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Ninth meeting

Bonn, 19-31 May 2008

Item 4.1 of the provisional agenda*

REPORT OF THE AD HOC OPEN-ENDED WORKING GROUP ON ACCESS AND BENEFIT-SHARING ON THE WORK OF ITS SIXTH MEETING

INTRODUCTION

1. The sixth meeting of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing was held at the United Nations Office at Geneva from 21 to 25 January 2008.

2. The meeting was attended by representatives of the following Parties and other Governments: Algeria, Angola, Antigua and Barbuda, Argentina, Australia, Austria, Bahamas, Bangladesh, Belgium, Benin, Bhutan, Brazil, Burkina Faso, Cambodia, Cameroon, Canada, Central African Republic, Chad, Chile, China, Colombia, Costa Rica, Croatia, Cuba, Czech Republic, Democratic Republic of the Congo, Denmark, Djibouti, Dominica, Ecuador, Egypt, El Salvador, Ethiopia, European Community, Finland, France, Gabon, Germany, Grenada, Guinea, Guinea-Bissau, Haiti, Hungary, India, Indonesia, Iran (Islamic Republic of), Italy, Japan, Kenya, Liberia, Madagascar, Malawi, Malaysia, Mali, Mauritania, Mexico, Morocco, Namibia, Nepal, Netherlands, New Zealand, Niger, Nigeria, Norway, Pakistan, Palau, Paraguay, Peru, Philippines, Portugal, Republic of Korea, Republic of Moldova, Saint Lucia, Senegal, Seychelles, Singapore, Slovenia, South Africa, Spain, Sweden, Switzerland, Tajikistan, Thailand, Timor-Leste, Togo, Tunisia, Trinidad and Tobago, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Viet Nam, Yemen, Zambia, Zimbabwe.

3. Observers from the following United Nations bodies, specialized agencies and other bodies also attended: Food and Agriculture Organization of the United Nations (FAO), Global Environment Facility (GEF), International Treaty for Plant Genetic Resources for Food and Agriculture (ITPGRFA), Permanent Forum on Indigenous Issues (PFII), United Nations Environment Programme (UNEP), United Nations University (UNU).

4. The following organizations were also represented by observers: African Centre for Biosafety; African Union; ALMACIGA-Grupo de Trabajo Intercultural; American BioIndustry Alliance (ABIA); Andean First Nations Council; Asociacion de la Juventud Indigena Argentina; Asociación Ixacavaa De Desarrollo e Información Indígena; Baikal Buryat Center for Indigenous Cultures; Berne Declaration; Biotechnology Industry Organization; Botanic Gardens Conservation International; Center for International Sustainable Development Law; Centre for Economic and Social Aspects of Genomics; Centre for Organisation, Research & Education; Centro de acción Legal-Ambiental y Social de Guatemala; Centro de Cooperación al Indígena; Centro de Estudios Multidisciplinarios Aymara; Chisasibi Business Service Centre; Church Development Service (Evangelischer Entwicklungsdienst);

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Commission for Environmental Cooperation (CEC); Consejo Autonomo Aymara; Consultative Group on International Agricultural Research (CGIAR); Cooperativa Ecologica das Mulheres Extrativistas do Marajo; CropLife International; Dena Kayeh Institute; Deutsche Forschungsgemeinschaft (German Research Foundation); ECOROPA; Edmonds Institute; Emerging Indigenous Leaders Institute; ETC Group; European Federation of Pharmaceutical Industries and Associations; European Seed Association; Federacion de comunidades Nativas Fronterizas del Putumayo; Forum Environment & Development; Fundación para la Promoción del Conocimiento Indígena; Fundacion Tinku; Gent University; Glaxo Smith Kline; Global Forest Coalition; Global Forest Coalition; Grand Council of the Crees (Eeyou Istchee); Humboldt University - Berlin; INBRAPI (Brazilian Indigenous Institute for Intellectual Property); Indigenous Information Network; Indigenous Peoples Council on Biocolonialism; Indigenous World Association of Hawaii; Institut du développement durable et des relations internationales; Institut Hydro-Québec, Environnement, Développement et Société; Institute for Biodiversity; Intellectual Property Owners Association; Inter Mountain Peoples Education and Culture in Thailand Association; International Alliance of Indigenous and Tribal Peoples of the Tropical Forests; International Alliance of Indigenous and Tribal Peoples of the Tropical Forests Surulere Lagos; International Centre of Insect Physiology and Ecology (ICIPE); International Chamber of Commerce; International Development Research Centre; International Federation of Pharmaceutical Manufacturers and Associations; International Institute for Sustainable Development; International Research Institute for Sustainability; International Seed Federation; Irish Centre for Human Rights/National University of Ireland; IUCN - Environmental Law Centre; IUCN—The World Conservation Union; J. Craig Venter Institute; Kummara Association; MISEREOR; National Aboriginal Health Organization; Native Women's Association of Canada; Natural Justice (Lawyers for Communities and the Environment); Nepal Indigenous Nationalities Preservation Association; Nepal Indigenous Nationalities Preservation Association; Netherlands Center for Indigenous Peoples; New Partnership for Africa's Development; New South Wales Aboriginal Land Council; Organisation Internationale de la Francophonie; Organizacion Dad Nakue Dupbir; Research and Action in Natural Wealth Administration; Russian Association of Indigenous Peoples of the North (RAIPON); Saami Council; Sierra Club of Canada; Tebtebba Foundation; The Eastern Door; The Fridtjof Nansen Institute; The Institute of Cultural Affairs; Third World Network; Tinhinan; UNI PROBA; United Confederation of Taino People; Universidade de Brasilia; Université de Sherbrooke; Université de Sherbrooke/CBD NGO Alliance; University of Ibadan; University of Malaya; West Africa Coalition for Indigenous Peoples' Rights (WACIPR); WWF International.

ITEM 1. OPENING OF THE MEETING

5. The meeting was opened at 10 a.m. on Monday, 21 January 2008, by Mr. Fernando Casas and Mr. Timothy Hodges, Co-Chairs of the Ad Hoc Open-ended Working Group. Mr. Hodges recalled the mandate of the Working Group and the progress to date. He informed representatives that he and his Co-Chair had spent the time since the fifth meeting of the Working Group liaising with Governments, non-governmental organizations, indigenous and local communities and other stakeholders, and remained committed to engaging all interested parties in the discussions on access and benefit-sharing in order to help the Working Group achieve its mandate. He acknowledged that differences of opinion remained on a number of issues, but welcomed the number of points of convergence that had begun to appear at, and since, the fifth meeting of the Working Group. Those would be a good basis for the continuation of the negotiations at the present meeting. He noted that calls for progress on the matter were amplifying as 2010 target drew closer, and that the success of the Convention was, in part, at stake in the present discussions on access and benefit-sharing.

6. Opening statements were made by Mr. Coimbra (Brazil) (on behalf of Ms. Marina Silva, Minister of the Environment of Brazil and current President of the Conference of the Parties), and Mr. Ahmed Djoghlaif, Executive Secretary of the Convention on Biological Diversity.

7. Mr. Coimbra (Brazil) said that Ms. Silva would have liked to attend the meeting personally to share her thoughts on the negotiation of an international regime on access and benefit-sharing, in accordance with decision VIII/4 A. As the current President of the Conference of the Parties, it was her

duty to highlight countries' shared responsibility to future generations to fulfil the long-term objectives of the Convention by demonstrating political will and taking concrete action to implement the objectives, decisions and agreements to which they were committed nationally and internationally.

8. Although she had become somewhat apprehensive on receiving the report of the fifth meeting of the Working Group, she trusted that the limited progress achieved on that occasion would not deter participants from moving forward with the negotiations and presenting substantive recommendations to the ninth meeting of the Conference of the Parties that would lead to the adoption of the international regime by 2010. There was still an unacceptable level of precaution and resistance to progress in the area of benefit-sharing. Yet the negotiation of the access and benefit-sharing regime constituted a priority for developing countries. As noted by the Minister of Environment of Spain at the fourth meeting of the Working Group in Granada in 2006, the Group needed to move from criteria, recommendations and guidelines to the establishment of a binding international regime.

9. A collective effort to boost implementation of the Convention was required by developed and developing countries alike, based on their respective capacities, and it was essential for the developed countries to take the lead. Much remained to be done to achieve the targets set for 2010. There was no more time for rhetoric or for action dissociated from multilateral efforts. To act now was a matter of responsibility, commitment, vision, ethics and survival.

10. Mr. Djoghlaif said that Geneva, the venue of the sixth meeting of the Working Group, had been the hub of multilateral cooperation for international peace and security at the end of the First World War. Sustainable development was a closely related contemporary aspiration that called for the implementation of the three objectives of the Convention on Biological Diversity. He hoped that the current meeting would make a valuable contribution to the building of an international regime to achieve the third of those objectives, which was fair and equitable sharing of the benefits arising out of the utilization of genetic resources. There was no time to lose, because the regime would need to be adopted by the Conference of the Parties at the tenth meeting, which the City of Nagoya, Japan, has offered to host in 2010.

11. He thanked Canada, Finland, France, Ireland, the Netherlands, Norway, Sweden and Switzerland for their generous financial support for the convening of the meeting. He also expressed appreciation to Austria, the European Community, Germany, Norway, Spain and Sweden for their voluntary contributions that had enabled the attendance of 58 participants from developing countries and countries with economies in transition.

12. Noting that the current meeting was being held at a critical juncture in the negotiations on an international regime on access and benefit-sharing, he invited Parties, other Governments and all stakeholders to rise to the challenge under the able leadership of the Co-Chairs.

ITEM 2. ORGANIZATIONAL MATTERS

2.1. Officers

13. In keeping with established practice, the Bureau of the Conference of the Parties acted as the Bureau of the meeting. As agreed by the Conference of the Parties at its eighth meeting, Mr. Fernando Casas and Mr. Timothy Hodges served as Co-Chairs of the Working Group.

14. Ms. Mary Fosi Mbantenkhu (Cameroon), Vice-President of the Bureau, served as Rapporteur.

2.2. Adoption of the agenda

15. At the 1st session of the meeting, on 21 January 2008, the Working Group adopted the following agenda, on the basis of the provisional agenda (UNEP/CBD/WG/ABS/6/1):

1. Opening of the meeting.
2. Organizational matters.
3. International regime on access and benefit-sharing:

- 3.1. Compliance:
 - (a) Measures to support compliance with prior informed consent and mutually agreed terms;
 - (b) Internationally recognized certificate of origin/source/legal provenance;
 - (c) Monitoring, enforcement and dispute settlement;
- 3.2. Traditional knowledge and genetic resources;
- 3.3. Capacity-building;
- 3.4. Nature, scope and objectives of the international regime.
4. Other matters.
5. Adoption of the report.
6. Closure of the meeting.

2.3. Organization of work

16. At the 1st session of the meeting, on 21 January 2008, the Working Group adopted the organization of work as proposed in the annotations to the provisional agenda (UNEP/CBD/WG-ABS/6/1/Add.1).

17. The Co-Chair recalled that the fifth and sixth meetings of the Working Group were to be treated as a single session, and that participants should view the present meeting as days six to ten of a ten-day session. He therefore requested that representatives take the floor only to provide new information or clarification of positions stated previously and not to repeat statements and proposals that they had already made at the fifth meeting. He, however, drew participants' attention to the addition to the agenda of a new topic that had not been discussed at the fifth meeting, namely, "Nature, scope and objectives of the international regime".

18. He said that he hoped that, during the current meeting, the Working Group would conclude its general discussion of the items early in the week and be in a position to embark on more specific and concrete negotiations on: (i) the overall objective of the international regime; (ii) the main components of the international regime; and (iii) specific options for those main components. On the basis of the outcome of those discussions, the Working Group would also prepare a draft decision for consideration at the ninth meeting of the Conference of the Parties.

19. In that regard and to ensure that the meeting was as productive as possible, he urged representatives to make best use of the opportunity to hold informal discussions in the margins of the meeting, as necessary.

ITEM 3. INTERNATIONAL REGIME ON ACCESS AND BENEFIT-SHARING

20. The Ad Hoc Open-ended Working Group took up agenda item 3 at the 1st session of meeting, on 21 January 2008.

21. In considering the item, the Working Group had before it the annex to decision VIII/4 A of the Conference of the Parties (UNEP/CBD/WG-ABS/5/2), a note by the Executive Secretary on the analysis of gaps in existing national, regional and international legal and other instruments relating to access and benefit-sharing (UNEP/CBD/WG-ABS/5/3), an overview of recent developments at national and regional levels relating to access and benefit-sharing (UNEP/CBD/WG-ABS/5/4), an overview of recent developments at the international level relating to access and benefit-sharing (UNEP/CBD/WG-ABS/5/4/Add.1), the report on the legal status of genetic resources in national law, including property law, where applicable in a selection of countries (UNEP/CBD/WG-ABS/5/5), the report of the Group of Technical Experts on an Internationally Recognized Certificate of Origin/Source/Legal

Provenance(UNEP/CBD/WG-ABS/5/7) and the report of the fifth meeting of the Working Group (UNEP/CBD/WG-ABS/5/8).

22. It also had before it, as information documents, the Co-Chairs' reflections on progress made by the Working Group at its fifth meeting (UNEP/CBD/WG-ABS/6/INF/1), notes by the Co-Chairs on proposals made at the fifth meeting of the Working Group, a compilation of submissions provided by Parties, Governments, indigenous and local communities and stakeholders on concrete options on the substantive items on the agenda of the fifth and sixth meetings of the Working Group (UNEP/CBD/WG-ABS/6/INF/3 and Add.1-3), and a study on access and benefit-sharing arrangements existing in specific sectors (UNEP/CBD/WG-ABS/6/INF/4/Rev.1).

23. It also had before it a number of information documents prepared for the fifth meeting of the Working Group, including a compilation of submissions provided by Parties and other relevant organizations on issues of relevance to the international regime on access and benefit-sharing (UNEP/CBD/WG-ABS/5/INF/1), a compilation of submissions provided by Parties on experiences in developing and implementing Article 15 of the Convention at the national level and measures taken to support compliance with prior informed consent and mutually agreed terms (UNEP/CBD/WG-ABS/5/INF/2 and Add. 1 and 2), an analytical study on administrative and judicial remedies available in countries with users under their jurisdiction and in international agreements (UNEP/CBD/WG-ABS/5/INF/3), a document submitted by the International Chamber of Commerce on issues for consideration regarding an internationally recognized certificate of origin/source/legal provenance (UNEP/CBD/WG-ABS/5/INF/4), a discussion paper submitted by the Government of Japan on an internationally recognized certificate of origin/source/legal provenance (UNEP/CBD/WG-ABS/5/INF/4/Add.1), a document provided by ICIPE-African Insect Science for Food and Health on access to biocontrol agents to combat invasive alien species and the access and benefit-sharing regulations (UNEP/CBD/WG-ABS/5/INF/5), the Workshop Report of the "Certificate of Origin/Source/Legal Provenance" in the African ABS Discussion (UNEP/CBD/WG-ABS/5/INF/7), the report of the first Capacity Development Workshop on Access and Benefit-sharing for Africa (UNEP/CBD/WG-ABS/5/INF/8), and the report of the International Indigenous and Local Community Consultation on Access and Benefit Sharing and the Development of an International Regime (UNEP/CBD/WG-ABS/5/INF/9).

3.1 Compliance

24. The Ad Hoc Open-ended Working Group took up agenda item 3.1 at the 1st session of the meeting, on 21 January 2008. Mr. Fernando Casas, Co-Chair of the Working Group, reminded the meeting that agenda item 3.1 was divided into three sub-items: (a) measures to support compliance with prior informed consent and mutually agreed terms; (b) internationally recognized certificate of origin/source/legal provenance; and (c) monitoring, enforcement and dispute settlement.

25. Statements were made by the representatives of Brazil, Canada, Chile, China, Colombia, Costa Rica, India, Indonesia, Japan, Malawi, New Zealand, Peru, Slovenia (on behalf of the European Community and its member States) and Switzerland.

26. A statement was also made by the representative of UNCTAD.

27. Statements were also made by the representatives of the Asian Indigenous Peoples' Caucus and the Foro Internacional de las Comunidades Locales.

28. The representative of the IUCN also made a statement.

3.2 Traditional knowledge and genetic resources

29. The Ad Hoc Open-ended Working Group took up agenda item 3.2 at the 2nd session of the meeting, on 21 January 2008.

30. Statements were made by the representatives of Brazil, Canada, Costa Rica, Japan, New Zealand, Norway, Slovenia (on behalf of the European Community and its member States) and Uganda (on behalf of the African group).

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31. The representative of the International Indigenous Forum on Biodiversity also made a statement.

32. The representative of the International Chamber of Commerce also made a statement.

3.3. Capacity-building

33. The Ad Hoc Open-ended Working Group took up agenda item 3.3 at the 2nd session of the meeting, on 21 January 2008.

34. Statements were made by the representatives of Algeria, Burkina Faso, Costa Rica, Gabon, Japan, Kenya, Malawi, Mexico, Pakistan, Peru, Senegal, Slovenia (on behalf of the European Community and its member States), Switzerland, Thailand, Timor-Leste and Tunisia.

35. Statements were also made by the representatives of the Foro Internacional Indígena and the Red de Mujeres Indígenas.

36. The representative of IUCN also made a statement.

3.4 Nature, scope and objectives of the international regime

37. The Ad Hoc Open-ended Working Group took up agenda item 3.4 at the 2nd session of the meeting, on 21 January 2008.

Objectives of the international regime

38. Statements were made by the representatives of Algeria, Argentina, Australia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, El Salvador, Ethiopia, Grenada, Haiti, Kenya, Malaysia (on behalf of the Like-minded Megadiverse Countries), Mali, Mexico, Namibia, Norway, Peru, Slovenia (on behalf of the European Community and its member States), Switzerland, Uganda (on behalf of the African Group) and Zambia.

39. Statements were also made by the representatives of the Arctic Indigenous Peoples' Caucus, the Indigenous Women's Biodiversity Network, the International Indigenous Forum on Biodiversity and six indigenous peoples' organizations (Indigenous Peoples Council on Biocolonialism, International Indian Treaty Council, Foundation for the Promotion of Indigenous Knowledge, Juventud Indígena Argentina, Consejo Autónomo Aymara, Centro Estudios Multidisciplinarios Aymara Bolivia and United Confederation of Taino Peoples).

40. A statement, including a proposal, was also made by the representative of the American BioIndustry Alliance.

Scope of the international regime

41. Statements were made by the representatives of Algeria, Australia, Burkina Faso, Canada, Cuba, Egypt, El Salvador, Ethiopia, Grenada, Haiti, Japan, Malaysia (on behalf of the Like-minded Megadiverse Countries), Namibia, Norway, Republic of Korea, Saint Lucia, Slovenia (on behalf of the European Community and its member States), Switzerland and Thailand.

42. A statement was also made by the representative of the Indigenous Women's Biodiversity Network.

43. The Ad Hoc Open-ended Working Group resumed its discussion of agenda item 3.4 at the 3rd session of the meeting, on 22 January 2008.

44. Statements were made by the representatives of Argentina, Brazil, Cameroon, Chile, China, Colombia, Costa Rica, Dominican Republic, Ecuador, Egypt, Guinea-Bissau, Indonesia, Mexico and Peru.

45. Statements were also made by the representatives of the International Treaty on Plant Genetic Resources for Food and Agriculture and the Food and Agriculture Organization of the United Nations (FAO).

46. Statements were also made by the representatives of the Consultative Group on International Agricultural Research (CGIAR), the Asian Indian Peoples' Caucus (supported by the African, Pacific and Arctic Indigenous Peoples' Caucuses) and six indigenous peoples' organizations (Indigenous Peoples Council on Biocolonialism, International Indian Treaty Council, Foundation for the Promotion of Indigenous Knowledge, Juventud Indígena Argentina, Consejo Autónomo Aymara, Centro Estudios Multidisciplinarios Aymara Bolivia and United Confederation of Taino Peoples).

47. Statements were also made by the representatives of CropLife International and the Intellectual Property Owners Association.

48. The American BioIndustry Alliance (ABIA) submitted a statement in writing.

Nature of the international regime

49. Statements were made by the representatives of Algeria, Australia, Brazil, Cameroon, Canada, Central African Republic, Colombia, Cuba, Egypt, El Salvador, Ethiopia, Gabon, Guinea, Indonesia, Japan, Kenya, Liberia, Malawi, Malaysia (on behalf of the Like-minded Megadiverse Countries), Mali, New Zealand, Norway, Seychelles, Slovenia (on behalf of the European Community and its member States), Switzerland and Yemen.

Action by the Working Group on item 3 as a whole

50. The Ad Hoc Open-ended Working Group decided at the 4th session of the meeting, on 22 January 2008, to set up an open-ended contact group with Mr. René Lefebvre (Netherlands) and Mr. Pierre du Plessis (Namibia) serving as co-chairs.

51. At the 5th session of the meeting, on 23 January 2008, Mr. René Lefebvre, co-chair of the contact group on objective and main components, reported on the group's discussions the previous day. An informal paper containing bracketed options under the heading "Objective" had been produced. The options reflected all positions in the form of a simple and focused objective. Although there was still a considerable measure of divergence, he believed that progress had been made and that some willingness to compromise was discernible. He drew attention to the need to define a number of terms, in particular "derivatives", "misuse" and "misappropriation".

52. The co-chairs of the contact group had allowed an observer to introduce proposed text on screen, making it clear that the proposal could not be submitted to the plenary unless it was formally supported by a Party. That question remained to be addressed by the contact group. The representative of Norway expressed regret that it had not been possible to include the text submitted by the observer representing indigenous and local communities. He reminded participants that the eighth meeting of the Conference of the Parties had decided that the negotiating process should be inclusive and facilitate the participation of indigenous and local communities.

53. The representatives of Canada, Slovenia (on behalf of the European Community and its member States), Malaysia (on behalf of the Like-minded Megadiverse Countries) and Japan requested that it be reflected in the report that there had been no opportunity to negotiate the text on the "Objective" contained in the informal paper. Mr. Hodges, Co-Chair of the Working Group, said that the content of the paper merely constituted the basis for an evolving process of negotiation.

54. The Co-Chairs noted that the contact group would move on at its next meeting to discuss the main components of the international regime, endeavouring to define their core content in simple language.

55. The Co-Chairs drew attention to an informal paper prepared by the Secretariat containing a draft recommendation from the Working Group on possible elements of a decision of the ninth session of the Conference of the Parties on access and benefit-sharing. It was decided to set up a second open-ended contact group to discuss the draft recommendation, with Mr. Linus Spencer Thomas (Grenada) and Mr. François Pythoud (Switzerland) serving as co-chairs.

56. At the 6th session of the meeting, on 24 January 2008, Mr. René Lefeber, co-chair of the contact group on objective and main components, reported on the group's discussions of the previous day. He informed the Working Group that the unresolved issue of the possible inclusion of a proposal by an observer had been settled following endorsement by Haiti of the submitted text.

57. He said that the contact group had heard proposals from several groups and Parties, but had not managed to hear from all interested parties, owing to a lack of time. The co-chairs of the contact group had therefore requested that any outstanding proposals be submitted in writing to the co-chairs before the start of the 6th session. The co-chair explained that he and his co-chair would prepare another informal paper, compiling those submissions and reflecting the contact group's deliberations to date, ready for consideration by the contact group at its next meeting. Finally, he appealed to all participants in the contact group to maintain their positive attitude to the work in hand.

58. The Co-Chairs of the Working Group requested the contact group not only to continue its good work on the objective and main components of the international regime, but also, at its next meeting, to begin consideration of the scope and nature of the international regime.

59. At the 6th session of the meeting, on 24 January 2008, Mr. François Pythoud, co-chair of the contact group on the draft recommendation from the Working Group on possible elements of a decision on access and benefit-sharing for the consideration of the ninth meeting of the Conference of the Parties, reported on the group's discussions of the previous day. He said that he and his co-chair had prepared a new informal paper reflecting the outcome of the contact group's discussions to date and including all the written submissions received. He requested that the contact group be permitted to reconvene in order to continue its deliberations, albeit on the understanding that work on the draft recommendation would not be concluded until the ninth meeting of the Conference of the Parties.

60. At the 7th session of the meeting, on 25 January 2008, Mr. Linus Spencer Thomas, co-chair of the contact group on the draft recommendation on possible elements of a decision on access and benefit-sharing for the consideration of the ninth meeting of the Conference of the Parties, reported on the group's discussions of the previous day. He conveyed his thanks to all participants for their hard work and the compromises that they had made. He reported that, although the contact group had not managed to remove all the square brackets in the informal paper, it had made substantial progress. The co-chairs had prepared a new informal paper reflecting the contact group's deliberations to date.

61. At the same session, Mr. René Lefeber, co-chair of the contact group on the objective, main components, scope and nature of the international regime, reported on the group's discussions of that day and the previous afternoon. He thanked participants for their efforts and for their submissions. He explained that the contact group had sorted the proposed elements into two categories: components to be further elaborated with the aim of incorporating them into the international regime; and components for further consideration. He stressed that the "components for further consideration" should not be considered as being less important than those on which there had been agreement, saying that some of the most important points needed more discussion.

62. Mr. Lefeber said that the contact group had not had enough time to work much on the scope and nature of the international regime. Nevertheless, the co-chairs had also collected submissions on those topics from members of the contact group. Those submissions, along with the outcome of the group's negotiations, had been compiled into one document, with footnotes indicating the extent to which some of the topics had been discussed. Before closing, he said that there remained one point of contention in the consolidated document, in that a number of developing countries had felt strongly that the issue of international access standards was in no way linked to the "enforcement of compliance".

63. The Co-Chairs of the Working Group thanked the co-chairs of the contact groups for their hard work and the skill with which they had performed their task. They also thanked the participants for their spirit of compromise and the collegial manner in which they had carried out their deliberations.

64. Mr. Hodges then presented a draft recommendation on possible elements of a decision on access and benefit-sharing for the consideration of the Conference of the Parties to the Convention at its ninth

meeting (UNEP/CBD/WG-ABS/6/L.2), which reflected the outcome of the deliberations of the two contact groups. Proposals regarding the objective, scope, main components and nature of the international regime on access and benefit-sharing were contained in the second part of the document as an annex to that draft recommendation. He said that the recommendation would be annexed to the report of the meeting and would form the basis for further elaboration and negotiation of the international regime. He also announced that all the written submissions made during the current meeting would be compiled by the Secretariat and made available to the Conference of the Parties at its ninth meeting.

65. He explained that following consultations with the Bureau, the Co-Chairs had incorporated an additional line of text into the draft recommendation. They were proposing that the meetings of the Working Group prior to the tenth meeting of the Conference of the Parties should be preceded by two days of informal consultations. They emphasized how useful the informal consultations prior to the present meeting had been and believed that enabling Parties to hold such consultations before future meetings, and permitting regional and other groups to meet ahead of time, would greatly facilitate the work of future meetings.

66. The representative of Canada, referring to paragraph 6 of the draft recommendation, proposed including three options rather than two. Option A would remain unchanged, the words “non-legally binding or” would be deleted in option B, and option C would reproduce the original wording of option B but delete the phrase “a mix of legally binding and non-legally binding” He emphasized that Canada had not ruled out the possibility that some elements of the international regime might be best effected in a legally binding fashion. However, the Working Group had not reached the point where such elements could be clearly identified. The proposal was adopted.

67. The representative of Japan, referring to the section on “Objective” in the annex to the draft recommendation, said that her delegation had hoped to engage in further discussion of the objective of the international regime but that had not been possible owing to time constraints. It therefore felt ill at ease with the text as it stood even though much of it was bracketed. The representative of Australia proposed inserting a footnote stating: “These proposals were neither negotiated nor agreed.” The Working Group agreed to the proposal.

68. The representative of Malaysia, speaking on behalf of the Like-minded Megadiverse Countries, said that a compromise proposal had been made to the European Community and its member States to move the item “International access standards” under “Components for further consideration” of the “Compliance” section of the annex to draft recommendation UNEP/CBD/WG-ABS/6/L.2 from the subsection “Development of tools to enforce compliance” to the subsection “Development of tools to encourage compliance”, since international access standards should not be regarded as a tool for enforcing compliance. Indeed, such standards should not fall under “Compliance” at all, but placement of the item “Development of tools to encourage compliance” would minimize the impact of keeping it in that section.

69. The representative of Slovenia, speaking on behalf of the European Community and its member States, said that those Parties were willing to go along with the proposal. He noted, however, that the items that the contact group characterized as components for further consideration in the main components section were in need of further discussion, also as regards their placement under the different headings.

70. The representative of Malaysia expressed surprise at the statement that the European Community and its member States were reserving the right to move the text again in the future.

71. The representative of Slovenia stated that it was his group’s perception that the placement of an issue in section “Components for further consideration” indicated that there was a need for further consideration and, in some cases, conceptual work.

72. Mr. Hodges, Co-Chair, noted that the compromise proposal had been adopted but that substantial differences of opinion clearly remained. The positions of the Like-minded Megadiverse Countries and the European Community and its member States would be reflected in the report of the meeting.

73. Following the discussion, the Working Group agreed to submit document UNEP/CBD/WG-ABS/6/L.2, as amended, to the Conference of the Parties for consideration at its ninth meeting as an annex to the present report.

ITEM 4. OTHER MATTERS

74. At the 7th session of the meeting, on 25 January 2008, Mr. Hodges, Co-Chair, reminded the Working Group that it had agreed at its fifth meeting to defer consideration of the need and possible options for indicators for access to genetic resources and in particular for the fair and equitable sharing of benefits arising from the utilization of genetic resources. The matter would be taken up at some point between the ninth and tenth meetings of the Conference of the Parties.

75. The representative of Peru suggested organizing a workshop to exchange ideas on issues such as the nature and scope of the international regime, the definition of the term derivatives, and the concept of misuse. She requested the Secretariat to explore the idea of holding a workshop and the availability of voluntary funding.

76. At the 7th (closing) session of the meeting, on 25 January 2008, Ms. Lakshan Bibi, from the Kalash Indigenous Survival Programme/Indigenous People Program, Pakistan, presented the Executive Secretary with the gift of a new exhibit for the Museum of Nature and Culture of the Convention on Biological Diversity.

ITEM 5. ADOPTION OF THE REPORT

77. The present report was adopted at the 7th session of the meeting, on 25 January 2008 on basis of the draft report prepared by the Rapporteur (UNEP/CBD/WG-ABS/6/L.1) and the draft recommendation submitted by the Co-Chairs (UNEP/CBD/WG-ABS/6/L.2), as orally amended.

78. During the adoption of the report, the representative of Liberia (speaking on behalf of the African Group) and the representative of Malaysia (speaking on behalf of the Like-minded Megadiverse Countries), referring to paragraph 53 of the draft report, said that the word “sufficiently” should be inserted before the word “negotiate” in the first sentence. The word “merely” in the second sentence should be deleted. In response, the Co-Chair said that paragraph 53 reflected a statement made by another delegation and therefore was not subject to negotiation.

79. A statement was also made by the representative of the Philippines.

ITEM 6. CLOSURE OF THE MEETING

80. At the 7th (final) session of the meeting, on 25 January 2008, closing statements were made by the representatives of Algeria, Brazil, Chile (on behalf of the Group of Latin American and Caribbean Countries), Malaysia (on behalf of the Group of Like-minded Megadiverse Countries), Senegal (on behalf of the African Group), Slovenia (on behalf on the European Community and its member States), the United States of America, and Yemen.

81. The Executive Secretary also made a statement.

82. The sixth meeting of the Ad Hoc Open-ended Working Group was then declared closed at 6.15 p.m. on 25 January 2008.

Annex

**RECOMMENDATION OF THE WORKING GROUP ON ACCESS AND BENEFIT-SHARING
AT ITS SIXTH MEETING ON POSSIBLE ELEMENTS OF A DECISION ON ACCESS AND
BENEFIT-SHARING FOR THE CONSIDERATION OF THE CONFERENCE OF THE
PARTIES AT ITS NINTH MEETING**

The Working Group *recommends* that the Conference of the Parties at its ninth meeting adopt a decision along the following lines:

The Conference of the Parties,

Recalling its decisions VII/19 D and VIII/4 A-E on access and benefit-sharing,

Recalling also its decision VIII/5 C on collaboration and contribution of the Ad Hoc Working Group on Article 8(j) and related provisions to the fulfilment of the mandate of the Ad Hoc Open-ended Working Group on Access and Benefit sharing,

Further recalling that the Bonn Guidelines on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising out of their Utilization are making a contribution to the development of national legislation,

Having considered the reports of the fifth and sixth meetings of the Ad Hoc Open-ended Working Group on Access and Benefit Sharing, which were held, respectively, in Montreal from 8 to 12 October 2007, and in Geneva from 21 to 25 January 2008,

[*Acknowledging* the importance of awareness-raising and *noting*, in this regard, the potential contribution of the work program on communication, education and public awareness (CEPA) to increased understanding of access and benefit sharing in light of the ongoing elaboration and negotiation of the international regime,]

Recognizing the potential role of the United Nations Environment Programme, Parties, Governments and other relevant international organisations in further contributing to awareness-raising and in capacity-development,

[*Welcoming*] [*Taking note of*] the United Nations Declaration on the Rights of Indigenous Peoples adopted by the General Assembly on 13 September 2007, [considering that some of the rights identified in the Declaration, particularly its Article 31 that relates to traditional knowledge and genetic resources will facilitate and guide Parties in their understanding of their commitments under the Convention on Biological Diversity,]

Acknowledging the potential role of the clearing house mechanism of the Convention as a tool to facilitate the dissemination and exchange of information on access and benefit-sharing,

Welcoming the agreements and other work relating to access to genetic resources and sharing the benefits of their use in various forums, and in particular the International Treaty of Plant Genetic Resources for Food and Agriculture, and the multi-year programme of work of the Commission on Genetic Resources for Food and Agriculture of the Food and Agriculture Organization of the United Nations,

Recognizing the importance of the participation of indigenous and local communities in the elaboration and negotiation of an international regime on access and benefit sharing,

1.

Option A

[*Welcomes* the progress made in the Ad Hoc Open-ended Working Group on Access and Benefit-sharing in the elaboration and negotiation of the international regime and takes note of [the annex] the report of the Working Group at its sixth meeting [on the objective[, nature and scope] and main components of the international regime]];

/...

Option B

[*Welcomes* the progress made in the Ad Hoc Open-ended Working Group on Access and Benefit-sharing and decides to transmit to the Ad Hoc Open-ended Working Group on Access and Benefit-sharing at its seventh meeting [the annex to the present decision, on the objective, nature, scope, and main components of the international regime], for the purpose of continuing to elaborate and negotiate the international regime];

2. *Reiterates* its instruction to the Ad Hoc Open-ended Working Group on Access and Benefit-sharing to complete its [mandate] [work] at the earliest possible time before the tenth meeting of the Conference of the Parties, [in accordance with the mandate and terms of reference as contained in decisions VII/19 D and VIII/4 A] [, to elaborate and negotiate the international regime according to its terms of reference in decision VII/19 D, decision VIII/4 A, [and to the report of its sixth meeting (UNEP/CBD/COP/9/6))] [to enable the adoption of the completed international regime by the tenth meeting of the Conference of the Parties];

3. *Welcomes* the outcome of the meeting of the Group of Technical Experts on an Internationally Recognized Certificate of Origin/Source/Legal Provenance, held in Lima in January 2007, as a relevant contribution to the work of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing;

4. *Decides* that the Ad Hoc Open-ended Working Group on Access and Benefit-sharing should meet [] times [subject to the availability of funds] prior to the tenth meeting of the Conference of the Parties in order to complete its [work in accordance with its] mandate. [to [elaborate and] negotiate the international regime. The meetings should be preceded by two days of informal consultations;

[5. *Further decides* that the seventh meeting of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing [should be convened as soon as possible after the ninth meeting of the Conference of the Parties, subject to the availability of financial resources] [shall be convened in 2008] [and the eighth meeting in the first half of 2009];

[6.

Option A

[*Further instructs* the Ad Hoc Open-ended Working Group on Access and Benefit-sharing to begin, at its seventh meeting, to draft the [legal] [legally binding] provisions of the international regime on access and benefit-sharing, on the basis of the annex to report of the sixth meeting of the Working Group and in accordance with decisions VII/19 D and VIII/4 A of the Conference of the Parties, [taking full advantage of the annex to decision VIII/4 A (“the Granada text”) and as a means of speedily implementing the third objective of the Convention;]]

Option B

[*Further instructs* the Ad Hoc Open-ended Working Group on Access and Benefit-sharing to begin, at its seventh meeting, to draft a mix of legally binding and non legally binding provisions of the international regime on access and benefit sharing, on the basis of the annex to the report of the sixth meeting of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing and in accordance with decisions VII/19 D and VIII/4 A of the Conference of the Parties,]]

Option C

[*Further instructs* the Ad Hoc Open-ended Working Group on Access and Benefit-sharing to begin, at its seventh meeting, to draft non legally binding provisions of the international regime on access and benefit sharing, on the basis of the annex to the report of the sixth meeting of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing and in accordance with decisions VII/19 D and VIII/4 A of the Conference of the Parties,]]

[7. *Invites* Parties, other Governments, international organizations and relevant stakeholders to submit operative text for the international regime on access and benefit-sharing and *requests* the

Executive Secretary to compile these submissions and make these compilations available to Parties sixty days prior to the seventh meeting of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing;]

< insert as necessary a paragraph on the establishment of a technical experts group or groups with clear terms of reference >

[8. *Requests* the Co-Chairs of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing to carry out bilateral and regional [and interregional] consultations during the inter-sessional period in order to advance the negotiations and *calls upon* the donors countries and relevant organizations to provide the financial resources necessary for such consultations and for the timely [and successful] completion of the [negotiations] [work];]

9.

Option A

[*Invites* Parties, other Governments, and donor organizations to contribute to provide the ways and means to facilitate sufficient preparation and participation of representatives of indigenous and local communities in the Ad Hoc Inter-Sessional Open-ended Working Group Article 8(j) and Related Provisions and the Ad Hoc Open-ended Working Group on Access and Benefit-sharing;]

Option B

[*Encourages* Parties, other Governments, international organizations and all relevant stakeholders to provide the ways and means to allow for sufficient preparation and to facilitate effective participation of indigenous and local communities in the process of the negotiation and elaboration of an international regime, in accordance with decision VIII/5 C;]

[10. *Requests* the Executive Secretary to convene an international expert meeting/seminar on traditional knowledge prior to the seventh meeting of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing;]

[11. *Invites* indigenous and local communities, Parties, donors, and other interested bodies to support national and regional workshops, the input of which shall feed into the international expert meeting/seminar;]

12. *Invites* the Global Environment Facility to strengthen the efforts to implement its strategic programme on capacity-building for access and benefit-sharing in order to enable Parties to elaborate, negotiate and implement the international regime, mobilizing available resources of the fourth replenishment and to provide appropriate resources in its fifth replenishment, and *urges* Parties to make full use of the programmes of the Global Environment Facility, including for the full implementation of the articles of the Convention related to access and benefit-sharing;

13. *Invites* the United Nations Environment Programme, Governments and relevant intergovernmental organizations, in close consultation with the Secretariat, to support or continue supporting and facilitating, as appropriate, regional and interregional consultations, to carry out capacity-development activities related to access and benefit-sharing and to contribute to raising awareness to the issue of access and benefit-sharing among decision makers, indigenous and local communities, and other relevant stakeholders, and encourage countries to include activities related to access and benefit-sharing among the priorities for external funding;

[14. *Invites* Parties to fully utilize the Bonn Guidelines in the formulation of their national legislation for access and benefit-sharing and related arrangements;]

[15. *Also invites* Parties to fully utilize the annex to decision VIII/4 A in the formulation of their national legislation for access and benefit-sharing and related arrangements;]

[16. *Requests* the Executive Secretary, as part of its programme of work on communication, education and public awareness outlined in decision IX/..., to implement activities with a view to increasing the awareness [and education] of decision-makers and relevant stakeholders;]

17. *Invites* Parties to make optimal use of the access and benefit-sharing component of the clearing house mechanism of the Convention in order to facilitate the exchange of information related to access and benefit-sharing, including relevant literature, legislation, analytical studies, and case-studies, and *requests* the Executive Secretary, and *invites* Parties, other Governments, and relevant organizations to take further measures to build the capacity of Parties for access to, and use of, the clearing-house mechanism.

Annex

THE INTERNATIONAL REGIME

I. OBJECTIVE 1

Effectively implement the provisions [in Articles 15, 8(j), 1, 16 and 19.2] of the Convention [and its three objectives], specifically by:

- [[Facilitating] [regulating transparent] access to genetic resources, [their derivatives] [and products] [and associated traditional knowledge];]
- Ensuring [the conditions and measures for] the [effective,] fair and equitable sharing of benefits arising out of their utilization, [their derivatives] [and products] [and associated traditional knowledge] [and to prevent their misappropriation and misuse];
- [Securing compliance in user countries with national laws and requirements, including PIC and MAT, of the country [of origin] providing those resources or of the Party that has acquired those resources in accordance with the CBD].

[taking into account all rights over those resources, including the rights of indigenous and local communities, and ensuring compliance with PIC.]

II. SCOPE

Compilation of proposals on scope 2

1. Recommendation of Co-Chairs of the Working Group

All genetic resources, and associated traditional knowledge, covered under the Convention on Biological Diversity and the benefits resulting from their use.

2. Submissions

Option 1

The scope of the international regime on access and benefit-sharing shall include, among others:

- (a) All relevant provisions of the Convention on Biological Diversity.
- (b) All biological resources, genetic resources, derivatives, products and associated traditional knowledge, innovations and practices
- (c) All benefits arising from the commercial and other utilization of biological resources, genetic resources, derivatives, products and associated traditional knowledge, innovations and practices.

1/ These proposals were neither negotiated nor agreed.

2/ These proposals were neither discussed, negotiated nor agreed.

(d) All benefits arising from the commercial and other utilization of biological resources, genetic resources, derivatives, products and associated traditional knowledge, innovations and practices from the entry into force of the Convention on Biological Diversity;

(e) All continuing benefits arising from the commercial and other utilization of biological resources, genetic resources, derivatives, products and associated traditional knowledge, innovations and practices taken prior to the coming into force of the Convention on Biological Diversity;

(f) All biological resources, genetic resources, derivatives, products and associated traditional knowledge, innovations and practices within national jurisdiction and of a transboundary nature.

The scope of the international regime on access and benefit-sharing shall exclude:

All species listed in Annex I of the International Treaty on Plant Genetic Resources for Food and Agriculture unless they are used beyond the purpose of the said treaty.

Option 2

The international regime applies to all genetic resources and associated traditional knowledge, innovations and practices covered by the Convention on Biological Diversity, subject to other international obligations, with the exclusion of human genetic resources and genetic resources beyond national jurisdiction.

Option 3

1. Will cover:

- Access to genetic resources and promotion and safeguarding of fair and equitable sharing of the benefits arising out of the utilization of genetic resources in accordance with relevant provisions of the Convention on Biological Diversity;
- Traditional knowledge, innovations and practices in accordance with Article 8(j).

2. Outside the scope will be:

- Genetic resources that were acquired before the entry into force of the Convention on Biological Diversity on 29 December 1993;
- Human genetic resources.

3. The international regime on access and benefit-sharing established in the framework of the Convention on Biological Diversity should provide flexibility to respect existing and allow for the implementation and potential and further development of other, more specialized international access and benefit-sharing systems.

4. Special consideration will be given to:

- Genetic resources covered by the FAO International Treaty on Plant Genetic Resources for Food and Agriculture when these are accessed for research, breeding or training for the purpose for food and agriculture;
- The relationship with the International Convention for the Protection of New Varieties of Plants (UPOV);
- Marine genetic resources found in areas beyond national jurisdiction;
- Genetic resources located in the Antarctic Treaty area;
- Animal genetic resources for food and agriculture;
- Work within the WIPO Intergovernmental Committee on Intellectual Property, Genetic Resources, Traditional Knowledge and Folklore;

- o Genetic resources within the remit of the FAO Commission on Genetic Resources for Food and Agriculture.

Option 4

The scope covers the subject-matter that should be included in an international regime. This subject matter should necessarily include:

- (a) All types of genetic resources and their derivatives but excludes human genetic resources;
- (b) Any traditional knowledge associated with genetic resources and their derivatives.

The international regime will not preclude the benefit-sharing provisions of the International Treaty of Plant Genetic Resources for Food and Agriculture included in its Multilateral System, and in harmony with the Convention on Biological Diversity.

Option 5

All genetic resources and associated traditional knowledge, innovations and practices covered by the Convention on Biological Diversity and benefits arising from the commercial and other utilization of such resources should be covered by the international regime, with the exclusion of human genetic resources.

Option 6

All genetic resources, derivatives and associated traditional knowledge provided derivatives must be clearly defined within the scope of Convention on Biological Diversity.

Option 7

1. The international regime should provide—in accordance with national and international laws and other international obligations—for:

(a) Conditions to facilitate access to and transboundary utilization of genetic resources for environmentally sound uses – and associated traditional knowledge;

(b) Fair and equitable sharing of the monetary and non-monetary benefits arising out the utilization of genetic resources and associated traditional knowledge.

2. The international regime shall be without prejudice to the International Treaty on Plant Genetic Resources for Food and Agriculture and should take into account the work of the WIPO on the intellectual property aspects of genetic resources and traditional knowledge, as well as the work by the FAO Commission on Genetic Resources for Food and Agriculture.

3. The following materials should be excluded from the scope of the international regime:

(a) Human genetic resources;

(b) Genetic material acquired prior to the national ratification of the Convention on Biological Diversity and since then cultivated *ex situ*;

(c) Genetic material already made freely available by the country of origin.

4. The term “utilization of genetic resources” needs further clarification to delimit the scope of the international regime.

III. MAIN COMPONENTS

A. *Fair and equitable benefit-sharing*

1. *Components to be further elaborated with the aim of incorporating them in the international regime*
 - 1)■ Linkage of access to the fair and equitable sharing of benefits
 - 2)■ Benefits to be shared on mutually agreed terms
 - 3)■ Monetary and/or non-monetary benefits
 - 4)■ Access to and transfer of technology
 - 5)■ Sharing of results of research and development on mutually agreed terms
 - 6)■ Effective participation in research activities, and/or joint development in research activities
 - 7)■ Mechanisms to promote equality in negotiations
 - 8)■ Awareness-raising
 - 9)■ Measures to ensure participation and involvement of indigenous and local communities in mutually agreed terms and sharing of benefits with traditional-knowledge holders
2. *Components for further consideration*
 - 1) Development of international minimum conditions and standards
 - 2) Benefit-sharing for every use
 - 3) Benefits directed towards conservation and sustainable use of biodiversity and socio-economic development, in particular the Millennium Development Goals (MDGs) in accordance with national legislation
 - 4) Multilateral benefit-sharing options when origin is not clear or in transboundary situations
 - 5) Establishment of trust funds to address transboundary situations
 - 6) Development of menus of model clauses and standardized benefits for potential inclusion in material transfer agreements
 - 7) Enhanced utilization of Bonn Guidelines

B. *Access to genetic resources ^{3/}*

1. *Components to be further elaborated with the aim of incorporating them in the international regime*
 - 1)■ Recognition of the sovereign rights and the authority of Parties to determine access
 - 2)■ Linkage of access to fair and equitable sharing of benefits
 - 3)■ Legal certainty, clarity and transparency of access rules
2. *Components for further consideration*
 - 1) Non-discrimination of access rules
 - 2) International access standards (that do not require harmonization of domestic access legislation) to support compliance across jurisdictions
 - 3) Internationally developed model domestic legislation
 - 4) Minimization of administration and transaction costs

^{3/} The title is without prejudice to the eventual scope of the international regime.

- 5) Simplified access rules for non-commercial research

C. Compliance

1. Components to be further elaborated with the aim of incorporating them in the international regime

- 1) ■ Development of tools to encourage compliance:
 - (a) Awareness-raising activities
- 2) ■ Development of tools to monitor compliance:
 - (a) Mechanisms for information exchange
 - b) Internationally recognized certificate issued by a domestic competent authority
- 3) ■ Development of tools to enforce compliance

2. Components for further consideration

- 1) Development of tools to encourage compliance:
 - (a) International understanding of misappropriation/misuse
 - (b) Sectoral menus of model clauses for material transfer agreements
 - (c) Codes of conduct for important groups of users
 - (d) Identification of best-practice codes of conduct
 - (e) Research funding agencies to oblige users receiving research funds to comply with specific access and benefit-sharing requirements
 - (f) Unilateral declaration by users
 - (g) International access standards (that do not require harmonization of domestic access legislation) to support compliance across jurisdictions
- 2) Development of tools to monitor compliance:
 - (a) Tracking and reporting systems
 - (b) Information technology for tracking
 - (c) Disclosure requirements
 - (d) Identification of check points
- 3) Development of tools to enforce compliance:
 - (a) Measures to ensure access to justice with the aim of enforcing ABS arrangements
 - (b) Dispute settlement mechanisms:
 - (i) Inter-State
 - (ii) Private international law
 - (iii) Alternative dispute resolution
 - (c) Enforcement of judgments and arbitral awards across jurisdictions
 - (d) Information exchange procedures between national focal points for access and benefit-sharing to help providers obtain relevant information in specific cases of alleged infringements of prior-informed-consent requirements
 - (e) Remedies and sanctions
- 4) Measures to ensure compliance with customary law and local systems of protection

D. Traditional knowledge associated with genetic resources ^{4/}

1. *Components to be further elaborated with the aim of incorporating them in the international regime*
 - 1)■ Measures to ensure the fair and equitable sharing with traditional-knowledge holders of benefits arising out of the utilization of traditional knowledge in accordance with Article 8(j) of the Convention on Biological Diversity
 - 2)■ Measures to ensure that access to traditional knowledge takes place in accordance with community level procedures
 - 3)■ Measures to address the use of traditional knowledge in the context of benefit-sharing arrangements
 - 4)■ Identification of best practices to ensure respect for traditional knowledge in ABS related research
 - 5)■ Incorporation of traditional knowledge in development of model clauses for material transfer agreements
 - 6)■ Identification of individual or authority to grant access in accordance with community level procedures
 - 7)■ Access with approval of traditional-knowledge holders
 - 8)■ No engineered or coerced access to traditional knowledge
2. *Components for further consideration*
 - 1) Prior informed consent of, and mutually agreed terms with, holders of traditional knowledge, including indigenous and local communities, when traditional knowledge is accessed
 - 2) Internationally developed guidelines to assist Parties in the development of their domestic legislation and policies
 - 3) Declaration to be made on the internationally recognized certificate as to whether there is any associated traditional knowledge and who owners of traditional knowledge are
 - 4) Community-level distribution of benefits arising out of traditional knowledge

E. Capacity

1. *Components to be further elaborated with the aim of incorporating them in the international regime*
 - 1)■ Capacity-building measures at all relevant levels for:
 - (a) Development of national legislation
 - (b) Participation in negotiations, including contract negotiations
 - (c) Information and communication technology
 - (d) Development and use of valuation methods
 - (e) Bioprospecting, associated research and taxonomic studies
 - (f) Monitoring and enforcing compliance
 - (g) Use of access and benefit-sharing for sustainable development

^{4/} The title is without prejudice to the eventual scope of the international regime.

- 2) ■ National capacity self-assessments to be used as a guideline for minimum capacity-building requirements
 - 3) ■ Measures for technology transfer and cooperation
 - 4) ■ Special capacity-building measures for indigenous and local communities
2. *Components for further consideration*
- 1) Establishment of a financial mechanism

IV. NATURE

Compilation of proposals on nature ^{5/}

1. Recommendation of Co-Chairs of the Working Group

Options

1. One legally binding instrument
 2. A combination of legally binding and non-binding instruments
 3. A non-binding instrument
2. *Submissions*

Option 1

The international regime should be legally binding. In addition, it should stress more cooperative enforcement between parties and *not* refer conflicts primarily to private international law, which is not only expensive, but also a strain on resource poor countries.

Option 2

1. One legally binding instrument
2. A combination of legally binding and/or non-binding instruments
3. A non-binding instrument

Option 3

The international regime shall be composed of a single legally binding instrument containing a set of principles, norms, rules and compliance and enforcement measures.

Option 4

The nature should be discussed after deliberations of the substance of an international regime are completed. For the time being, Japan suggests the following: the international regime could be composed of one or more non-binding instruments within a set of principles, norms, rules and decision-making procedures.

Option 5

The international regime should be composed of one or more legally binding and/or non-binding instruments within a set of principles, norms, rules and procedures, legally binding and non-binding.

^{5/} These proposals were neither discussed, negotiated nor agreed.