

SUMMARY OF THE NINTH MEETING OF THE WORKING GROUP ON ACCESS AND BENEFIT-SHARING OF THE CONVENTION ON BIOLOGICAL DIVERSITY: 22-28 MARCH 2010

The ninth 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 22-28 March 2010, in Santiago de Cali, Colombia. More than 500 participants attended the meeting, representing governments, UN agencies, intergovernmental and non-governmental organizations, indigenous and local community groups, public sector research, academia and business.

The meeting continued negotiations on an international regime on ABS, in view of its mandate to submit an instrument for consideration at the tenth meeting of the CBD Conference of the Parties (COP 10). For the first time in the process, negotiations were conducted on the basis of a draft protocol, tabled as a Co-Chairs' text and developed upon a request made during the Co-Chairs' Informal Inter-regional Consultation held prior to ABS 9. Delegates identified a series of key issues with respect to the draft protocol text and established four contact groups to address them. Following three days of productive contact group discussions and significant progress achieved on a number of issues, including benefit-sharing from derivatives and an internationally recognized certificate of compliance, an inter-regional group was established. Due to procedural wrangling, the inter-regional group never managed to enter into text-based negotiations and talks temporarily broke down. The Working Group eventually agreed to: suspend ABS 9 and convene a resumed session in the near future; and forward the draft protocol text, as revised during this session, to the resumed session, with the understanding that the draft was not negotiated, is without prejudice to the rights of parties to make further amendments and additions to the text, and should be read together with the ABS 9 report reflecting parties' views expressed at the meeting. ABS 9 is expected to resume in June or July 2010.

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 193 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.

CBD Article 15 addresses access to genetic resources, including facilitating access, prior informed consent (PIC), mutually agreed terms (MAT) and benefit-sharing. Related articles refer 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. The expert panel held two meetings (October 1999, San José, Costa Rica; and March 2001, Montreal, Canada) and developed a set

IN THIS ISSUE

A Brief History of the CBD and ABS	1
ABS 9 Report	3
Identification of Key Issues	4
Procedural Arrangements	4
Substantive Items	5
Outcome	10
Closing Plenary	12
A Brief Analysis of ABS 9	14
Upcoming Meetings	16
Glossary	16

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of recommendations, including on PIC, MAT, approaches for stakeholder involvement and options to address ABS within the CBD framework. COP 5 (May 2000, Nairobi, Kenya) established the Working Group on ABS to develop guidelines and other approaches on: PIC and MAT; participation of stakeholders; benefit-sharing mechanisms; and the preservation of traditional knowledge (TK).

ABS 1: At its first meeting (October 2001, Bonn, Germany), the Working Group on ABS developed the draft Bonn guidelines on ABS, identified elements for a capacity-building action plan, 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 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 negotiating, within the CBD framework, an international regime to promote and safeguard the fair and equitable sharing of benefits arising out of the utilization of genetic resources.

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 produced 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. 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 TK.

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 Fernando Casas (Colombia) and Timothy Hodges (Canada), their notes on proposals made at the meeting and their reflections on progress made.

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, TK 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, and instructed the ABS Working Group to finalize the international regime and to submit an instrument/instruments for consideration and adoption by COP 10.

EXPERT GROUP ON CONCEPTS, TERMS, WORKING DEFINITIONS AND SECTORAL APPROACHES: This group (2-5 December 2008, Windhoek, Namibia) addressed: the different ways of understanding biological resources, genetic resources, derivatives and products and the implications of each understanding; different forms of utilization of genetic resources; sector-specific characteristics of ABS arrangements; and options and approaches for taking these different characteristics into account to bring coherence to ABS-related practices in different sectors.

EXPERT GROUP ON COMPLIANCE: This group (27-30 January 2009, Tokyo, Japan) considered measures to: facilitate access to justice by foreign plaintiffs; support recognition and enforcement of judgments across jurisdictions; and provide remedies and sanctions to ensure compliance with national ABS legislation. The group also addressed: voluntary measures to enhance compliance by users of foreign genetic resources; whether an internationally agreed definition of misappropriation and misuse could support compliance; compliance measures that take account of customary laws; and compliance measures for research with non-commercial intent.

ABS 7: At its seventh meeting (2-8 April 2009, Paris, France), the Working Group focused on operational text on the objective, scope, compliance, fair and equitable benefit-sharing, and access. Despite procedural obstacles, mostly related to the structure of

the negotiating document, the Working Group proceeded with consolidating submissions on compliance, benefit-sharing and access.

EXPERT GROUP ON TK ASSOCIATED WITH GENETIC RESOURCES: The group (16-19 June 2009, Hyderabad, India) addressed legal and technical issues concerning: the relationship between access to genetic resources and associated TK; customary laws of indigenous and local communities (ILCs) regulating access to genetic resources and associated TK; and measures to ensure compliance with PIC and MAT.

ARTICLE 8(J) WG 6: At its sixth meeting (2-6 November 2009, Montreal, Canada), the Working Group on Article 8(j) worked towards concluding negotiations on an ethical code of conduct to ensure respect for the cultural and intellectual heritage of ILCs, and expressed detailed views on the international regime on ABS, for transmission to ABS 8.

ABS 8: At its eighth meeting (9-15 November 2009, Montreal, Canada), the Working Group addressed operative text on all components of the regime, and discussed its legal nature. The meeting adopted the Montreal Annex, consisting of a single, consolidated draft of the international regime, and a second annex on proposals for operational texts left in abeyance for consideration at ABS 9. The Working Group also established an intersessional process leading up to ABS 9, including: a Friends of the Co-Chairs group; a Co-Chairs' Inter-regional Informal Consultation; and a series of regional consultations.

ABS FRIENDS OF THE CO-CHAIRS MEETING: The Friends of the Co-Chairs meeting (26-29 January 2010, Montreal, Canada) addressed several issues related to: access, benefit-sharing, compliance, and the relationship between them; derivatives; TK; and implementation questions.

ABS CO-CHAIRS INFORMAL INTER-REGIONAL CONSULTATION: The meeting (16-18 March 2010, Cali, Colombia) was held in order to identify concrete solutions to facilitate and accelerate ABS 9 negotiations. As a result, the Co-Chairs prepared a draft protocol and a draft COP decision to be circulated prior to ABS 9.

ABS 9 REPORT

On Monday, 22 March, ABS Working Group Co-Chair Timothy Hodges (Canada) opened the meeting and expressed his gratitude to the host Government of Colombia. Yadir Salazar, Ministry of Foreign Affairs of Colombia, welcomed delegates and urged them to conclude negotiations, stressing the need for cooperation on monitoring and enforcing compliance with national ABS legislation. Working Group Co-Chair Fernando Casas (Colombia) reported on the intersessional work completed since ABS 8, noting that parties have never been so close to reaching consensus, but cautioning not to underestimate the task ahead. Jochen Flasbarth, on behalf of the German COP Presidency, called on delegates to focus on key issues and show flexibility in reaching agreement.

CBD Executive Secretary Ahmed Djoghlaif described how indigenous peoples in Colombia view nature, life and culture as intrinsically related and urged delegates to finalize the ABS protocol that will contribute to reshaping man's relationship

with nature. In a video message on the 2010 International Year of Biodiversity (IYB), UN Secretary-General Ban Ki-moon stressed the need for joint action to protect biodiversity in the face of ecosystem loss. Carlos Martin-Novella, UN Environment Programme, stressed that there will be no post-Nagoya negotiation process, and that adopting the protocol at COP 10 would be the most appropriate celebration of IYB.

ORGANIZATIONAL MATTERS: Delegates adopted the provisional agenda (UNEP/CBD/WG-ABS/9/1 and Add.1). On the organization of work, Co-Chair Hodges reported that consultations since ABS 8 had clarified that the Montreal Annex (UNEP/CBD/WG-ABS/8/8) was a significant step forward, but unsuitable to finalize negotiations at ABS 9. He explained that, upon a request made during the Co-Chairs Informal Inter-regional Consultation, the Co-Chairs circulated non-papers containing a draft protocol and a draft COP decision on adoption of the protocol, and a revised guidance note. He proposed to use the draft protocol as the basis for negotiations, noting that the Montreal Annex will function as a safety net. He proposed that delegations: aim at improving the draft protocol rather than adding text from the Montreal Annex; provide views on specific areas of concern that may require improvements in the draft protocol; establish contact groups to identify solutions to these issues as non-bracketed text; and ensure that text agreed in plenary will be integrated in the draft protocol, using brackets only if absolutely necessary. He encouraged delegates to produce a "meaningful" and "explainable" draft protocol in good faith, and underscored the role of the draft COP decision to address not only procedural but also substantive items. Delegates then elected Somaly Chan (Cambodia) as rapporteur of the meeting.

OPENING STATEMENTS: All regional groups supported the Co-Chairs' proposal and expressed willingness to work on the basis of the draft protocol. Canada noted that the draft COP decision should present a range of options on the instrument/instruments of the ABS regime, without prejudice to its/their nature. Malaysia, on behalf of developing countries from the Latin America and the Caribbean Group (GRULAC), Asia-Pacific Group, African Group and the Like-Minded Megadiverse Countries (LMMC), noted that the nature of the draft protocol is not up for negotiation, and recalled a common understanding at the Friends of the Co-Chairs' meeting on ensuring benefit-sharing from derivatives and on placing compliance at the core of the protocol. Spain, for the European Union (EU), drew attention to the Conclusions of the Council of Environment Ministers of the EU supporting work towards a protocol to the CBD. Serbia, for Central and Eastern Europe (CEE), expressed support for the draft protocol as a legally binding instrument to be adopted in Nagoya, and highlighted issues related to: utilization of genetic resources and their derivatives, compliance, capacity building, and fair and equitable benefit-sharing. New Zealand announced its support for working towards a legally binding protocol to the CBD on the assumption that its provisions will "make legal sense" and "be able to be implemented." Switzerland expressed confidence that a protocol can be adopted by COP 10. Malawi, on behalf of the African Group, called for a holistic approach to benefit-

sharing that includes all biological resources, and urged the Co-Chairs to reflect the contribution of the Article 8(j) Working Group regarding ABS in the draft protocol. Mexico, on behalf of GRULAC, recalled the common understanding on the protocol's main elements reached during the Co-Chairs' Informal Inter-regional Consultations.

The International Indigenous Forum on Biodiversity (IIFB) expressed concern that indigenous rights and interests have not been taken into account in the draft protocol despite their inclusion in the Montreal Annex and called for: indigenous prior informed consent (PIC) regarding access to TK; recognizing indigenous rights over genetic resources; integration of TK in provisions on compliance; and recognition of the role of customary laws. The Consultative Group on International Agricultural Research (CGIAR) recommended that the international regime create space for the development of more specialized ABS norms in the future. The Like-Minded in Spirit Group of Women advocated for the inclusion of gender perspectives in the draft protocol. The International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGR) suggested ensuring coherence among relevant international legal obligations. Highlighting the need to build national capacity for implementation, the United Nations University recalled its Bioprospecting Information Resource and the TK Initiative.

This report summarizes: deliberations on substantive and procedural issues held in the opening plenary, item-by-item discussion on the protocol's substantive articles in contact groups and the inter-regional group, issues discussed in the closing plenary, as well as the meeting's outcome.

IDENTIFICATION OF KEY ISSUES

On Monday, in plenary, Working Group Co-Chair Casas invited parties to identify key issues for further consideration with respect to the draft protocol. Brazil, for LMMC, called for a streamlined and comprehensive draft protocol, with compliance at its center, to include: PIC and mutually agreed terms (MAT) regarding TK; recognition of country of origin; clear obligations regarding financial resources and capacity; and accurate provisions on monitoring and an international certificate of compliance. GRULAC prioritized discussion on: derivatives; reference to the country of origin; PIC of ILCs as a precondition for access to TK; means of implementation, including financial resources; and non-parties' obligations.

The African Group stressed that the draft protocol should include tracking and monitoring of the utilization of genetic resources and a dispute settlement procedure, and provided a list of priority issues regarding the protocol's scope, including derivatives. He stressed the need to effectively safeguard the rights of ILCs, including through compliance measures relating to TK, and to devise specific rules dealing with non-parties.

Switzerland requested discussions on: utilization of genetic resources in relation to ABS; the role of monitoring and tracking for transparency and compliance; compliance with MAT; and, with Norway and Australia, TK, compliance, and the regime's relationship with other agreements and processes. The Cook Islands, for the Asia-Pacific Group, emphasized: including

derivatives in the regime's scope; safeguarding parties' sovereign rights in relation to access; financial mechanism and financial resources; technology transfer; and non-parties.

CEE stressed the need to reach common understanding on access, benefit-sharing and derivatives. The Republic of Korea called for focus on the objective, scope, compliance with national ABS legislation and MAT, and monitoring and tracking.

Malaysia called for: adding clear obligations to respect national sovereignty over resources and community rights over TK; strengthening rather than weakening CBD provisions on technology transfer; and giving parties the right to maintain or develop arrangements ensuring food security without undermining the protocol's objectives. He noted that he would speak on behalf of the Like-Minded Asia-Pacific Group, which excludes the region's developed countries, during negotiations on substantive items. The Philippines requested clarifying that every use must be subject to benefit-sharing and every access subject to PIC of the party concerned and, if appropriate, of the community. Thailand stressed that derivatives should be included in the scope of the regime to capture technological advancements.

Canada expressed concern with: the scope not addressing the protocol's relationship with other instruments, temporal and geographical scope, and the issue of derivatives; patent offices as check-points; enforcement of national ABS laws; lack of definition of misappropriation; and insufficient flexibility for national legal frameworks. New Zealand proposed: ensuring flexibility for parties on TK; balancing the interests of users and providers; dealing with certain compliance measures in other international fora, such as the World Intellectual Property Organization (WIPO); and clarifying the protocol's relationship with the ITPGR and the Antarctic Treaty.

The EU outlined as priority issues: clarifying the temporal and geographical scope, as well as the relationship with other international processes either under scope or in a separate provision; access, including a list of access requirements, and access for research; and concerns regarding successful implementation of checkpoints as well as certain compliance measures. Argentina emphasized mutual supportiveness of international processes. IIFB asked to include: references to indigenous rights in the preamble and the provisions on benefit-sharing and access; and an indigenous PIC requirement in the provision on compliance. A representative of civil society presented as key points to be included in the protocol: recognition of indigenous peoples' rights as referenced in UN human rights agreements; TK associated with genetic resources as a cross-cutting issue; a broad scope to cover all uses of genetic resources; and clear and binding compliance rules.

PROCEDURAL ARRANGEMENTS

On Tuesday, delegates established four contact groups mandated to provide solutions for the specific issues identified, which met from Tuesday to Thursday, with the understanding that solutions would be reported back to plenary and bracketing was not allowed until a later stage. Group 1, co-chaired by Johan Bodegård (Sweden) and José Luis Sutera (Argentina), discussed: relationship with other instruments and processes; temporal and geographical application; flexibility for sectoral approaches;

non-parties; and financial mechanism/financial resources. Group 2, co-chaired by René Lefebvre (the Netherlands) and Ricardo Torres (Colombia), tackled: monitoring, reporting and tracking, including disclosure requirements and checkpoints; dispute settlement and access to justice; country of origin; and instances of no PIC or MAT. Group 3, co-chaired by Cosima Hufner (Austria) and Pierre du Plessis (Namibia), addressed: utilization of genetic resources/derivatives/benefit-sharing; benefit-sharing obligations including access to and transfer of technology; as well as biodiversity-related research, access requirements, and parties who determine that access is not subject to PIC. Group 4, co-chaired by Tone Solhaug (Norway) and Damaso Luna (Mexico), addressed TK-related issues, including: the relationship between ABS activities and TK; diversity of national circumstances; and recognition of customary law. On Wednesday, another contact group, co-chaired by François Pythoud (Switzerland) and Vanida Khumnirdetch (Thailand), was established to discuss the draft COP decision.

On Thursday, plenary approved the establishment of an inter-regional group, co-chaired by José Luis Suter (Argentina) and Johan Bodegård (Sweden), mandated to negotiate on the basis of a revised draft protocol. Working Group Co-Chair Hodges said the group would work in a roundtable format, inspired by the Vienna setting used during the biosafety negotiations, and include five representatives for each UN region, and two representatives for ILCs, civil society, industry and public research, respectively. He explained that in such a “Vienna +” setting, spokespersons and representatives can change freely, and discussions will be open to the attendance of all Working Group participants.

On Saturday, following break-down of negotiations over compliance mechanisms on Friday night, the inter-regional group began to examine the draft protocol paragraph by paragraph to signal “significant” problems by “shading,” rather than bracketing, the respective text. As a result, most paragraphs were shaded. Later on, the African Group proposed, and delegates agreed, to hold an *in camera* meeting among regional group representatives to consider the way forward.

Reporting to the inter-regional group on the closed-door meeting, the African Group stated the draft protocol tabled by the Working Group Co-Chairs provided a basis on which all parties can negotiate and which can be presented to ministers. He further noted the *in camera* meeting’s understanding that exercises similar to “shading” had already been performed in the past, and that the draft protocol was not a negotiated document. On behalf of the regional groups, he proposed concluding the inter-regional group’s work and adding a footnote to the draft protocol noting that this document: was not negotiated; reflects the efforts by the Working Group Co-Chairs to elaborate the elements of a draft protocol; is without prejudice to the rights of parties to make further amendments and additions to the text; and should be read together with the ABS 9 report reflecting parties’ views expressed at the meeting. He further requested that Sunday’s plenary hear parties’ views on outstanding issues, and agree on a roadmap from Cali to Nagoya. He finally proposed that ABS 9 be suspended and resumed at a later date, in order to conclude

its work. Canada noted the need to seek instructions from its capital regarding the status of the draft protocol, requesting in the meantime to bracket the draft protocol in its entirety.

SUBSTANTIVE ITEMS

BENEFIT-SHARING: Benefit-sharing was considered in contact group 3 on Tuesday and Thursday and in the inter-regional group on Friday, on the basis of draft protocol Article 4.

The Like-minded Asia-Pacific Group, GRULAC and the African Group proposed that benefit-sharing be with the “party providing resources that is the country of origin.” Australia and New Zealand raised concerns on the basis of Convention language and technical limitations.

The Like-minded Asia-Pacific Group and GRULAC supported references to benefit-sharing from the utilization of associated TK throughout the draft article. The African Group proposed sharing benefits directly with the community providing the knowledge through processes overseen by national governments. IIFB suggested sharing benefits from genetic resources also with ILCs, where ILCs hold rights to genetic resources under national or international law, and further proposed language on respecting ILCs’ existing rights on genetic resources. Pointing to instances where TK is held by the state, the Like-Minded Asia-Pacific Group noted that TK is not necessarily held by ILCs.

GRULAC and the Philippines called for linking the benefit-sharing obligation to all genetic resource utilizations, independent of MAT or the existence of ABS legislation. Iran emphasized multilateral or regional arrangements in addition to MAT. Australia preferred retaining flexibility to negotiate benefits through MAT.

DERIVATIVES: The issue of derivatives was addressed in contact group 3 on Tuesday and Thursday and in the inter-regional group on Friday. It was considered in the framework of discussions on benefit-sharing and in conjunction with the concept of genetic resource utilization, on the basis of Article 4 of the draft protocol.

The EU recalled that the Friends of the Co-Chairs meeting had agreed not to define derivatives, to avoid excluding future scientific developments and, with Canada, supported addressing benefit-sharing from derivatives in MAT. GRULAC stressed that benefit-sharing obligations should not be left to bilateral negotiations, suggesting including the concept of utilization in the regime’s scope to ensure compliance with national obligations. The Like-Minded Asia-Pacific Group stated that MAT only refer to benefit-sharing modalities, and international guidance is needed on what can legitimately be subject to MAT.

To clarify that utilization of genetic resources also covers benefits from derivatives, the Like-Minded Asia-Pacific Group suggested that derivatives should include: substances derived from the metabolism of a genetic resource; synthetic molecules; and molecules expressing the same function as genetic resources. Australia suggested referring to expression, replication and characterization of genetic resources instead, noting that these terms cover all potential uses of genetic resources without excluding future technological developments. GRULAC agreed in principle, but suggested retaining the term derivatives.

Switzerland suggested reference to benefits from “technological applications,” to achieve clarity without restricting the range of benefits covered.

Delegates considered a proposal to refer to “utilization of genetic resources, including derivatives resulting from characterization, replication and expression.” GRULAC and the African Group requested further elaborating these concepts, with GRULAC otherwise preferring reference to “derivatives” only. LMMC suggested referring to “use of a compound” or “information relating to the compound.”

In the inter-regional group, the Like-Minded Asia-Pacific Group, GRULAC and the CEE countries supported general reference to derivatives, with the African Group calling for reference to derivatives in all their current and future forms. Japan and the Republic of Korea pointed to common understanding reached in the contact group and argued against expanding the reference.

The EU, Australia and New Zealand expressed concern regarding reference to an annex listing typical genetic resource uses and its regular review by the meeting of the parties (MOP) to the protocol. The Like-Minded Asia-Pacific and CEE groups supported its inclusion, and the African Group added it should be regularly adapted to scientific and technological advances. Many preferred the list to be indicative. GRULAC expressed concern regarding reference to breeding and selection, propagation and cultivation, due to potential food security implications.

TECHNOLOGY TRANSFER: Contact group 3 addressed this issue in the context of benefit-sharing on Tuesday and Thursday. Controversy focused on whether or not to include a self-standing article on technology transfer and/or a general benefit-sharing obligation.

The Like-Minded Asia-Pacific Group pointed to the need for a stand-alone article, noting that the draft protocol’s language is weaker than the Convention text. The African Group said that accessed material should be developed jointly by providers and users, to bridge the technology gap. The Republic of Korea noted that most technology is owned by the private sector, and that the government’s role is to encourage and facilitate technology transfer to the provider. The Philippines called for a requirement for contracts to provide for technology transfer.

On Thursday, delegates examined a new provision on technology transfer and cooperation submitted by the contact group Co-Chairs, referring to collaboration in scientific research and development programmes as a means to generate benefits, and encouraging private sector cooperation. The Like-Minded Asia-Pacific Group and LMMC suggested that developed countries provide incentives to enterprises for technology-transfer purposes. The EU observed that there was no specific link to ABS activities.

ACCESS: Access-related issues were addressed by contact group 3 on Thursday, and in the inter-regional group on Friday, on the basis of draft protocol Article 5. Major questions included how to: address biodiversity-related research; parties’ right not to require PIC; and access requirements.

The EU proposed that parties create conditions that facilitate biodiversity research. GRULAC, the Like-Minded Asia-Pacific Group and LMMC requested links to tracking and monitoring

any change of intent or subsequent uses. GRULAC, supported by the African Group, suggested text along the lines of CBD Article 12(b) (promoting and encouraging research contributing to biodiversity conservation and sustainable use).

The EU cautioned against placing requirements on the right to opt out of the obligation to require PIC and, supported by Canada and New Zealand, noted that sovereign rights include the authority to determine for which resources and which situations PIC is required. The Philippines cautioned that not requiring PIC in certain cases does not imply that PIC is voluntary, and that parties must recognize other parties’ decisions to require PIC. Africa, supported by the Like-Minded Asia-Pacific Group, proposed that: national decisions not to require PIC be registered with the Clearing-House Mechanism (CHM) and specify conditions such as geographical and time limitations; and requirements for non-discrimination apply to commercial utilization only. The EU noted that PIC requirements, rather than the decision not to require PIC, should be notified. Africa stressed that decisions not to require PIC should be reflected in certificates of compliance. The Like-Minded Asia-Pacific Group and LMMC cautioned that not requiring PIC could undermine the protocol’s objectives in the case of transboundary genetic resources.

Regarding a list of access-related measures to be implemented by parties, the Like-Minded Asia-Pacific Group, GRULAC and LMMC suggested clearly reflecting national sovereignty by stating that the list is not prescriptive. The African and CEE groups also cautioned that the list was too prescriptive and raised concerns with individual measures in the list. GRULAC opposed language implying an evaluation of national PIC procedures. The EU, Switzerland and Japan called for including reference to appeal procedures for those seeking access. The EU also asked to consider emergency situations, with Switzerland suggesting reference to CBD Article 15.2 (access for environmentally sound uses). Norway requested specifying the timing for negotiating MAT and flexibility for different contractual approaches. Canada, supported by New Zealand, objected to prescribing the content of MAT in the context of access requirements. He proposed that access measures and their application not discriminate between foreign users, or between foreign and domestic users. Africa requested deleting reference to non-discrimination. The Like-Minded Asia-Pacific Group proposed allowing developing and least developed countries to take into account the special needs of their nationals as users vis-à-vis foreign users.

IIFB proposed that, as an access requirement, parties set criteria for indigenous PIC where the applicable law recognizes indigenous rights to genetic resources. The African Group requested referencing associated TK throughout the article on access, including its title. The Like-Minded Asia-Pacific Group, supported by GRULAC, proposed adding a principle that every access be with PIC of the party providing genetic resources and associated TK that is the country of origin or the party that has acquired genetic resources or associated TK, unless a party otherwise determines, in accordance with the CBD.

Traditional knowledge: Delegates discussed TK in contact group 4 on Tuesday and Thursday. The African Group, GRULAC, IIFB and others insisted on dealing with TK as a

cross-cutting issue and include it in provisions on compliance, benefit-sharing and access; whereas Canada and New Zealand argued that TK-related issues should be covered solely under draft protocol Article 9 on TK. IIFB proposed preambular paragraphs: referring to the UN Declaration on the Rights of Indigenous Peoples (UNDRIP); and on “taking into account the rights of ILCs to genetic resources and associated TK,” which was supported and amended by Australia to refer to “existing” rights.

Relationship between ABS activities and TK associated with genetic resources: The EU suggested treating genetic resources separately from associated TK, recognizing the right of communities to refuse access. New Zealand proposed that the international regime provide principles for benefit-sharing from TK use, including: approval and involvement of TK holders; and benefit-sharing with these holders. GRULAC, the African Group and Norway proposed including language in the articles on benefit-sharing and access stating that use of TK associated with genetic resources requires PIC of the communities that own the TK, according to national legislation. Canada stated that it is unclear who provides PIC at the local level, and proposed addressing this through MAT and community protocols. Norway suggested reflecting the facilitative role of consultations to ensure communities’ participation with the aim of obtaining consent.

Diversity of national circumstances: Delegates agreed on the need for flexibility to allow for different national circumstances, reflecting this in a preambular paragraph. China noted that consideration of diverse national circumstances should not be an obstacle to reaching agreement at the international level. The African Group stressed that the draft protocol should provide a common starting point for all CBD parties on ownership of genetic resources and granting of PIC. IIFB recommended that the protocol spell out public international law obligations confirming that TK holders have the right to grant access to TK, and states have the flexibility to ensure that this is realized under specific national circumstances. Delegates agreed on preambular text recognizing diverse circumstances in which TK associated with genetic resources is owned, held and developed by ILCs.

Customary law: IIFB and the African Group called for recognition of customary law as a cross-cutting issue. New Zealand said that the protocol should recognize communities’ rights according to their customary laws to identify relevant knowledge holders. The EU stressed that the protocol should recognize the importance of customary law, while procedures for the recognition of customary law should be defined by national legislation. Brazil proposed a distinction between ILCs controlling TK and knowledge holders. Delegates eventually agreed to refer to ILCs’ right to identify the rightful holders of the knowledge, consistent with their laws, customary laws, community protocols and procedures in the preamble.

Benefit-sharing: Japan, opposed by GRULAC, the African Group, Norway and IIFB, suggested “encouraging” rather than “ensuring” benefit-sharing from TK utilization. Canada proposed, and delegates agreed, that parties take measures “with

the aim of ensuring” benefit-sharing from the utilization of TK associated with genetic resources with “ILCs holding such knowledge.”

Access: IIFB requested that the protocol confirm ILCs’ right to PIC as collective TK owners, with states empowering ILCs to secure PIC and assisting them in implementing it. Discussion ensued as to whether this provision should be made “subject to national legislation,” with Africa suggesting “in accordance with national law” and IIFB calling for accordance with “national and international law” or “national law in accordance with UNDRIP.” New Zealand requested reference to “PIC/approval.” Canada proposed that parties take measures “with the aim of ensuring” that TK associated with genetic resources held by ILCs is accessed with the “PIC or approval and involvement of ILCs,” and that “if mandated by ILCs, national or local authorities may represent ILCs’ interests.”

Transboundary issues: Africa requested a reference to transboundary TK in the article on transboundary cooperation, with Switzerland, the EU and IIFB requesting cooperation of affected ILCs.

Capacity building for ILCs: IIFB proposed a separate provision to allow ILCs to determine their own capacity-building needs and priorities. Delegates agreed that parties “shall support” such capacity building.

COMPLIANCE: Compliance-related articles, particularly draft Articles 12 (monitoring, reporting and tracking), 13 (compliance with national ABS law) and 14 (compliance with MAT), were discussed in contact group 2 from Tuesday to Thursday, and in the inter-regional group on Friday.

Compliance with national ABS legislation: Discussions on draft protocol Article 12 focused on: the ABS-related items covered by compliance; the mandatory nature of, and degree of flexibility in ensuring compliance with, national ABS legislation; and the need for an internationally agreed understanding of misappropriation.

Coverage of compliance: IIFB and the African Group stressed that the provisions on compliance must include reference to TK, with the African Group adding “in accordance with national legislation.” LMMC stressed that compliance focus on the country of origin legislation on genetic resources, derivatives and TK. GRULAC called for parties: to take measures to ensure that genetic resources, derivatives and associated TK are obtained, accessed and used in accordance with PIC and MAT, as specified in the legislation of the country of origin; and, supported by the African Group, to require natural and legal persons using genetic resources, derivatives and/or associated TK to prevent their acquisition or utilization not in compliance with the protocol.

The EU stressed that compliance obligations should, instead, focus exclusively on genetic resources, and with Switzerland, expressed preference for referring only to “access” and not “use.” This was opposed by the Like-Minded Asia-Pacific and African groups, who noted that subsequent uses have to be covered. Canada preferred to refer to “measures aimed at preventing the use of genetic resources that have been acquired without PIC and MAT in violation of national legislation.”

Canada opposed a reference to TK in the provision. Australia and New Zealand stressed that the WIPO Inter-Governmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) was the appropriate body to deal with the connection between genetic resources and TK. Africa noted that the WIPO IGC, despite its mandate, has not yet entered into text-based negotiations.

Mandatory nature and flexibility: The Republic of Korea, opposed by the African Group, requested avoiding prescriptive language on compliance with national ABS legislation. New Zealand preferred references to “international cooperation” rather than onerous and unworkable obligations, stressing that MAT should be the primary compliance mechanism under the protocol. The Like-minded Asia-Pacific Group, supported by Norway, stressed the need for a clear obligation for countries to enforce provider countries’ ABS laws, accepting flexibility in its implementation; and stressed the need to set out criteria for the enforcement of national ABS laws of other countries. Africa also noted the need to take into account the situation of states without national ABS legislation.

Misappropriation: Canada and Australia expressed preference for an internationally agreed understanding of “misappropriation,” leaving flexibility for parties to adopt measures to address it. The African Group, New Zealand and others agreed to further discuss misappropriation. Canada proposed defining misappropriation as acquiring genetic resources by failing to obtain PIC and MAT. The African Group and the Philippines requested adding a reference to community PIC. Australia suggested limiting an international understanding of misappropriation to “accessed genetic resources.”

Monitoring, reporting and tracking: On draft protocol Article 13 (monitoring, tracking and reporting the utilization of genetic resources), discussions focused on the establishment of an internationally recognized certificate of compliance, and on checkpoints and disclosure requirements.

Certificate: The African Group, supported by LMMC, GRULAC, Switzerland and the EU, stressed the need for the protocol to establish an internationally recognized certificate of compliance, rather than postpone it after the protocol’s entry into force. The African Group said that a PIC certificate should be granted within the provider country, before negotiating MAT and seeking international recognition. Norway suggested the certificate should reflect the situation at the time of access, while subsequent uses should be dealt with under compliance with MAT. The Republic of Korea, supported by many, proposed using the CHM for the international recognition of the certificate.

Cuba recommended that the certificate confirm compliance with national legislation on genetic resources or on TK. The IIFB recommended that certificates of compliance related to TK cover compliance with community PIC, going beyond national law. The Republic of Korea suggested that compliance have PIC and MAT as its basis. New Zealand underscored that contractual agreements based on MAT should be the primary compliance measure.

Canada and Australia stressed the need to allow for discretion as to whether to issue a certificate. Opposing a voluntary certificate, GRULAC and the Philippines stressed that provider

countries may choose not to issue a certificate if they decide not to require PIC under CBD Article 15.5 (access subject to PIC unless the providing party otherwise determines) but would need to recognize a certificate issued by another country. The African Group added that an internationally recognized certificate of compliance with PIC and MAT should be the norm, unless provider countries decide not to require PIC under CBD Article 15.5.

The African Group and GRULAC proposed clarifying the elements of the internationally recognized certificate in the text of the protocol. The Like-Minded Asia-Pacific Group and GRULAC called attention to the criteria identified by the expert group on the certificate (January 2007, Lima, Peru); and noted the need for a transitional clause until the international recognition system is established. The EU noted practical and legal difficulties in detailing the minimum content in the protocol. GRULAC explained that the certificate should be a short document, while confidential information remains in the contract. Brazil proposed including: contact details of the provider, user and competent national authority; description of the subject matter and unique identifier; location of access; conditions of transfers to third parties; and date of issue.

Disclosure requirements and checkpoints: New Zealand recommended that a list of measures to monitor genetic resource utilization, including disclosure requirements and checkpoints, should not be prescriptive. Switzerland opposed checkpoints. Canada expressed concern over references to patent offices and product approval authorities as checkpoints.

GRULAC and the African Group stressed the need for checkpoints, with the Like-minded Asia-Pacific Group noting that establishment of effective checkpoints should be mandatory, but their choice can be left flexible. Africa also called for mandatory disclosure requirements, with India noting that the protocol fails to stipulate consequences for non-disclosure.

Delegates also debated whether issues related to intellectual property rights (IPRs) should be addressed under the protocol, with some developed countries arguing that the WIPO IGC is the appropriate body. Many developing countries pointed to frustrations with the WIPO IGC process, noting that issues related to genetic resources, TK, disclosure and IPRs should be dealt with under the protocol because it is in the final stages of negotiation.

Compliance with MAT: Discussions on draft protocol Article 14 (compliance with MAT) mainly focused on measures to address non-compliance with MAT, and also on the review of the effectiveness of these measures.

Measures on non-compliance with MAT: The Republic of Korea and Canada argued that parties should “provide” legal avenues to users and providers in cases of non-compliance with MAT, rather than “facilitate” access to them. The Like-minded Asia-Pacific Group, supported by Brazil, suggested that parties should instead create “convenient” and “meaningful” opportunities to seek recourse under user parties’ jurisdictions. GRULAC stressed that general rules are insufficient to deal with the asymmetry among countries and litigation costs related to genetic resources and TK in foreign jurisdictions.

GRULAC, the LMMC and the African Group called for including an international ombudsman and provision of legal aid. The African Group and GRULAC also requested compliance mechanisms in the absence of MAT; and sanctions to be applied to persons in foreign jurisdictions. GRULAC, opposed by the EU, called for compliance with national legislation related to contracts.

Review of effectiveness of measures on non-compliance with MAT: GRULAC supported a review by the MOP to the protocol of measures to address non-compliance with MAT and consideration of further action. The EU opposed, expressing concern that this implies subjecting domestic legal systems to broad review. The Like-minded Asia-Pacific Group proposed clarifying that this will not result in a review of national judicial systems, or to state that the COP “may” engage in such a review, or include this in the clause on the review of the protocol.

TEMPORAL APPLICATION OF BENEFIT-SHARING:

The issue of the temporal application of benefit-sharing obligations was addressed in contact group 1 from Tuesday to Thursday.

Discussions focused on benefit-sharing obligations, on the basis of article 4 of the draft protocol, rather than under scope. The African and Like-minded Asia-Pacific groups suggested that benefit-sharing cover continued and new uses of genetic resources acquired before the protocol’s entry into force. Delegates raised implementation-related concerns regarding determining, tracking and monitoring the new use.

The EU noted the general rule that legal obligations arise after ratification and entry into force and, supported by Australia and Canada, proposed that parties ensure benefit-sharing arising from the utilization of genetic resources acquired after the protocol’s entry into force for the concerned party. GRULAC distinguished between entry into force of the protocol and date on which obligations become binding, calling for respect of pre-existing rights and obligations and national legislation consistent with the CBD. The African and Like-minded Asia-Pacific Groups added that CBD obligations are valid notwithstanding the protocol’s entry into force. A civil society representative highlighted that accessions date back to colonial times and said this is an issue of “historic debt” that should be addressed at the political level.

The Like-minded Asia-Pacific Group, GRULAC and the African Group then suggested that benefit-sharing cover “every utilization” of genetic resources or associated TK. The EU, Australia and New Zealand stated that benefit-sharing should apply to genetic resources acquired after the entry into force of the protocol for each party. Norway suggested compliance measures can apply, and benefit-sharing be encouraged, for material acquired before the protocol’s entry into force.

RELATIONSHIP WITH OTHER AGREEMENTS: This issue was discussed in contact group 1 from Tuesday to Thursday and in the inter-regional group on Friday. Discussions focused on the relationship with the ITPGR and the Antarctic Treaty, and the protocol’s relationship with future specialized ABS arrangements.

GRULAC, LMMC, Norway, the EU and others stressed ensuring mutual supportiveness through a separate article. The EU, Norway, Australia, Canada and the Republic of

Korea stressed the need to respect existing instruments and processes, and provide flexibility for future development of specialized ABS systems. The African Group expressed concern about “sectoralization” of the ABS regime and subjecting parts of it to other processes. The EU proposed inserting language on existing instruments, specialized instruments and instruments developed in parallel to the protocol. Australia and New Zealand stressed the need for acknowledging the World Health Organization’s work of relevance to ABS.

On the relationship with the ITPGR, delegates agreed to base discussions on CBD Articles 4 (Jurisdictional Scope) and 22 (Relationship with other International Conventions). Australia proposed taking note of obligations under the ITPGR and the Antarctic Treaty, whereas GRULAC preferred not to reference specific instruments. Norway requested recognizing that ABS under the ITPGR fulfills ABS obligations under the protocol. The African Group objected to a stand-alone provision on relationship with other processes, and noted the Antarctic Treaty does not cover commercial benefits from bioprospecting activities.

The Like-minded Asia-Pacific Group suggested: recognizing rights and obligations under other agreements, rather than listing existing agreements on ABS; and stating that future agreements should not run counter to protocol or CBD objectives. The EU agreed, but requested specifying that both future developments under the protocol and developments of specialized ABS regimes be safeguarded. The African Group suggested adding that the protocol is a comprehensive international instrument on ABS and that future developments should be in conformity with the protocol and make specific reference to PIC and MAT.

The contact group 1 Co-Chairs proposed text stating that: CBD Article 22 applies to the protocol; the protocol is the comprehensive international instrument for implementing the ABS provisions of the CBD; and the protocol does not prejudice development and implementation of specialized instruments that are in harmony with it. Many expressed reservations on: reference to the protocol being “the comprehensive” international ABS instrument, and related language requiring parties to duly consider this when implementing or developing other international ABS instruments; and not prejudicing the implementation or development of other instruments that are “in harmony” with the protocol. GRULAC called for language stating that future instruments should adhere to the fundamental and basic ABS principles, even if they are more specific.

NON-PARTIES: Contact group 1 addressed this issue on Wednesday. GRULAC called for specific reference to non-party obligations, possibly along the lines of Biosafety Protocol Article 24 (Non-Parties), broad enough to accommodate third parties involved in ABS arrangements. The African Group explained that parties to the protocol will have to enforce protocol obligations in their transactions with non-parties or private entities.

FINANCIAL MECHANISM/FINANCIAL RESOURCES: Financial issues were addressed by contact group 1 on Wednesday. Australia, Switzerland, New Zealand, the EU and Norway suggested that the Global Environment Facility should be the financial mechanism. The Like-Minded Asia-Pacific Group and LMMC preferred a separate mechanism, with

LMMC suggesting using language from the ITPGR, including on the development of a funding strategy. GRULAC prioritized clarifying the source of financial means over elaborating the mechanism.

OUTCOME

REVISED DRAFT PROTOCOL: The revised draft protocol to the CBD on access to genetic resources and the fair and equitable sharing of benefits arising from their utilization (UNEP/CBD/WG-ABS/9/L.2) includes a footnote stating that the document: was not negotiated; reflects the efforts by the Co-Chairs to elaborate the elements of a draft protocol; is without prejudice to the parties' rights to make further amendments and additions to the text; and should be read in conjunction with the main body of the report, which reflects parties' views during ABS 9.

Preamble: The preamble includes text on, among others:

- recognizing the diversity of circumstances in which TK associated with genetic resources is owned, held and developed by ILCs;
- taking into account ILCs' existing rights to genetic resources and associated TK;
- being mindful that when TK associated with genetic resources is accessed, ILCs have the right to identify the rightful knowledge holders, consistent with their laws, customary laws, community protocols and procedures, as appropriate;
- recognizing the importance of providing legal certainty; and
- recognizing the importance of providing legal certainty in MAT negotiations.

Article 1 (Objective): Article 1 states that the protocol objective is to ensure fair and equitable benefit-sharing from genetic resources, contributing to the conservation of biodiversity and the sustainable use of its components.

Article 2 (Use of terms): Article 2 includes definitions on COP and regional economic integration organization.

Article 3 (Scope): Article 3 states that the protocol applies to: genetic resources within the scope of the CBD, TK associated with genetic resources, and benefits arising from their utilization.

Article 4 (Benefit-sharing): Article 4 states that benefits from the utilization of genetic resources and associated TK be shared with the party providing such resources or, where applicable, with ILCs holding such resources or associated TK.

It further requires parties to take appropriate measures with the aim of ensuring benefit-sharing from:

- the utilization of genetic resources, including from derivatives produced through expression, replication, characterization or digitalization, with the provider country, taking into account the list of typical uses of genetic resources in Annex II; and
- utilization of TK associated with genetic resources with ILCs holding such knowledge.

Article 5 (Access to genetic resources): Article 5 states that, in the exercise of sovereign rights over genetic resources, access to genetic resources is subject to PIC of the provider country, unless otherwise determined by the country. The appropriate measures to be adopted by parties include to:

- provide for the issuance of a permit or internationally recognized certificate as evidence of the decision to grant PIC;

- set out criteria for ILCs' PIC/approval and involvement for access to their genetic resources, where applicable national law recognizes and affirms ILCs' rights to genetic resources; and
- establish clear rules and procedures for requiring and establishing MAT at the time of access.

The article also requires: parties to make their decisions on PIC available to the ABS CHM; and a party to inform the ABS CHM of its determination of which genetic resources will or will not be subject to PIC, along with accompanying information.

Article 5bis (Access to TK associated with genetic resources): Article 5bis requires parties to take appropriate measures with the aim of ensuring that TK associated with genetic resources held by ILCs is accessed with the PIC/approval and involvement of ILCs, and is based on MAT.

Article 6 (Considerations relevant to research and emergency situations): Article 6 requires parties, in the development and implementation of national ABS legislation, to: create conditions to facilitate, promote and encourage biodiversity-related research important for conservation and sustainable use; and pay due regard to emergency situations including serious threats to public health, food security or biodiversity, according to national law.

Article 7 (Contribution to conservation and sustainable use): Article 7 states that parties shall encourage users and providers to direct benefits towards biodiversity conservation and sustainable use.

Article 8 (Transboundary cooperation): Article 8 contains two alternative options. According to the first option, the article requires parties to cooperate with a view to implementing the protocol's objective:

- to ensure that measures are supportive of, and do not run counter to, the protocol's objectives, when the same genetic resources are found *in situ* within the territory of neighbouring parties; and
- with ILCs' involvement, when the same TK associated with genetic resources is shared by different ILCs in several parties.

According to the second option, parties would be required to cooperate, with ILCs' involvement, where applicable, when the same genetic resources and/or TK associated with genetic resources are found *in situ* within the territory of more than one party.

Article 9 (TK associated with genetic resources): Article 9 requires parties:

- to give due consideration to ILCs' community laws, customary laws, community protocols and procedures, with respect to TK associated with genetic resources;
- to establish mechanisms to inform potential users of TK about their obligations for ABS arising from TK use, with ILCs' effective participation;
- not to restrict the customary use and exchange of genetic resources and TK within and amongst ILCs; and
- encourage users of publicly available TK to take all reasonable measures, including due diligence, to enter into fair and equitable benefit-sharing arrangements with the rightful holders of TK.

Article 10 (National focal points and national competent authorities): Article 10 includes provisions on designation and responsibilities of national focal points and competent national authorities on ABS.

Article 11 (ABS clearing-house and information sharing): Article 11 includes provisions on establishment of an ABS clearing-house and requirements for providing information.

Article 12 (Compliance with national ABS legislation): Article 12 requires parties to:

- take appropriate, effective and proportionate measures to ensure that genetic resources utilized within their jurisdiction have been accessed and used in accordance with PIC and provided that MAT have been established, as specified in the national ABS legislation of the provider country;
- take appropriate measures to address situations of non-compliance with the above measures; and
- cooperate in cases of alleged violation of the provider country's ABS legislation.

Article 13 (Monitoring, tracking and reporting the utilization of genetic resources): Article 13 requires parties to take appropriate measures to monitor the utilization of genetic resources, including from derivatives produced through expression, replication and characterization, having regard for the list of typical uses provided in Annex II, such as:

- identifying and establishing checkpoints and disclosure requirements, including user countries' national competent authorities, intellectual property examination offices, and authorities providing regulatory or marketing approval for products derived from genetic resources; and
- requiring users and providers of genetic resources to share information on the implementation of MAT, including through reporting requirements.

The article also states that:

- the permit or certificate issued at the time of access and registered with the ABS CHM constitutes an internationally recognized certificate of compliance;
- the internationally recognized certificate must serve as evidence that genetic resources are obtained, accessed and used, in accordance with PIC and MAT, as specified in national ABS legislation; and
- disclosure requirements must be met by providing an internationally recognized certificate.

The article also lists minimum information to be contained in the internationally recognized certificate, and requires the protocol MOP to consider additional modalities for the internationally recognized certificate, taking into account the need to minimize transaction costs and ensure feasibility, practicality and flexibility.

Article 14 (Compliance with MAT): Article 14 requires parties to:

- encourage providers and users of genetic resources and/or associated TK to include provisions in MAT to cover, where appropriate, dispute resolution;
- ensure that an opportunity to seek recourse is available under their legal system, in case of disputes arising from MAT; and
- take appropriate, effective and proportionate measures to address cases of alleged non-compliance with MAT.

Article 15 (Model contractual clauses): Article 15 states parties shall encourage the development and use of sectoral menus of model contractual clauses for MAT.

Article 16 (Codes of conduct and best practice standards): Article 16 states that parties shall encourage the development and use of codes of conduct and best practice standards in relation to ABS.

Article 17 (Awareness-raising): Article 17 provides a list of measures parties shall take to raise awareness of the importance of genetic resources and associated TK.

Article 18 (Capacity): Article 18 includes provisions on development and strengthening of capacities and a list of key areas and measures for capacity-building.

Article 18bis (Technology transfer and cooperation): Article 18bis requires parties to collaborate, cooperate and contribute in scientific research and development programmes, particularly biotechnological research, as a means to generate and share benefits, including through measures by developed country parties providing incentives to companies and institutions within their jurisdiction, to promote and encourage access to technology by, and transfer of technology to, developing countries, including least developed countries. The article also states that, where possible, such collaborative activities must take place in the provider country.

Article 18ter (Non-parties): Article 18ter requires parties to encourage non-parties to adhere to the protocol and contribute information to the ABS CHM.

Article 19 (Financial mechanism and resources): Article 19 states that the financial mechanism of the CBD will be the financial mechanism of the protocol.

Remaining articles include:

- Article 20 (COP serving as the MOP)
- Article 21 (Subsidiary bodies)
- Article 22 (Secretariat)
- Article 23 (Relationship with the Convention)
- Article 24 (Monitoring and reporting)
- Article 25 (Compliance with the protocol)
- Article 26 (Assessment and review)
- Article 27 (Signature)
- Article 28 (Entry into force)
- Article 29 (Reservations)
- Article 30 (Withdrawal)
- Article 31 (Authentic texts)

Annex I includes a list of monetary and non-monetary benefits. Annex II lists typical uses of genetic resources.

DRAFT COP DECISION: The draft decision on the adoption of the Nagoya protocol to the CBD on access to genetic resources and the fair and equitable sharing of benefits arising from their utilization (UNEP/CBD/WG-ABS/9/L.3) includes sections on: adoption of the Nagoya protocol; intergovernmental committee for the Nagoya protocol; and administrative and budgetary matters. The draft indicates that three annexes will be inserted: the text of the Nagoya protocol; the work plan of the intergovernmental committee; and the budget for the protocol's interim mechanism.

A footnote to the draft decision states that the document was not negotiated and is without prejudice to the parties' rights to make further amendments and additions to the text.

According to the draft decision, the COP adopts the protocol and requests the UN Secretary-General to be the depositary, and to organize signing ceremonies at UN Headquarters on 4 June 2011 and in Rio de Janeiro in June 2012, in conjunction with the UN Conference on Sustainable Development. In addition, the COP establishes an open-ended *ad hoc* intergovernmental committee to undertake the preparations necessary for the protocol's first MOP, and endorses its work plan. Finally, the COP decides that pending the entry into force of the Nagoya protocol, the financial costs of the interim mechanism will be borne by the Trust Fund for the CBD; and decides to establish an interim secretariat for the protocol hosted by the CBD Secretariat until the protocol's first MOP.

CLOSING PLENARY

DRAFT PROTOCOL AND OUTSTANDING ISSUES:

On Sunday morning, Working Group Co-Chair Casas noted that the revised draft protocol (UNEP/CBD/WG-ABS/9/L.2) would constitute the basis for further work and, as indicated in the footnote, was not negotiated. The Working Group adopted the draft protocol as Annex I to the meeting report.

Casas then asked delegates to present outstanding issues and text proposals, for reflection in the report. The EU noted submission of a list of issues and text proposals to the Secretariat. The Like-minded Asia-Pacific Group and the LMCC drew attention to submission of text proposals on benefit-sharing, access and compliance with national ABS legislation. GRULAC flagged as key outstanding issues: derivatives; references to the country of origin; internationally recognized certificates issued by national competent authorities; relationship with other agreements; and establishment of an ombudsman. Japan called for: transparency in access procedures; a mechanism to confirm that parties' PIC system is in conformity with the protocol access requirements; addressing benefit-sharing from derivatives under MAT and providing examples of derivatives in the COP decision, rather than in the protocol; addressing the negative implications of checkpoints to IPRs and product approval; and ensuring that the protocol does not affect other existing international obligations and more specialized ABS regimes.

Iran stressed the need to: recognize farmers' contribution to the development and conservation of genetic resources, and farmers' rights; develop a common understanding on the future development of specialized ABS arrangements; and clarify the relationship with existing ABS mechanisms. Norway supported binding provisions on checkpoints, disclosure requirements and the certificate of compliance, noting that work at WIPO and CBD on disclosure should be mutually supportive. The Philippines requested that: the protocol should ensure that ILCs' rights are not prejudiced in the absence of national ABS legislation or when access occurs without PIC or MAT; references to national legislation in relation to TK be accompanied by reference to "where appropriate," and to UNDRIP.

Australia called for: clarifying the protocol's relationship with the ITPGR, work in other fora such as WHO, and the development of specialized ABS arrangements; a common understanding of "utilization of genetic resources" as the access and use of genetic resources for the purposes of research and development of their genetic and biochemical make-up; excluding from the protocol's scope resources beyond national jurisdiction; clarifying that the protocol will not be applied retroactively; and fully recognizing the need for separate solutions for agricultural biodiversity. The Republic of Korea expressed regret that the Working Group did not fulfill its mandate in Cali, requesting: establishing a balance between facilitating access to genetic resources and benefit-sharing in the protocol's objective; and clarifying that benefit-sharing should be established in MAT.

Peru emphasized GRULAC's position on the cross-cutting nature of derivatives and TK, and requested: removing Annex II listing typical uses of genetic resources; making reference to ILCs' collective TK; separating rules on transparency and due process in relation to access from the internationally recognized certificate of compliance; clarifying that the protocol will serve as a comprehensive frame of reference for the implementation of obligations arising from other relevant international agreements; establishing an international fund to support monitoring and tracking of genetic resources, TK and derivatives; including in temporal scope new uses and continuing uses as of the date of entry into force of the CBD; and clarifying that the genetic resources of migratory species belong to the country in which these species are found or captured. Brazil identified as key issues: reference to the country of origin; and, among others, work on the scope, relationship with other international agreements, TK and derivatives.

Switzerland prioritized: further work on the concept of genetic resource utilization, which could provide a solution on temporal application and derivatives; legally-binding compliance measures allowing for flexibility in implementation; and clarification of the relationship with other international instruments, with particular reference to the ITPGR Multilateral System.

The African Group presented text on ecosystem custodians sharing the economic benefits of ecosystem value and on the inseparable nature of genetic resources and TK for ILCs. Reflecting on statements made, he urged delegates to preserve the careful balance and middle-of-the-road approach taken in respect to the draft protocol. Canada noted submission of written proposals on the relationship with other instruments and compliance.

New Zealand called for: clarification of the relationship between the ABS and other international regimes; for the protocol to protect ILCs' knowledge; providing for legal clarity, certainty and flexibility in terms of implementation; and appropriate reflection of the role of the state in ILC affairs.

India considered the current reference to derivatives too restrictive and called for reference to countries of origin. Highlighting that disclosure at patent offices is central to any regime establishing checkpoints, he stressed that certain

checkpoints should be mandatory. Colombia emphasized the protocol should serve as an umbrella for other instruments, none of which should run counter to or undermine its objectives.

Indonesia proposed that ILCs have the right to identify knowledge holders, subject to national legislation. New Zealand, for the Like-Minded in Spirit Group of Women, asked to include a preambular reference recognizing the vital role of women in the conservation and sustainable use of biodiversity, affirming the need for their full participation, including from ILCs, in ABS arrangements and for ensuring that they receive a fair share of the benefits. IIFB proposed an additional preambular paragraph noting the significance of UNDRIP for the protocol; and an operative paragraph requiring parties to take national measures to ensure compliance with indigenous PIC. She further requested that associated TK be addressed in all compliance measures, including the internationally recognized certificate. The Coordination of Indigenous Organizations in the Amazon (COICA) called for reference to UNDRIP, indigenous rights and the role of customary law and authorities throughout the protocol. IUCN called for a reference that ABS must be an incentive for sustainable use. A civil society representative stressed the need to: establish an international ombudsperson; address the "historic debt" related to pre- and post-CBD accessions; fight biopiracy through certificates and checkpoints; and ensure political will to finalize negotiations.

DRAFT COP DECISION: In the afternoon, delegates addressed the draft COP decision submitted by the Co-Chairs (UNEP/CBD/WG-ABS/9/L.3). Canada requested inserting a footnote stating that the draft is not negotiated and is without prejudice to the rights of parties to make further amendments and additions to the text. The draft decision was approved as amended. Colombia and the African Group put on record their reservations regarding reference to the "Nagoya protocol" and the complementary role of the ITPGR, respectively.

INTERSESSIONAL PROCESS: Working Group Co-Chair Hodges presented a Co-Chairs' proposal for an intersessional process, consisting of: a meeting of the Friends of the Co-Chairs in May in Tokyo, Japan; a Co-Chairs' Informal Inter-regional Consultation in June in Bonn, Germany; a Co-Chairs' Informal Inter-regional Consultation in September in Japan; a Friends of the Co-Chairs meeting in late September in Berlin, Germany; and a three-day resumed ABS 9 meeting in parallel to the fifth meeting of the parties to the Biosafety Protocol (COP/MOP 5) in October in Nagoya. Recognizing problems with scheduling, he said the proposal to resume ABS 9 during COP/MOP 5 was intended to keep costs down, announcing confirmed funding by the respective host countries for the other meetings.

Noting that different work formats have been tried without much success, Mexico, for GRULAC, called for: broad participation; continuity of members across all meeting formats; transparency; detailed reporting from all intersessional meetings; and regional consultations. The African Group expressed concern about the proposed multiplicity of meetings and proposed to hold: a resumed session of ABS 9 of at least seven days; followed by at most one informal inter-regional consultation to focus on text-based negotiations; or otherwise use the pledged funds for regional consultations. He said meetings should not

be back-to-back or in parallel with the biosafety meeting. The Cook Islands, for the Like-Minded Asia-Pacific Group, proposed to resume ABS 9 to engage in open, transparent and inclusive negotiations, but not in parallel with COP/MOP 5. Supporting the proposals from the African Group and the Like-Minded Asia-Pacific Group, the EU called for inclusive and transparent negotiations.

Serbia, for CEE, called for a ten-day resumed ABS 9 session prior to COP/MOP 5. Requesting formal and clear negotiations with certain legal safeguards, Switzerland proposed to have a preparatory meeting to resolve outstanding issues and to resume ABS 9 for five days. Australia called for ABS 9 to resume within three months for up to seven days.

CDB Executive Secretary Ahmed Djoghlaflaf noted that it would be very difficult for financial reasons to avoid a resumed session in Nagoya. Japan, for the incoming COP Presidency, stressed the role of the Co-Chairs in proposing an intersessional process in light of parties' suggestions, indicating willingness to consult with the Co-Chairs on funding needs. Germany, for the current COP Presidency, noted that the current and incoming COP Presidencies contributed to the Co-Chairs' proposal, expressing willingness to depart from it.

Working Group Co-Chair Hodges then proposed to: hold one Friends of the Co-Chairs meeting for three days; one Co-Chairs' Informal Inter-regional Consultation for five days; and a resumed Working Group meeting for up to seven days in early September 2010, or during the week of COP/MOP 5, preceded by two days of informal regional consultations.

Uganda, for the African Group, underscored the lack of parties' interest in holding informal meetings and requested only one meeting of the resumed Working Group. Namibia, for the African Group, supported by Australia and the EU, called for the resumption of the Working Group for seven days well in advance of the COP, and proposed holding a Friends of the Co-Chairs meetings or Co-Chairs' Informal Inter-regional Consultations.

Working Group Co-Chair Hodges then proposed to resume the Working Group in June 2010, in Montreal, Canada, for up to seven days, preceded by two days of informal, regional and inter-regional consultations, subject to confirmation of funding and the specific dates. He noted that delegates at the resumed session will still be able to decide whether to convene a Friends of the Co-Chairs meeting or Co-Chairs' Informal Inter-regional Consultations before the COP.

The African Group supported the proposal and requested commissioning studies on: areas of non-agreement in the protocol and alternative solutions; temporal scope, *ex situ* collections and potential options for benefit-sharing arrangements; and status of publicly available TK and possibility of ensuring benefit-sharing from its utilization. Working Group Co-Chair Hodges remarked that proposals for studies would be entertained, subject to availability of funding.

OTHER MATTERS: Delegates agreed on a Co-Chairs' proposal to call for COP 10 to ensure that the future strategic plan "cover the three objectives of the Convention in a balanced manner."

The meeting then adopted a tribute to the Government and people of Colombia (UNEP/CBD/WG-ABS/9/L.4), hailed by delegates with a long round of applause.

ADOPTION OF THE REPORT: Rapporteur Somaly Chan (Cambodia) introduced the draft report of the meeting (UNEP/CBD/WG-ABS/9/L.1). The EU requested to review the wording to be introduced into the report with regard to the status of the draft protocol. Following a break for consultations, delegates recorded that: the Working Group agreed to annex the Co-Chairs' draft protocol to the report of the meeting as Annex I, with the footnote as agreed; and the Working Group agreed to suspend the meeting and, subject to confirmation and availability of funds, to resume the meeting in Montreal for a period of seven days at a date to be confirmed.

Delegates then reviewed the meeting report (UNEP/CBD/WG-ABS/9/L.1) and made corrections to properly reflect their interventions. The meeting then adopted the report as amended.

Japan announced that its government will finance the resumed session, and hosting it in Japan remains under consideration.

CLOSING STATEMENTS: Malawi, for the African Group, called for quickly addressing outstanding issues and bringing the process to a successful conclusion, if necessary through an informal meeting following the resumed ABS 9. Mexico, for GRULAC, called on all parties to assess the outcome and build political will of all parties. The Cook Islands, for the Asia-Pacific Group, said benefit-sharing can contribute to poverty reduction and called on all to embark on the same road towards a successful conclusion of the negotiations. Malaysia, for the LMMC, noted that the LMMC had lost its voice due to the composition of the inter-regional group according to UN regions and asked that this be addressed in future negotiations. He reiterated that compliance is at the center of the negotiations for the developing world, and that without strong compliance provisions they would not be ready to discuss access requirements.

Serbia, on behalf of CEE, underscored its commitment to adopt a legally binding instrument at COP 10. Spain, for the EU, recalled its recent mandate to finalize negotiations on a protocol and noted the meeting's importance in identifying issues to take home for further consultations. Japan urged delegates to keep up the current momentum. IIFB stressed its preference to comprehensively address indigenous rights over TK and genetic resources in the future protocol, including strong compliance measures on traditional knowledge, rather than reducing the issue to a question of intellectual property protection. The Indigenous Women's Biodiversity Network highlighted the role of indigenous women in conservation and sustainable use of biodiversity, and underscored the collective nature of TK. A local community's representative underscored the need for promoting the full and effective participation of local communities in CBD processes, particularly on ABS.

Colombia, as the host government, stressed the need to find a win-win solution for all countries of origin, providers and users of biodiversity. CBD Executive Secretary Ahmed Djoghla stressed the Cali meeting was "exceptional," thanks to the contribution of all.

Following the customary exchange of courtesies, Working Group Co-Chair Hodges suspended the meeting at 7:57 pm.

A BRIEF ANALYSIS OF ABS 9

Statistically, ABS 9 was a success! The negotiating text evolved from a 57-page maze—the unwieldy Montreal Annex featuring a whopping 3,400 pairs of square brackets—to a 19-page, clean and understandable draft protocol. In real terms, this progress was welcomed by all negotiators, with the understanding that the draft protocol remains a Co-Chairs' text that does not limit parties' ambitions to add or amend text. Of practical importance is its status as a draft legal instrument that allows it to meet the six-month notification deadline so it can be considered at COP 10 in Nagoya, Japan, in October. Beyond such minimum benchmarks, however, many were frustrated by the fact that ABS 9 barely entered into the text-based negotiations necessary to tackle the many outstanding and politically sensitive issues that have to be resolved before October. As a result, delegates saw little choice but to suspend and resume ABS 9, allowing for another seven days of negotiations prior to COP 10.

This analysis revisits the process towards the development of a workable draft document at ABS 9. It highlights some of the main political undercurrents and their effects on key substantive issues, with a view to explaining why delegates leaving Cali were cautiously optimistic regarding the possible adoption of a protocol in Nagoya.

FROM A CLEAN SLATE TO PROCEDURAL SURREALISM

ABS 9 was challenged with the formidable task of transforming the Montreal Annex—a document that even negotiators could hardly interpret—into a draft protocol that decision-makers in capitals could understand, in order to provide clear instructions to their delegations for the final round of negotiations. To prepare for this task, ABS 9 was preceded by extensive intersessional consultations. This enabled the Co-Chairs to develop a clean and short text as the basis for work at ABS 9. To build ownership and to avoid reinsertion of language *en masse* from the Montreal Annex, at the beginning of the meeting the Co-Chairs imposed a moratorium on brackets, asking delegates to merely identify missing or difficult issues. Contact groups were then established to find "common understandings" on these issues, and some convergence emerged from these groups quicker than expected, even on some of the most controversial issues, such as benefit-sharing from derivatives and the certificate of compliance.

Therefore it was no surprise that delegates expected to engage in text-based negotiations on a revised version of the Co-Chairs' draft. These expectations were further fuelled by the formation of an inter-regional group in the "Vienna-plus setting:" a large roundtable, limiting the number of spokespersons to five per UN region and two per stakeholder group, while freely allowing for rotation and admitting all participants into the room. Yet text-based negotiations never took place. This was due, several delegates reasoned in retrospect, to the fact that not all compromises reached in contact groups were inserted in the revised draft protocol. In addition, many explained that

the Co-Chairs did not clarify how the inter-regional group's deliberations would be reflected in the meeting's outcome. Uncertain as to whether and how their disagreements would be captured, delegates continued to reiterate their positions and became increasingly assertive and polarized in their interventions, leading to a degeneration of the collaborative atmosphere and, eventually, to the collapse of negotiations late on Friday night.

By Saturday morning tempers had cooled down and all regions came back with strong pleas to finally enter into full-fledged text-based negotiations. Their appeals, however, went unheard, as they were asked to "shade" portions of the protocol on which they had "serious" issues—an exercise that resulted in shading the text almost in its entirety. These procedural frustrations led delegates to perceive the process as increasingly surreal and disconnected from their expectations, to the point that regional groups' leaders decided to take the reins of the process, requesting that ABS 9 revert to plenary setting, for parties to record their concerns with the text in the report of the meeting. They also requested ABS 9 to be suspended and resumed well in advance of COP 10 to finally conduct a round of "real" text-based negotiations.

OF CROCODILES AND ANACONDAS

The meltdown that occurred during this meeting is an example of the often sudden disruptions that have characterized the ABS negotiations to date—vividly portrayed by Namibia, speaking for the African Group, as crocodiles and anacondas. To understand these clashes, one has to look at the political undercurrents that can be framed in terms of two major divergences between industrialized and developing countries. The first is the question of the "historical debt," as aptly summed up by civil society.

Many developing countries, Africa in particular, expect the ABS regime to rectify the perceived injustice related to access to and transfers of genetic resources that occurred before the CBD's entry into force or acquired thereafter regardless of the CBD provisions, and now held by the developed world's *ex situ* collections. From a country of origin perspective, the Convention's framework and its implementation so far have contributed little to remedying this situation. Such concerns have shaped the developing countries' position that the regime should have a broad scope to cover genetic resources, derivatives, traditional knowledge and possibly all biological resources.

At ABS 9, this fundamental tension also tainted discussions on "temporal scope," where developing countries argued that benefit-sharing obligations cover new and continuous uses of material acquired before the protocol's entry into force. Many developed countries argued against any retroactive application of the protocol's provisions. Norway though, on the basis of their national legislation, suggested mandatory compliance measures and voluntary benefit-sharing for new uses of pre-protocol material. This may point towards possible common ground. Significant progress was also made towards resolving contentions on derivatives by including the concept of "utilization of genetic resources or their derivatives" under the

article on benefit-sharing; and by accepting, for the first time, to describe, rather than define, derivatives in scientifically sound terms.

The second political undercurrent is a specific reflection of the "trade and environment" debate: potential interactions between the ABS regime and international trade and intellectual property law. This mainly affected discussions on compliance-related provisions. While disclosure requirements have been a bone of contention for a long time, the clash and subsequent meltdown during ABS 9 occurred over a proposal to use patent offices as checkpoints for verifying certificates of compliance and for tracking and monitoring the use of genetic resources. While developing countries count on disclosure to fight misappropriation, developed countries aim to keep the intellectual property rights processes free from procedural obstacles or prefer to address the issue in WIPO or the TRIPS review process. Eventually delegates decided to put the issue on hold, leaving compliance as a significant stumbling block in the way towards the finalization of the regime.

Both of these undercurrents affected the discussion on the relationship of the ABS regime with other international agreements. While in the past this discussion mostly focused on the relationship with existing agreements, primarily the ITPGR, the Antarctic Treaty system and the WIPO IGC, it has now expanded to whether and how the protocol should be taken into account in the development and implementation of future specialized ABS regimes. Although it is unclear at this point if and which specialized regimes will emerge, this may be the case for certain genetic resources, such as marine or microbial genetic resources, or for specific uses such as pharmaceuticals or animal breeding. The African Group clearly opposed such a "sectoralization" of the regime, cautioning that this could allow specific user communities to "escape" the general ABS obligations under the protocol by developing a specialized regime. Contact group discussions eventually pointed to a possible balance between integrating new specialized regimes under the protocol and safeguarding the integrity and overarching nature of the protocol's principles and procedures. It remains to be seen, however, whether this compromise is acceptable to all.

These few examples of "crocodiles" and "anacondas" explain the complex linkages in countries' positions on issues that are political and technical at the same time. More predators may be lurking beneath the surface of the shaded paragraphs in the draft protocol text, and delegates need to stay very alert on their way to Nagoya.

A PROTOCOL IN 2010?

Overall, three outcomes can be envisaged for COP 10: a full-fledged protocol; a framework protocol, with some elements (such as compliance and the financial mechanism) to be elaborated during an interim period; or the establishment of an intergovernmental negotiation committee or an ExCOP to complete negotiations beyond Nagoya. While some want to avoid the third option at all costs, others clearly prefer a delayed protocol to one that is weak or unsatisfactory from their perspective.

Delegates returning to their capitals now need to prepare their positions based on the draft protocol and their deliberations in Cali, hopeful to devise strategies to strike deals in the areas of remaining divergence, to ensure that a protocol or framework protocol is adopted at COP 10. But, as many participants noted, positions and strategies are only some of the ingredients for successful negotiations: there is also need for political will. While clarity in the process and better understanding of the outstanding issues may help, what remains to be ascertained is whether the expressions of commitment to the process voiced at the end of ABS 9 will be enough to sustain negotiations until their successful conclusion. The experience of the Cartagena Protocol, however, and the ABS negotiations so far, have shown that negotiations under the CBD tend to take much longer than even the most cautious assessments predict. It will take the best efforts of delegates, Chairs, COP presidencies and CBD Secretariat, in a collaborative and transparent manner, to conclude a timely, fair and significant Nagoya protocol on ABS, in no more than six months.

UPCOMING MEETINGS

RESUMED ABS 9: The resumed session of the ninth meeting of the CBD *Ad Hoc* Open-ended Working Group on Access and Benefit-sharing is expected to be held in Montréal, Canada, at a date to be determined in June or July 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/>

UNPFII 9: The ninth session of the UN Permanent Forum on Indigenous Issues will be held from 19-30 April 2010 at UN Headquarters in New York. Its special theme is "Indigenous peoples: development with culture and identity; articles 3 and 32 of the UN Declaration on the Rights of Indigenous Peoples." For more information, contact: UNPFII Secretariat; tel: +1-917-367-5100; fax: +1-917-367-5102; e-mail: indigenous_un@un.org; internet: http://www.un.org/esa/socdev/unpfii/en/session_ninth.html

WIPO IGC 16: The sixteenth session of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore will be held from 3-7 May 2010 in Geneva, Switzerland. The meeting is organized by the World Intellectual Property Organization (WIPO). For more information, contact: the WIPO Secretariat; tel: +41-22-338-9111; fax: +41-22-733-5428; e-mail: grtkf@wipo.int; internet: http://www.wipo.int/meetings/en/details.jsp?meeting_id=20162

CBD SBSTTA 14: The 14th meeting of the CBD Subsidiary Body on Scientific, Technical and Technological Advice will be held from 10-21 May 2010, in Nairobi, Kenya. 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=SBSTTA-14>

WGRI 3: The third meeting of the CBD *Ad Hoc* Open-ended Working Group on Review of Implementation of the Convention will be held from 24-28 May 2010, in Nairobi, Kenya. 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=WGRI-03>

4TH INTERNATIONAL INDIGENOUS CONFERENCE

ON TRADITIONAL KNOWLEDGE: This Conference will be held from 6-9 June 2010, in Auckland, New Zealand. It is organized by New Zealand's Maori Centre of Research Excellence. For more information, contact: tel: +64-9-373-7599 ext 84220; fax: +64-9-373-7928; e-mail: enquiries@traditionalknowledge2010.ac.nz; internet: <http://www.traditionalknowledge2010.ac.nz/>

INTERNATIONAL CONGRESS ON BIOLOGICAL AND CULTURAL DIVERSITY: This Congress, organized by UNESCO, in the framework of the International Year of Biodiversity will be held from 8-10 June 2010 in Montréal, Canada. For more information, contact: Mrs. Thora Martina Herrmann, Canada Research Chair in Ethnoecology and Biodiversity Conservation; tel: +1-514-343-8044; fax: +1-514-343-8008; e-mail: crcecb@umontreal.ca; internet: <http://www.cbd.int/meetings/icbcd/>

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 a protocol on ABS and a revised strategic plan for the Convention; and celebrate the International Year of Biodiversity 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/doc/?meeting=COP-10>

GLOSSARY

ABS	Access and Benefit-sharing
CBD	Convention on Biological Diversity
CEE	Central and Eastern Europe
CHM	Clearing-House Mechanism
COP	Conference of the Parties
GRULAC	Latin America and the Caribbean Group
IIFB	International Indigenous Forum on Biodiversity
IGC	Intergovernmental Committee
ILC	Indigenous and local communities
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
TK	Traditional knowledge
UNDRIP	UN Declaration on the Rights of Indigenous Peoples
WIPO	World Intellectual Property Organization
WHO	World Health Organization