to provide the ways and means to allow for sufficient preparation and to facilitate effective participation of indigenous and local communities in the process of the negotiation and elaboration of the international regime, in accordance with decision VIII/5C];
- [request the Executive Secretary to convene an international expert meeting/seminar on traditional knowledge prior to ABS 7];
- [invite indigenous and local communities, parties, donors and others to support national and regional workshops, the input of which shall feed into the international expert meeting/seminar];
- [invite parties to fully utilize the Bonn Guidelines in the formulation of their national ABS legislation];
- [invite parties to fully utilize the annex to decision VIII/4A in the formulation of the national ABS legislation]; and
- [request the Executive Secretary to implement activities with a view to increasing the awareness and, [education] of decision-makers and relevant stakeholders.]

The draft decision also contains a note to insert, as necessary, a paragraph on the establishment of a technical expert group or groups with clear terms of reference.

#### CLOSING PLENARY

On Friday afternoon, Working Group Co-Chair Hodges commended delegates on their cooperative spirit and thanked the Co-Chairs of the two contact groups. The Working Group then addressed its draft recommendation on possible elements of a COP decision.

Contact Group Co-Chair Thomas reported on progress achieved in the contact group on the draft decision, noting that while substantial progress was made, the group was not able to remove all brackets. He urged delegates to adopt the recommendation as is for further consideration by the COP.

Working Group Co-Chair Hodges noted that the Bureau included a new sentence in the draft decision calling for two days of informal consultations prior to the meetings of the Working Group between COP 9 and 10. Upon request for explanation of process from the EU, Brazil explained that the Bureau wished to explore the possibility of having informal consultations since they may lead to a better understanding of the issues.

Working Group Co-Chair Casas read out language to be inserted in the report of the meeting (UNEP/CBD/WG-ABS/6/L.1), stating that the annex on the international regime will form the basis for further negotiations, and that all written submissions made during the Working Group meeting will be compiled by the Secretariat and be made available prior to COP 9. Australia suggested that the annex form the basis for further “elaboration and” negotiation of the international regime, which was agreed upon.

Drawing attention to two options in the draft COP decision, which included bracketed references to the nature of the regime, Canada proposed that a third option clearly reflect the possibility that the COP instruct the Working Group to draft non-legally binding provisions for the regime. The Working Group accepted the proposal. Canada reiterated that they have not ruled out that some parts of a regime might be legally binding.

Co-Chair du Plessis of the contact group on the objective and main components reported on the contact group’s deliberations and outlined its working method. He noted ongoing informal

consultations on the specific placement of an element on international access standards under the section on compliance. The EU announced that they accepted a compromise proposal by the LMMC, the African Group and GRULAC, namely to place the item on international access standards under the tools to encourage compliance, removing it from the list of tools to enforce compliance. The LMMC requested reflecting in the report that the African Group, LMMC and GRULAC did not see the international access standards as forming part of any compliance mechanism or tool. Later, the EU requested reflecting in the meeting's report that the items that the contact group categorized as "components for further consideration" are in need of further discussion, which could also relate to the placement of items under the different headings. The LMMC and the African Group expressed their surprise, noting the EU statement suggests their compromise was temporary, and requested that the report of the meeting reflect that the contact group had a clear understanding of the rules of engagement that items could only be re-categorized as a component for further consideration from the list of components to be further elaborated.

Japan expressed its reservation with regard to sections on the objective and the scope included in the annex, noting lack of discussion, and agreed that this be reflected in the report of the meeting. Drawing attention to a footnote explaining that the proposed compiled submissions under scope were neither negotiated nor agreed, Australia suggested a similar footnote under the section on the objective. The suggestion was accepted.

The Working Group then adopted its recommendation to the COP, including an annex on the international regime (UNEP/CBD/WG-ABS/6/L.2), as amended during the closing plenary.

Under the agenda item on "Other Matters," Co-Chair Hodges reminded delegates of the Working Group's mandate to consider indicators for ABS. Peru reiterated a request that the Secretariat organize an informal workshop on essential issues, such as derivatives, nature, scope and misappropriation, subject to voluntary contributions, which was reflected in the report of the meeting.

Rapporteur Mary Fosi tabled the draft meeting report (UNEP/CBD/WG-ABS/6/L.1) for consideration. The African Group and the LMMC asked to revise the section of the report noting that there had been no opportunity to negotiate the text on the objective, to state that it had not been "sufficiently" negotiated. The report was adopted with this and other minor amendments and additions.

CBD Executive Secretary Ahmed Djoghlaif was presented with a gift from a representative of the Indigenous Survival Programme for display in the CBD Museum for Nature and Culture. In his closing statement, Djoghlaif stated he was convinced that COP 9 will build on the achievements of COP 8, and will be a major step in the collective journey towards the adoption of an international regime on ABS at COP 10, to be held in October 2010.

Co-Chair Hodges expressed his appreciation to delegates, the government of Switzerland, the Secretariat, the interpreters and the *Earth Negotiations Bulletin*. Co-Chair Casas described the meeting as "historic" and urged delegates to prepare well for COP 9. Following statements of appreciation from regional groups and individual countries, Co-Chair Casas gavelled the meeting to a close at 6:16 pm.

## A BRIEF ANALYSIS OF ABS 6

What a difference a few months can make! After a slow and, for many, disillusioning meeting in Montreal in October 2007, ABS 6 provided a much needed breakthrough in the negotiation of an international ABS regime. The meeting adopted a long awaited framework for further negotiation that was not only supported by all parties but also lays out the core elements for a future regime on access and benefit-sharing. This outcome was made possible by both an innovative working method and notable shifts in the positions of several parties and negotiating blocs. Notably, for the first time since the launching of the process, no party questioned the general need for an international regime.

This analysis describes the achievements made at ABS 6, and explores some of the influences that could strengthen the negotiation dynamics on the road to COP 10: the development of a common understanding, ownership, common interests, and a common vision for the international ABS regime.

### OF BRICKS AND BULLETS

In any multilateral negotiating process, leadership and procedure are key elements to achieving a successful outcome. When there is a general distrust of the process, the outcomes produced may never be broadly accepted. This was the case with both the outcomes of ABS 4 (the Granada text) and ABS 5 (the Co-Chairs' notes on convergence), which many parties saw as biased or not reflecting the full range of views expressed.

In Geneva, however, contact group Co-Chairs René Lefebvre and Pierre du Plessis successfully guided delegates through the negotiations using an innovative procedure that allowed parties to develop trust in each other and the process. This approach helped delegates to identify issues of convergence, while reflecting the range of views on issues on which they remained divided. The Co-Chairs' working method of separating the proposals on which delegates agreed should form part of the regime ("bricks"), from those on which they did not agree ("bullets") was hailed by many delegates as a key to success. Bullets were included in the text as proposals for further consideration, thus making it clear that they present different options that will be further considered. Delegates commented that the inclusiveness of this process gave parties an important feeling of ownership over the document and helped establish the collaborative spirit necessary to overcome the impasse between the major negotiating blocs that impeded progress in the past. Several pointed out that while the text does not contain ground-breaking new elements, for the first time it presents a package that could become the core of the international ABS regime.

The strategic advantage of this approach was that it led delegates to discuss issues of substance rather than falling back into entrenched divisions surrounding the nature and scope of the regime. While nature and scope remain the keys that will ultimately unlock the regime's potential, from the perspective of the negotiating dynamics it was wise to leave these key questions for a later stage, in order to reach agreement on the "bricks." The Co-Chairs' approach stripped the bricks of their sharp edges by removing any references to whether the regime should be legally binding or not, and whether it should address controversial issues such as derivatives. This allowed delegates to agree on a number of "bricks" that will form the regime and serve as the basis for future negotiations.

## THE CORNERSTONES OF A REGIME

Already at ABS 5, some parties' and stakeholders' proposals had become more concrete with regard to the regime's core elements. At ABS 6, as the "bricks" were extracted from the clutter of submissions, the picture came into focus, and parties can now begin to develop a common understanding of the regime's cornerstones. A few trends can now be identified:

**Supporting national legislation:** One of the regime's primary objectives might become supporting compliance with national laws on access and benefit-sharing, rather than developing a new system of international regulation. The concept of developing international minimum standards for access legislation as one of the key components of the regime was put forward and is likely to re-emerge at future meetings. Such an approach would have the two-fold advantage of serving as guidance for the development of national access legislation and as a fallback mechanism for countries that lack the capacity to develop and enforce such legislation.

**Standard contracts and model clauses:** The idea of developing standard material transfer agreements for ABS in specific sectors is becoming increasingly popular among the major negotiating groups. This trend is likely inspired by the recent implementation of the ITPGR and its standard material transfer agreement for genetic resources for food and agriculture. Beyond that, the EU and other user countries have suggested developing standard clauses for national ABS legislation and MAT in ABS contracts. Both of these ideas could become key tools for providing legal certainty and lowering transaction costs.

**Building negotiating, monitoring and enforcement capacity:** A third emerging trend is the increased attention being paid to reflecting the imbalance in capacity often prevailing between providers and user countries in negotiating and enforcing ABS agreements and contracts.

Together these trends present a first impression of how ABS might be realized under the regime. A contractual approach that incorporates an adequate degree of standardization and support for the enforcement of national legislation, in combination with international standards and an international mechanism for compliance, enforcement and dispute settlement, could become the core of the regime.

## FINDING THE COMMON INTEREST?

On many other issues the outcome of ABS 6 still reflects the fundamental divergence between negotiating groups on nature, scope and objective. More specifically, countries were divided on whether the regime's objective should focus on benefit-sharing and preventing misappropriation, as called for by the LMMC, or whether it should also include provisions on access to genetic resources, as proposed by the EU and other user countries. This illustrates that, despite the breakthrough achieved, parties have not yet identified their common interest in the regime. On this point, one delegate made an interesting comparison between the ABS process and the negotiation of the ITPGR. In his view, the ITPGR process was ultimately successful because all parties were aware of their interdependence in access to genetic resources for plant breeding for agricultural purposes. This led to a core of common interest in the establishment of an international system to regulate access to and ensure the sustainable use of such resources, including provisions on benefit-sharing through a multilateral system.

In the ABS process this interdependence is less pronounced and an understanding of a common interest is emerging only slowly. Ever since ABS 3 in 2005, the LMMC has presented their understanding that the regime should focus on benefit-sharing only, in order to implement the Convention's third objective which, in their view, has so far been neglected by user countries. User countries for their part insisted on including facilitating access into the regime's objective in order to create a mutually beneficial package. The controversy over whether or not the regime should include provisions on facilitating access has been one of the main stumbling blocks.

While the issue of access remains unresolved, the outcome reveals several practical aspects of ABS, such as legal certainty, transparency and enforcement, which would be in the best interest of all parties. Furthermore, the positions of the major negotiating groups on key concepts, such as an internationally recognized definition of misappropriation, capacity building, emphasis on the linkage between access and benefit-sharing or the inclusion of components on traditional knowledge, have moved much closer, thanks to significant concessions from all sides.

This was interpreted by some as a sign that both provider and user countries are becoming more aware of the long-term benefits the regime will provide, beyond the question of the distribution of benefits arising out of the use of genetic resources. Experts have often commented that the benefits of providing legal certainty and reducing transaction costs might be just as important as the actual sharing of benefits. This is especially important for the research community that has often suffered from overly strict access legislation in some countries and, as several seasoned participants noted with concern, have been surprisingly under-represented in the ABS process thus far.

## OUTLOOK 2010

Ownership and a fledging sense of common interest and vision of the regime's design could be the main factors needed to safeguard the delicate compromise reached at ABS 6. Apart from adopting the ABS 6 outcome as a framework for future negotiations or even further elaborating it, COP 9 will have to determine how many Working Group meetings should be convened prior to COP 10 to complete negotiations. So in a sense, the future of the ABS regime depends in part on whether developed countries consider the regime sufficiently important to "invest" in its development by providing adequate financial resources for the negotiation process.

By the end of the week in Geneva, many participants agreed that serious negotiations had finally begun. Yes, despite the enthusiasm, the compromise is quite fragile. This time many reported that we "got lucky," as a number of delegates received instructions to accept an uneasy compromise on the linkages between international access standards and compliance only during the last minutes of the closing plenary, narrowly escaping a possible collapse of the meeting. Others noted that some parties will have to reconsider their position in the coming months and may have to pull back during COP 9, noting that even small changes might destroy the delicate balance achieved during ABS 6. While it cannot be denied that ABS 6 considerably improved the prospects for achieving the 2010 deadline, it is the deliberations at COP 9 and beyond that will determine whether the Geneva bricks assemble into a hut or a castle.



## UPCOMING MEETINGS

### SECOND MEETING OF THE CBD WORKING GROUP ON PROTECTED AREAS:

The second meeting of the CBD *Ad Hoc* Open-ended Working Group on Protected Areas will take place from 11-15 February 2008, in Rome, Italy. This meeting will consider future action on the programme of work on protected areas, including country reports on implementation and recommendations from a series of workshops. For more information, contact: CBD Secretariat; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: [secretariat@cbd.int](mailto:secretariat@cbd.int); internet: <http://www.cbd.int/doc/meeting.aspx?mtg=WGPA-02>

**SBSTTA 13:** The thirteenth meeting of the CBD Subsidiary Body on Scientific, Technical and Technological Advice will take place from 18-22 February 2008, in Rome, Italy. This meeting will consider the in-depth review of the implementation of the work programmes on agricultural and forest biodiversity, and address scientific and technical issues of relevance to the implementation of the 2010 target. For more information, contact: CBD Secretariat; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: [secretariat@cbd.int](mailto:secretariat@cbd.int); internet: <http://www.cbd.int/doc/meeting.aspx?mtg=SBSTTA-13>

**COHAB 2:** The second International Conference on Health and Biodiversity will be held from 25-28 February 2008, in Galway, Ireland. This conference will highlight the links between population health and the status of global biodiversity. For more information, contact: the COHAB Initiative Secretariat; tel: +353-935-2329; fax: +353-875-242-5339; e-mail: [conference@cohabnet.org](mailto:conference@cohabnet.org); internet: <http://www.cohabnet.org/cohab2008/index.htm>

**WIPO IGC 12:** The twelfth session of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore will be held from 25-29 February 2008, in Geneva, Switzerland. For more information, contact: WIPO Secretariat; tel: +41-22-338-8161; fax: +41-22-338-8120; e-mail: [grtkf@wipo.int](mailto:grtkf@wipo.int); internet: [http://www.wipo.int/meetings/en/details.jsp?meeting\\_id=14802](http://www.wipo.int/meetings/en/details.jsp?meeting_id=14802)

**FIFTH MEETING OF THE WORKING GROUP ON LIABILITY AND REDRESS IN THE CONTEXT OF THE BIOSAFETY PROTOCOL:** The fifth meeting of the Working Group of Legal and Technical Experts on Liability and Redress in the Context of the Cartagena Protocol on Biosafety will take place from 12-19 March 2008, in Cartagena, Colombia. This meeting will elaborate options for elements of rules and procedures referred to in Article 27 of the Biosafety Protocol. For more information, contact: CBD Secretariat; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: [secretariat@cbd.int](mailto:secretariat@cbd.int); internet: <http://www.cbd.int/doc/?meeting=BSWGLR-05>

**OPPORTUNITIES AND CHALLENGES OF RESPONSES TO CLIMATE CHANGE FOR INDIGENOUS AND LOCAL COMMUNITIES, THEIR TRADITIONAL KNOWLEDGE AND BIOLOGICAL DIVERSITY:** This conference will take place from 25-28 March 2008, in Helsinki, Finland. It is organized by the CBD Secretariat. For more information, contact: CBD Secretariat; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: [secretariat@cbd.int](mailto:secretariat@cbd.int); internet: <http://www.cbd.int/meetings/>

**UNPFII 7:** The seventh session of the UN Permanent Forum on Indigenous Issues will be held from 21 April - 2 May 2008, at UN headquarters in New York. The session's focus is: "Climate

change, bio-cultural diversity and livelihoods: the stewardship role of indigenous peoples and new challenges." For more information, contact: UNPFII Secretariat; tel: +1-917-367-5100; fax: +1-917-367-5102; e-mail: [indigenoupermanentforum@un.org](mailto:indigenoupermanentforum@un.org); internet: [http://www.un.org/esa/socdev/unpfii/en/session\\_seventh.html](http://www.un.org/esa/socdev/unpfii/en/session_seventh.html)

**CARTAGENA PROTOCOL COP/MOP 4:** The fourth meeting of the Conference of the Parties serving as the Meeting of the Parties to the Cartagena Protocol on Biosafety (COP/MOP 4) will take place from 12-16 May 2008, in Bonn, Germany. For more information, contact: CBD Secretariat; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: [secretariat@cbd.int](mailto:secretariat@cbd.int); internet: <http://www.cbd.int/doc/?meeting=MOP-04>

**CBD COP 9:** The ninth Conference of the Parties to the CBD will take place from 19-30 May 2008, in Bonn, Germany. A high-level segment will be held from 28-30 May. For more information, contact: CBD Secretariat; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: [secretariat@cbd.int](mailto:secretariat@cbd.int); internet: <http://www.cbd.int/doc/meeting.aspx?mtg=COP-09>

## GLOSSARY

ABS	Access and benefit-sharing
CBD	Convention on Biological Diversity
CHM	Clearing-House Mechanism
CGRFA	Commission on Genetic Resources for Food and Agriculture
COP	Conference of the Parties
GEF	Global Environment Facility
GRULAC	Latin American and Caribbean Group
IIFB	International Indigenous Forum on Biodiversity
ITPGR	International Treaty on Plant Genetic Resources for Food and Agriculture
LMMC	Like-minded Megadiverse Countries
MAT	Mutually agreed terms
MTA	Material transfer agreement
PIC	Prior informed consent
UNEP	United Nations Environment Programme
UNDRIP	UN Declaration on the Rights of Indigenous Peoples
WIPO	World Intellectual Property Organization
WSSD	World Summit on Sustainable Development
WTO	World Trade Organization