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Items 9 and 17 of the provisional agenda*

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

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INTRODUCTION

1. The fourth meeting of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing was held at the Palacio de Congresos, Granada, from 30 January to 3 February 2006 at the kind invitation of the Government of the Kingdom of Spain.

2. The meeting was attended by representatives of the following Parties and other Governments: Antigua and Barbuda, Argentina, Australia, Austria, Bahamas, Belgium, Benin, Bhutan, Brazil, Burkina Faso, Cambodia, Cameroon, Canada, Chile, China, Colombia, Comoros, Congo, Costa Rica, Côte d'Ivoire, Cuba, Czech Republic, Democratic Republic of the Congo, Denmark, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Estonia, Ethiopia, European Community, Finland, France, Gabon, Germany, Ghana, Grenada, Guatemala, Guinea, Guinea-Bissau, Haiti, India, Indonesia, Ireland, Italy, Jamaica, Japan, Kenya, Kiribati, Lao People's Democratic Republic, Lebanon, Liberia, Madagascar, Malawi, Malaysia, Mali, Mauritania, Mauritius, Mexico, Micronesia (Federated States of), Mongolia, Morocco, Mozambique, Namibia, Netherlands, New Zealand, Nicaragua, Niger, Niue, Norway, Pakistan, Palau, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Korea, Russian Federation, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Sao Tome and Principe, Senegal, Seychelles, Singapore, Solomon Islands, South Africa, Spain, Suriname, Sweden, Switzerland, Thailand, Togo, Tunisia, Tuvalu, Uganda, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, Uruguay, Venezuela, Yemen, Zambia, Zimbabwe, United States of America, .

3. Observers from the following United Nations bodies, specialized agencies and other bodies also attended: Food and Agriculture Organization of the United Nations, Global Environment Facility, United Nations Conference on Trade and Development, United Nations Permanent Forum on Indigenous Issues, United Nations Institute for Training and Research, United Nations University, World Trade Organization.

4. The following organizations were also represented by observers: Acción Ecológica, African Centre for Biosafety, African Indigenous Women Organisation, Agencia EFE, Aliansi Masyarakat Adat Nusantara, ALMACIGA, American BioIndustry Alliance, Andes Chinchasuyo, Arctic Center, University of Lapland, Asamblea Nacional Indígena Plural por la Autonomía, Asia Indigenous Peoples Pact, Asociación "El Encinar", Asociación ANDES, Asociación Civil Defensa de los Derechos Aborígenes (Formosa), Asociación Ixacavaa De Desarrollo e Información Indígena, Asociación Napguana, Asociación Solea Prod., Assembly of First Nations, Association-Tara, Australian Institute of Aboriginal and Torres Strait Islander Studies, Baikal Buryat Center for Indigenous Cultures, Ban Terminator Campaign, Berne Declaration, Biotechnology Industry Organization, Call of the Earth Llamado de la Tierra, Call of the Earth Llamado de la Tierra, Campana Contra Biopirateria- Alemania, Caribbean Antilles Indigenous Peoples Caucus & the Diaspora, Centre for Economic and Social Aspects of Genomics, Centre for Indigenous Farming Systems, Centro de Estudios Multidisciplinarios Aymara, Chatam House (Royal Institute for International Affairs), Chibememe Earth Healing Association, Church Development Service (Evangelischer Entwicklungsdienst), Climate Alliance, Comité Intertribal, Comunidad Indígena Ocumazo, Comunidad Sarayaku de Sucumbios, Confederación Indígena Tayrona, Consejo Autonomo Aymara, Consejo Mexicano para el Desarrollo Sustentable, A.C., Consejo Organizaciones Mayas de Guatemala, Cooperativa Ecologica das Mulheres Extrativistas do Marajo, Coordenacao Nacional de Quilombos, Coordinadora de las Organizaciones Indígenas de la Cuenca Amazonica, Creator's Right Alliance, CropLife International, Deutsche Forschungsgemeinschaft (DFG) (German Research Foundation), Dupont Company, Eco-Accord, ECONEXUS, Eli Lilly and Company, Embajada da Brasil, Embratur, European Federation of Pharmaceutical Industries and Associations, European Seed Association, Federation of German Scientists, FONAKIN, Forum Brasileiro de ONGs e Movimentos Sociais para o Meio Ambiente e o Desenvolvimento, Foundation for Aboriginal and Islander Research Action, Fridtjof Nansen Institute, Fundacion Dobbo-Yala y Congreso de la Cultura Kuna, Fundación para la Promoción del Conocimiento Indígena, Future Technologies Consulting (FTD), Giessen University, Global Forest Coalition, Greenpeace International, Groupement National Interprofessionnel des Semences et Plants, Helsint S.A.L., INBRAPI, Indigenous Information Network, Indigenous Peoples

Council on Biocolonialism, Indigenous Women's Biodiversity Network, Institute for Biodiversity, Instituto Indigena Brasileiro para Propiedade Intelectual, Intellectual Property Watch, International Alliance of Indigenous and Tribal Peoples of the Tropical Forests, International Chamber of Commerce, International Indian Teatry Council, International Institute for Environment & Development, International Institute for Sustainable Development, International Plant Genetic Resources Institute, International Seed Federation/International Association of Plant Breeders, International Union for the Protection of New Varieties of Plants, IUCN - The World Conservation Union, IUCN Environment Law Centre, Jawaharlal Nehru University, JETRO Dusseldorf, Junta de Andalucia, Keele University, Kitasso Xai'xais Nation, Ligue Nationale des Associations Autochtones Pygmes Du Congo (LINAPYCO), Monsanto Co., Naga Peoples' Movement for Human Rights, Namanga Environmental Group, National Cultural Commission, Netherlands Center for Indigenous Peoples, Nordic Genetic Resources Council, Organización de Mujeres Indigenas, Oxfam, Pacific Indigenous Peoples Environment Coalition, Pegsalabuhan Subanen sa Lakewood Association (Mesaligan), PhRMA (Pharmaceutical Research & Manufacturers of America), Quaker International Affairs Programme, Quechua-Aymara Association for Sustainable Livelihoods, Red de Cooperacion Amazonica, Russian Association of Indigenous Peoples of the North (RAIPAN), Safari Club International Foundation, Social Equity in Environmental Decisions, Sociedad Brasileira para Progreso da Ciencia, Solidarity Deeds and Social Welfare Foundation, Stratos Inc. - Strategies to Sustainability, Syngenta, Tebtebba Foundation, Tekwip, Women's Organization-Uganda, The Winged Horse Trust, Third World Network, Tinhinan, Tu Farmacia, Tulalip Tribes of Washington, United Indigenous Nations of Mindanao, United Organization of Batwa Development in Uganda, Universidad de Granada, Universidad de Puerto Rico-Rio Piedras, Universidade Federal de Santa Catarina, University of Basel, University of Birmingham, University of Curitiba, University of Kassel, University of Paris, University of Rome - La Sapienza, University of São Paulo, Verbiotech S.L., Vrije Universiteit Amsterdam (Institute for Environmental Studies), Wissenschaftszentrum Berlin für Sozialforschung, World Foundation for Environment and Development, World Growth, World Trade Institute, World Wide Fund for Nature International.

ITEM 1. OPENING OF THE MEETING

5. The meeting was opened at 10.30 a.m. on Monday 30 January 2006 by Mr. Suboh Mohd Yassin (Malaysia), representing the President of the Conference of the Parties. He recalled that the Ad Hoc Open-ended Working Group on Access and Benefit-sharing had been set up to further the goal of the Convention on Biological Diversity to meet the 2010 target. The first session for negotiation of an international regime, held in Bangkok in 2005, had launched the process and provided a basis for further work. It was now time for the Working Group to achieve tangible results, so that significant progress could be reported to the Conference of the Parties at its eighth meeting, in March 2006. That would require political will and determination on the part of all concerned.

6. Opening statements were made by Mr. Ahmed Djoghlaif, Executive Secretary of the Convention on Biological Diversity, and Mr. Antonio Serrano, Secretary-General for the territory and for biological diversity in the Ministry of the Environment of Spain.

7. Mr. Djoghlaif expressed his condolences to the people of Kenya and to the people of Poland for the loss of life caused by the collapse of buildings. He congratulated the Chinese people on the occasion of their New Year, which had started on 28 January. He evoked the Chinese New Year custom of offering *lai see*, or small sums of money as signs of generosity and sharing and hoped that delegates would be inspired by that tradition of generosity.

8. He said that the Convention on Biological Diversity was founded on three main principles: conservation, sustainable use and benefit-sharing. Much progress had been achieved towards the first two goals, but much remained to be done in reaching the third, which was the main characteristic of the Convention. The uncertainty generated by divergent views on the proposed international regime on access and benefit-sharing were detrimental to the Convention and to all parties concerned, as it discouraged long-term financial and economic investment. The benefits derived from use of genetic resources were significant, and the potential was no doubt even greater. He urged participants to make use of the

opportunity being offered to agree on an international regime that would allow partnerships between present and future providers and users of Nature's resources and represent a powerful instrument for alleviating poverty, achieving the Millennium Development Goals and promoting peace, security and shared prosperity.

9. Mr. Serrano echoed the words of Ms Cristina Narbona Ruiz, the Minister of the Environment of Spain, at the opening session of the fourth meeting of the Ad Hoc Open-ended Inter-sessional Working Group on Article 8(j) and Related Provisions, that it was time to move from criteria, recommendations and guidelines to formulation of a binding international regime to regulate access to genetic resources and fair and equitable sharing of the benefits. Only in that way could the mandate of the Convention be filled, for the benefit of mankind. The tasks of the Working Group would include identifying the scope of application of the regime and the respective roles of Contracting Parties. The analysis of gaps in existing national, regional and international legal and other instruments relating to access and benefit-sharing, compiled by the Secretariat, was a useful first step. He urged the participants to formulate clear, specific proposals that would help the Conference of the Parties to make progress towards the common goal for 2010 and for a more equitable, more sustainable world.

ITEM 2. ORGANIZATIONAL MATTERS

2.1. Officers

10. In keeping with established practice, the Bureau of the Conference of the Parties acted as the Bureau of the meeting.

11. On the proposal of the President of the Conference of the Parties, Ms Margarita Africa Clemente Muñoz (Spain) was elected by acclamation to chair the meeting.

12. On the proposal of the Bureau, Mr. Antonio Matamoros (Ecuador) served as Rapporteur.

2.2. Adoption of the agenda

13. At the 1st plenary session of the meeting, on 30 January 2006, the Working Group adopted the following agenda, on the basis of the provisional agenda (UNEP/CBD/WG/ABS/4/1):

1. Opening of the meeting.
2. Organizational matters:
 - 2.1 Officers;
 - 2.2 Adoption of the agenda;
 - 2.3 Organization of work.
3. Report of the fourth meeting of the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions;
4. Reports on the implementation of the Bonn Guidelines, developments in relevant international processes and capacity-building.
5. Status of the negotiation of an international regime on access and benefits-sharing: general statements.
6. International regime on access and benefit-sharing: nature, scope, potential objectives and elements to be considered for inclusion in the regime.
7. Other approaches, as set out in decision VI/24 B, including consideration of an international certificate of origin/source/legal provenance.
8. Measures, including consideration of their practicability, feasibility and costs, to support compliance with prior informed consent of the contracting party providing genetic resources and

mutually agreed terms on which access was granted, in Contracting Parties with users of such resources under their jurisdiction.

9. Use of terms, definitions and/or glossary, as appropriate.
10. Strategic Plan: future evaluation of progress – the need and possible options, for indicators for access to genetic resources and in particular for the fair and equitable sharing of the benefits arising from the utilization of genetic resources.
11. Other matters.
12. Adoption of the report.
13. Closure of the meeting.

2.3. Organization of work

14. At its 1st plenary session, on 30 January 2006, the representative of Ethiopia (on behalf of the African Group) said that the African Group had approved the draft Protocol on Access and Benefit-sharing to the Convention on Biological Diversity prepared and submitted by his country. Contained in the compilation of submissions provided by Parties, Governments, international organizations, indigenous and local communities and relevant stakeholders related to the international regime on access and benefit-sharing (UNEP/CBD/WG-ABS/INF/3), the text of the draft Protocol should now therefore be regarded as a submission by the African Group, the intention being that it should serve as a starting point for the negotiation of a legally-binding international regime on access and benefit-sharing. Bearing in mind that most African delegations consisted of one person only, he suggested in the interest of achieving faster progress in the discussion of such an important subject that the Working Group should discuss items 7, 8, 9 and 10 of the agenda within item 6 on the international regime on access and benefit-sharing, without dividing into sub-working groups.

15. The Chair said that, in response to similar concerns expressed by other delegations, she also had a proposal to make, namely that the substantive negotiations should be conducted in a single “committee of the whole” under her chairmanship, with the Bureau making regular assessments of the situation as work progressed throughout the week. Contact groups could also be established to consider specific issues, where necessary.

16. The Working Group consequently decided that items 5 to 10 of the agenda would initially be taken up by a Committee of the Whole and that items 3 and 4 would be taken up in plenary. As thus amended, the organization of work for the meeting proposed in annex II to the revised annotated provisional agenda (UNEP/CBD/WG-ABS/Add.1/Rev.1) was approved.

17. The Chair set up an open-ended informal consultative group to continue discussion of the draft decision put before the third meeting of the Working Group by the International Indigenous Forum on Biodiversity (paragraphs 152-164 of the report of the third meeting (UNEP/CBD/COP/8/5)). The group would be chaired by Norway and its core composition would consist of Brazil, Canada, Ethiopia, the European Community, India, Kenya, Malaysia, Mexico, the Russian Federation, and seven representatives of indigenous and local communities.

2.4. Statements and general comments

18. Following the adoption of the agenda and the organization of work, statements were made by representatives of regional groups, intergovernmental organizations and indigenous and local communities.

19. The representative of Austria (speaking on behalf of the European Community and its member States, with the acceding countries Bulgaria and Romania, the candidate countries Croatia and The Former Yugoslav Republic of Macedonia, the countries of the Stabilization and Association Process and potential candidates Albania, Bosnia and Herzegovina and Serbia and Montenegro aligning themselves with the statement and with statements on other agenda items) emphasized the importance of negotiating an international regime to the overall goals of the Convention. She assured the meeting that the European

Union would make every endeavour to act in a constructive manner during the discussions. The meeting should focus on issues that were essential or related to a successful regime, which included equal attention to all issues; further analysis and selection of options; negotiation of an international regime on the basis of existing international instruments and processes; participation of indigenous and local communities in elaboration of a regime, with protection of their rights; and conservation of biological diversity. The aim of the discussion should be to clarify all issues for the deliberations of the Conference of the Parties.

20. The representative of Kiribati, speaking on behalf of the Asia and Pacific Group, said that, in view of the transboundary nature of some genetic resources and associated traditional knowledge, mandatory provisions concerning the origin of such resources would be critical to the international regime. The prior informed consent of indigenous and local communities in accordance with Article 8(j) of the Convention would also be critical, not least to ensuring that the country of origin received due recognition and shared equitably in any benefits arising from commercial and other utilization of genetic resources and their derivatives and products. Measures designed to promote access and benefit-sharing should include, *inter alia*, monetary and non-monetary benefits, capacity-building, effective technology transfer and the promotion and enforcement of mechanisms for the monitoring and settlement of disputes and/or arbitration, as well as the protection and enforcement of intellectual property rights. She urged the Working Group to recommend to the Conference of the Parties that support from the Global Environment Facility (GEF) be given to developing countries and countries with economies in transition, especially small island developing States, in order to facilitate functioning of the regime at the local, national, subregional, regional and international levels.

21. The representative of Canada, speaking on behalf of JUSCANZ (Japan, the United States of America, Canada, Australia, New Zealand, Norway and Switzerland), said that the group would work towards a positive outcome of the negotiations, with enhanced understanding of different positions. It was the sincere hope of the group that the results of the meeting would be a clearer understanding of the path forward.

22. The representative of Venezuela, speaking on behalf of the Latin American and Caribbean Group (GRULAC), expressed the hope that a spirit of solidarity would prevail throughout the negotiations for the international regime on access and benefit-sharing, which was a complex issue. He reiterated the view that the time had come to move from the stage of recommendations and guidelines to that of commitment in the form of a binding instrument aimed at protecting traditional knowledge and genetic resources, thereby promoting in particular the provisions of Article 15 of the Convention. The input of indigenous and local communities was vital to that process in view of their expertise in matters relating to biodiversity and genetic resources.

23. The representative of India, speaking on behalf of the Like-minded Megadiverse Countries (Bolivia, Brazil, China, Colombia, Congo, Costa Rica, Ecuador, India, Indonesia, Kenya, Madagascar, Malaysia, Mexico, Peru, the Philippines, South Africa, and Venezuela) said that the time had come to work on a streamlined text with clearly defined elements of an international regime; it should not contain multiple options and should not be at variance with the objectives of the Convention. In particular, the regime should safeguard the rights of indigenous and local communities to their traditional knowledge of genetic resources. The consolidated information on gaps provided by the Secretariat would help Parties to focus on the negotiations and should not distract them from that goal. Although there were links between the Convention and other processes and forums, such as the Agreement on Trade-related Aspects of International Property Rights (TRIPs), the World Intellectual Property Organization (WIPO), the International Treaty on Plant Genetic Resources for Food and Agriculture and the International Convention for the Protection of New Varieties of Plants (UPOV), the Convention on Biological Diversity should remain central to the elaboration and negotiation of an international regime on access to genetic resources and benefit-sharing. The Convention recognized the sovereign right of States to regulate the conditions for access to their natural resources. It was important to trust the wisdom of States to articulate those conditions in a rational and fair manner.

24. The representative of the International Indigenous Forum on Biodiversity (IIFB) said that indigenous peoples and local communities held inherent and inalienable rights and were owners of traditional knowledge and biological resources. The proposed international regime would undoubtedly have a profound impact on their traditional knowledge and genetic resources originating in their territories. So far, the proposals of the Parties failed to recognize their collective human rights. The intrinsic and inextricable relationship between their traditional knowledge and genetic resources was the basis for the mandate for collaboration between the Working Group on Article 8(j) and the Working Group on Access and Benefit-sharing.

25. The representative of IIFB continued by saying that State sovereignty did not amount to absolute political or legal freedom under international law and was limited by the Charter of the United Nations and other legal mechanisms. Other constructive arrangements between indigenous peoples and States should be respected. The Convention should act consistently with existing and evolving human rights standards regarding indigenous peoples, and therefore any international regime must recognize, among others, seven principles. The right of self-determination and the right of permanent sovereignty over natural resources were the fundamental principles upon which indigenous peoples had asserted their proprietary, collective, inherent, inalienable and imprescriptible rights over their traditional knowledge, biodiversity and genetic resources. Indigenous peoples had the right to free prior informed consent, which included the right to deny access to their knowledge and resources, and the right to have their own legal systems recognized and enforced. Where there were conflicts with domestic legislation, customary laws should prevail. The land rights of indigenous peoples and their territorial security and integrity were indispensable for the existence and perpetuation of their traditional knowledge.

26. The IIFB representative said that the proposed international regime failed to address effective measures to repatriate traditional knowledge and biogenetic resources which had been pirated over centuries and were now held in *ex situ* collections where they were vulnerable to exploitation. Indigenous peoples demanded that they be returned to their rightful owners. The proposed international regime did not adequately address the complexities of transboundary traditional knowledge and genetic resources or protect the rights of transboundary indigenous peoples. World Trade Organization (WTO) and WIPO treaties and regional free-trade agreements did not recognize the rights of indigenous peoples or protect their traditional knowledge; they promoted the interests of the market above collective rights. For that reason the Forum believed that any proposed international regime should include international human rights as a fundamental element and must be interpreted and implemented consistent with human rights obligations, as well as those rights stipulated in Article 8(j) of the Convention. Intellectual property rights should not be granted on lifeforms.

27. In conclusion, she said that indigenous peoples and local communities reaffirmed the relevance of their active role based on capacity-building for full and effective participation in all processes related to access and benefit-sharing, and for that reason urged Parties and the Secretariat to support the organization of workshops. With regard to participatory mechanisms for achieving that full and effective participation they requested that their participation be strengthened by measures such as those proposed by the Forum at the third meeting of the Working Group on Access and Benefit-Sharing (UNEP/CBD/WG-ABS/3/7, paragraphs 152-164).

28. The representative of the International Chamber of Commerce (ICC), speaking on behalf of its task force on access and benefit-sharing, said that the private sector had a major stake in the success of the negotiation of an international regime, since only by gaining access to genetic resources could value be created from their use and could it be ensured that the benefits were fairly and equitably shared. The ICC task force included three major industries with significant but distinct interests in and needs for the use of genetic resources, and that was why the ICC was convinced that a “one fits all” approach would not work. The agricultural sector was dependent on genetic resources, which had been systematically exchanged and modified for centuries. It used mainly elite varieties, and operated according to a highly-developed system of rules and standards. An industry with a growing interest in natural genetic resources was that of the industrial application of microbial resources – harnessing the potential of bacteria to produce chemicals and enzymes to enhance manufacturing and improve finished products. In the past decade, the

pharmaceutical industry had had to cope with increased uncertainty regarding access, and many large companies had scaled back or eliminated their natural products programmes.

2.5. Documentation

29. In addition to the documentation prepared by the Secretariat for specific agenda items, the Working Group had before it the following information documents, which related to one or more items of the agenda: a report on developing an effective international regime for access and benefit-sharing for genetic resources – using market-based instruments, submitted by the Australian APEC Study Centre, Monash University (UNEP/CBD/WG-ABS/4/INF/7); the report of the Regional Biopiracy Prevention Workshop held in Bogotá, Colombia, on 1 and 2 September 2005 (UNEP/CBD/WG-ABS/4/INF/8); needs and options for ABS implementation in Africa: recommendations of the Regional ABS Capacity-building Workshop for Eastern and Southern Africa (UNEP/CBD/WG-ABS/4/INF/9); an information note on access and benefit-sharing of genetic resources: ways and means for facilitating biodiversity research and conservation while safeguarding ABS provisions (UNEP/CBD/WG-ABS/4/INF/10); and the co-chair's summary and record of discussion of the international expert workshop on ABS held in Cape Town, South Africa, from 20 to 23 September 2005 (UNEP/CBD/WG-ABS/4/INF/11).

ITEM 3. REPORT OF THE FOURTH MEETING OF THE AD HOC OPEN-ENDED WORKING GROUP ON ARTICLE 8(j) AND RELATED PROVISIONS

30. The Ad Hoc Open-ended Working Group took up agenda item 3 at its 1st plenary session, on 30 January 2006.

31. Ms Maria Martin-Crespo (Spain), speaking on behalf of the Chair of the Ad Hoc Open-ended Inter-sessional Working Group on Article 8(j) and Related Provisions, reported on the Ad Hoc Working Group's fourth meeting. The Conference of the Parties had mandated the Ad Hoc Working Group on Access and Benefit-sharing to negotiate an international regime in collaboration with the Ad Hoc Working Group on Article 8(j) and it had been recognized that the scope of negotiations should include traditional knowledge, innovations and practices. Moreover, five of the elements of the international regime were closely related to the mandate of the Working Group on Article 8(j). It was important to ensure, however, that there was no overlapping or duplication of work between the two Groups and there needed to be ongoing communication and exchange of information between them. The Conference of the Parties had also requested the Working Group on Article 8(j) to define those elements of the international regime that concerned the protection of traditional knowledge related to genetic resources and, for that purpose, indigenous and local communities would be requested to transmit their comments to the Secretariat, including case studies, on their experience.

32. Another issue of great importance was the development of *sui generis* systems to protect the knowledge, innovations and practices of indigenous and local communities. The Working Group on Article 8(j) had recommended that the Conference of the Parties urge Parties and Governments to develop, adopt and/or recognize national *sui generis* models, with the full and effective participation and prior informed consent of indigenous and local communities.

33. The Working Group had also recommended that Parties, Governments and donor organizations be invited to provide resources to facilitate the full preparation and participation of representatives of indigenous and local communities in the Ad Hoc Open-ended Working Group on Access and Benefit-sharing and had adopted criteria for the operation of the voluntary funding mechanism for transmission to the Conference of the Parties, urging Parties, Governments and relevant funding institutions and mechanisms to make voluntary contributions to the trust fund.

34. Lastly, the Working Group on Article 8(j) had adopted recommendations to the Conference of the Parties on the potential socio-economic impacts of genetic use restriction technologies on indigenous and local communities and on an ethical code of conduct to ensure respect for the cultural and intellectual heritage of indigenous and local communities

35. Statements were made by the representatives of Austria (on behalf of the European Union) and Norway. The latter said that her country intended to provide financial support to the International Indigenous Forum on Biodiversity to make it possible for representatives of indigenous peoples to participate in the eighth meeting of the Conference of the Parties, to be held in Curitiba, Brazil, in March 2006.

36. Statements were also made by the representatives of Cooperativa Ecológica das Mulheres Extrativistas do Marajó – Amazonia, 15 Future Harvest Centers, supported by the Consultative Group on International Agricultural Research, and the International Indigenous Forum on Biodiversity.

ITEM 4. REPORTS ON THE IMPLEMENTATION OF THE BONN GUIDELINES, DEVELOPMENTS IN RELEVANT INTERNATIONAL PROCESSES AND CAPACITY-BUILDING

37. The Ad Hoc Open-ended Working Group took up agenda item 4 at its 1st plenary session, on 30 January 2006.

38. Parties, Governments and relevant organizations had been invited to report on any developments concerning the implementation of the Bonn Guidelines, as well as any developments related to access to genetic resources and benefit-sharing in relevant international processes and to capacity-building.

39. Statements were made by the representatives of Australia, Austria (on behalf of the European Union), Canada, China, the Czech Republic, Japan, Lebanon, Malawi, Mali, Pakistan, Switzerland, Thailand and Zambia.

ITEM 5. STATUS OF THE NEGOTIATION OF AN INTERNATIONAL REGIME ON ACCESS AND BENEFIT-SHARING: GENERAL STATEMENTS

ITEM 6. INTERNATIONAL REGIME ON ACCESS AND BENEFIT-SHARING: NATURE, SCOPE, POTENTIAL OBJECTIVES AND ELEMENTS TO BE CONSIDERED FOR INCLUSION IN THE REGIME

40. The Committee of the Whole of the Ad Hoc Open-ended Working Group took up agenda items 5 and 6 at its 1st session, on 30 January 2006.

41. Parties, Governments and observers were invited to comment on the negotiation of an international regime on access and benefit-sharing with the aim of adopting an instrument or instruments to implement the provisions in Article 15 and Article 8(j) of the Convention and the three objectives of the Convention effectively.

42. In considering the items, the Working Group had before it a note by the Executive Secretary containing the consolidated text of the comments and proposals contained in submissions by Parties, Governments and organizations regarding the international regime (UNEP/CBD/WG-ABS/4/2 and Add.1) and a synthesis of the main gaps identified in existing national, regional and international legal and other instruments relating to access and benefit-sharing (UNEP/CBD/WG-ABS/4/3). It also had before it as information documents a note by the Executive Secretary containing a compilation of submissions provided by Parties, Governments, international organizations, indigenous and local communities and relevant stakeholders related to the international regime on access and benefit-sharing (UNEP/CBD/WG-ABS/INF/3 and Add.1), and a note by the Executive Secretary containing a compilation of submissions relating to the matrix on the analysis of gaps (UNEP/CBD/WG-ABS/INF/4).

43. In accordance with the terms of reference set out in the annex to decision VII/19 D of the Conference of the Parties, the Working Group on Access and Benefit-sharing at its third meeting undertook an initial review of the nature, scope, potential objectives and elements to be considered for inclusion in the international regime, and compiled views and proposals on the international regime in annex I to recommendation 3/1. The Working Group had further agreed to transmit the annex including

further options submitted by the Parties, to its fourth meeting as a basis, together with any other items set out in the annex to decision VII/19 D, for further elaboration and negotiation by Parties.

44. Moreover, in order to facilitate further analysis of gaps in existing national, regional and international legal and other instruments relating to access and benefit-sharing, Parties, Governments, indigenous and local communities, international organizations and all relevant stakeholders had been invited to provide information to the Executive Secretary on the basis of the matrix contained in annex II to recommendation 3/1 and the potential additional elements and options.

45. General statements were made by the representatives of Austria (on behalf of the European Union), Bahamas, China, Colombia, Costa Rica, Egypt, Grenada, Indonesia, Malaysia, Mexico, Mongolia, Peru, the Republic of Korea, South Africa and Switzerland.

46. The representative of Egypt made a following statement, which he requested be reflected in its entirety in the body of the report of the meeting. He thanked Spain and Granada for hosting such an important meeting, which, it was to be hoped, would be historical. He recalled the previous week's experience of a traditional, warm, passionate Spanish welcome and of its generosity and immaculate facilities. He had appreciated the chance to sample the truly international nature of Spain's geography, history and people during the visit to the Alhambra. He congratulated the new Executive Secretary on his appointment and expressed confidence that the momentum of the Convention would be maintained under his able leadership; assuring him of his delegation's full backing.

47. He said that the last-minute provision of financial support for the participation of delegates from developing countries in the meeting might have prevented some from coming to Granada. While thanking the Governments that had provided the financial support to make the Convention operable, he appealed for efforts to continue to make the Convention a truly consensus treaty through the timely provision of generous contributions to that end, in order to ensure full and effective participation by all Parties.

48. He also recalled United Nations General Assembly resolution 60/202 of December 2005 on the Convention on Biological Diversity, which noted progress made at the third meeting of the Working Group on Access and Benefit-sharing and urged Parties "to make every effort to ensure an early and successful conclusion of the negotiations" for "an international regime to promote and safeguard the fair and equitable sharing of benefits arising out of the utilization of genetic resources". He further recalled paragraph 3 of recommendation 3/1 of the Working Group, which had entrusted the current meeting with the "further elaboration and negotiation by Parties" of the international regime. At its meeting the previous week, the Working Group on Article 8(j) had recommended that the Working Group on Access and Benefit-sharing include concerns reflected in Article 8(j) in the international regime. Although several national arrangements for access and benefit-sharing had evolved during the past few years and experience had been gained with the Bonn Guidelines, the nature of the use of genetic resources meant that a legally binding international instrument would be the only effective regime. In that respect, his Government associated itself with and supported the proposal submitted to the Secretariat by the Government of Ethiopia, which included a fully elaborated draft text for the regime. He invited Parties to begin negotiations immediately on the basis of that text.

49. He also recalled the statement made by the wise, effective acting President of the sixth meeting of the Conference of the Parties, Mr Hans Hoogeveen of the Netherlands, which had appeared as annex II to document UNEP/CBD/COP/8/4. Mr Hoogeveen had stated that access and benefit-sharing was the number one challenge for the Convention and had said: "Developing countries have a stake in getting an international regime ratified as soon as possible. Ratification requires agreement, and agreement depends on finding a compromise. But this compromise need not be a sacrifice to anyone. Developed countries are traditionally more interested in developing and improving (national) access possibilities. This is fine, but it is a simple trade principle that you have to pay for the goods that you receive. Developing a regime that holds a good balance in access and benefit sharing will be an investment in all of us. Let us stop with splitting ABS into separate camps and start listening to the possibility that access and benefit sharing aren't just mutually supportive, they are mutually dependent on one another. So let us go to Granada in January and really be willing to negotiate a balanced ABS regime that ultimately benefits us all."

50. The representative of Egypt said that delegates were now in Granada. The Minister of the Environment of Spain, opening the meeting on Article 8(j) the previous week, had urged participants to intensify and speed up negotiations, to move on from voluntary guidelines ‘to an international regime that I believe needs to be a binding regime’. He had been moved by her reference to the ‘need to ensure that we apply the principles of precaution, prevention and social justice and participation’, words that he would quote often. He was pleased that the same sentiment had been expressed by the Spanish Secretary-General for the Environment that morning.
51. In closing, he noted that it had been in Spain, some 10 years previously, that the beginnings of the Cartagena Protocol on Biosafety had been forged. That made him optimistic that ‘The Granada Protocol on Access and Benefit Sharing’ could be forged during the current meeting.
52. A general statement was also made by the representative of the Food and Agriculture Organization of the United Nations (FAO) and its Commission on Genetic Resources for Food and Agriculture, speaking also on behalf of the Interim Secretariat of the International Treaty on Plant Genetic Resources for Food and Agriculture.
53. At the 2nd session of the Committee of the Whole, the representative of UPOV and the representative of the United Nations Conference on Trade and Development (UNCTAD) made general statements. At the 3rd session, statements were made by the representatives of WIPO and the WTO.
54. Following an exchange of views on the merits and demerits of taking the African Group’s text (UNEP/CBD/WG-ABS/INF/3) as a basis for negotiating the international regime, it was decided instead to proceed on the basis of the consolidated text of the comments and proposals contained in submissions by parties, Governments and organizations regarding the international regime (UNEP/CBD/WG-ABS/4/2).
55. After the Chair had called for comments on the annex to document UNEP/CBD/WG-ABS/4/2, statements were made by the representatives of Austria (on behalf of the European Union), Brazil, Canada, Colombia, Malaysia, Mexico, Norway, Peru and Uganda.
56. At its 2nd session, the Committee of the Whole continued its discussion of the annex to document UNEP/CBD/WG-ABS/4/2.
57. Statements were made by the representatives of Australia, Austria (on behalf of the European Union), Burkina Faso, Colombia, Costa Rica, Côte d’Ivoire, Cuba, Ecuador, Egypt, Ethiopia (on behalf of the African Group), Gabon, Guinea, India (on behalf of the Like-minded Megadiverse Countries), Indonesia, Japan, Kenya, Kiribati, Mexico, New Zealand, Peru, Saint Lucia (on behalf of the indigenous people of Saint Lucia, the Caribbean Antilles Indigenous Peoples’ Caucus and the Diaspora, and the Small Island Developing States 2005 Mauritius Initiative), Switzerland, Thailand, Tunisia, Uganda, Venezuela (on behalf of GRULAC) and Yemen.
58. A statement was also made by the representative of the United States of America.
59. The representative of the United Nations Permanent Forum on Indigenous Issues also made a statement.
60. Statements were made by the APEC Centre – Monash University, Australia, the Biotechnology Industry Organization (BIO), the International Chamber of Commerce Task Force on Access and Benefit Sharing, and the International Indigenous Forum on Biodiversity.
61. At its 3rd session, on 31 January 2006, the Committee of the Whole continued its discussion of the annex to document UNEP/CBD/WG-ABS/4/2.
62. Statements were made by representatives of Antigua and Barbuda (also on behalf of Saint Vincent and the Grenadines, Grenada and Saint Kitts and Nevis), Burkina Faso, Canada, Gabon, Kenya, Mali, New Zealand, Uganda and Zambia.
63. Statements were also made by the representatives of the Third World Network and the International Indigenous Forum on Biodiversity.

64. A statement was made by the representative of the International Chamber of Commerce (ICC).
65. At its 4th session, on 1 February 2006, the Committee of the Whole began consideration of a draft submitted by the Chair entitled “International [legally binding] regime on access and benefit-sharing within the framework of the Convention on Biological Diversity”.
66. Statements were made by the representatives of Antigua and Barbuda (also on behalf of the Bahamas, Jamaica, Saint Kitts and Nevis, and Saint Vincent and the Grenadines), Argentina, Australia, Austria (on behalf of the European Union), Brazil, Canada, China, Colombia, Costa Rica, Ecuador, Ethiopia (on behalf of the African Group), India (on behalf of the Like-minded Megadiverse Countries), Indonesia, Japan, Kenya, Liberia, Malawi, Malaysia, Mexico, Mongolia (on behalf of the Asia and Pacific Group), New Zealand, Niger, Norway, Peru, the Philippines, the Republic of Korea, Senegal, South Africa, Switzerland, Thailand, Uganda and Venezuela (on behalf of GRULAC).
67. Statements were made by the representatives of FAO and WIPO.
68. Statements were also made by the representatives of Ecological Action and the International Indigenous Forum on Biodiversity.
69. At its 5th session, on 1 February 2006, the Committee of the Whole continued its deliberations on item 6. After a brief procedural discussion, in which the representatives of Australia, Austria (on behalf of the European Union), Canada, Costa Rica, Ecuador, Egypt, Ethiopia (on behalf of the African Group), India, Malaysia, Mexico and New Zealand took part, it was agreed that the Chair’s text should be used as the basis for discussions, and the Committee would make textual suggestions to improve it. The Chair would produce a revised text for a later session, at which time negotiations could be started.
70. The Chair invited representatives to submit written suggestions for ways in which the structure of the text could be improved, and invited them to propose textual changes both orally and in writing.
71. Statements were made by the representatives of Australia, Austria (on behalf of the European Union), Brazil, Burkina Faso, Canada, China, Colombia, Costa Rica, Côte d’Ivoire, Cuba, Ecuador, Egypt, El Salvador, Ethiopia, India, Indonesia, Japan, Kenya, Liberia, Malawi, Malaysia, Mexico, Mongolia, Namibia, New Zealand, Nicaragua, Norway, Peru, the Philippines, Saint Lucia, Senegal, Switzerland, Uganda, Venezuela and Zambia.
72. Statements were made by the representatives of UNCTAD and WIPO.
73. Statements were also made by the representatives of the International Indigenous Forum on Biodiversity and Third World Network.
74. At its 6th session, on 2 February 2006, the Committee of the Whole took up a revised text prepared by the Chair, incorporating the suggestions made.
75. Statements were made by the representatives of Australia, Austria (on behalf of the European Union), Canada, Colombia, Egypt, Ethiopia (on behalf of the African Group), India (on behalf of the Like-minded Megadiverse Countries), Japan, Malaysia, Mexico, New Zealand, Switzerland and Venezuela.
76. Following an exchange of views, the Chair established a group of Friends of the Chair, comprising representatives from all the five regions, in order to pursue informal consultations on the subject.
77. At its 7th session, on 3 February 2006, the Committee of the Whole took up a further revised draft text submitted by the Chair and presented by one of the co-chairs of the group of Friends of the Chair.
78. The draft, entitled “International regime on access and benefit-sharing”, was adopted, as orally amended, for submission to the plenary as draft recommendation UNEP/CBD/WG-ABS/4/L.2.

Action by the Working Group

79. At the 2nd plenary session, on 3 February 2006, the Working Group took up draft recommendation UNEP/CBD/WG-ABS/4/L.2 and adopted it as recommendation 4/1. The text of the recommendation, as adopted, is contained in the annex to the present report.

ITEM 7. OTHER APPROACHES, AS SET OUT IN DECISION VI/24 B, INCLUDING CONSIDERATION OF AN INTERNATIONAL CERTIFICATE OF ORIGIN/SOURCE/LEGAL PROVENANCE

80. The Committee of the Whole of the Ad Hoc Open-ended Working Group took up agenda item 7 at its 3rd session, on 31 January 2006. In considering the item, the Working Group had before it a note by the Executive Secretary containing a compilation of further studies and pilot projects and views on the design of an international certificate of origin, source or legal provenance (UNEP/CBD/WG-ABS/4/4).

81. Introducing the item, the Chair said that views had been elicited on the rationale, need and objectives, the desirable characteristics and features and the practicality, feasibility and costs at national and international levels of an international certificate.

82. Statements were made by representatives of Argentina, Australia, Austria (on behalf of the European Union), Brazil, China, Colombia, Costa Rica, Cuba, Ecuador, El Salvador, Gabon, Grenada, Haiti, Indonesia, Japan, Malawi, Mexico, Namibia, New Zealand, Norway, Peru, Republic of Korea, Singapore, Uganda and Venezuela.

83. The representative of the United States of America also made a statement.

84. A statement was made by the representative of UNCTAD.

85. Statements were made by the representatives of the 15 Future Harvest Centers, supported by the Consultative Group on International Agricultural Research (CGIAR), and the International Indigenous Forum on Biodiversity.

86. At the conclusion of the discussion, the Chair requested representatives to submit their comments and proposals in writing.

87. The Chair suggested that agenda items 7 and 8 be debated in a contact group whose terms of reference and chairmanship would be announced at a subsequent session.

88. At the 5th session of the Committee of the Whole, on 1 February 2006, the Chair established the contact group, co-chaired by Kenya and Switzerland, to discuss agenda items 7 and 8 and to report back to the Committee of the Whole.

89. At the 6th session of the Committee of the Whole, on 2 February 2006, a co-chair of the contact group gave a progress report of the group's work on item 7.

90. At its 7th session, on 3 February 2006, the Committee of the Whole took up a draft recommendation submitted by the Chair and presented by one of the co-chairs of the contact group.

91. The draft, entitled "Other approaches, as set out in decision VI/24 B, including consideration of an international certificate of origin/source/legal provenance", was adopted, as orally amended, for submission to the plenary as draft recommendation UNEP/CBD/WG-ABS/4/L.3.

Action by the Working Group

92. At the 2nd plenary session, on 3 February 2006, the Working Group took up draft recommendation UNEP/CBD/WG-ABS/4/L.3 and adopted it as recommendation 4/2. The text of the recommendation, as adopted, is contained in the annex to the present report.

ITEM 8. MEASURES, INCLUDING CONSIDERATION OF THEIR FEASIBILITY, PRACTICALITY AND COSTS, TO SUPPORT COMPLIANCE WITH PRIOR INFORMED CONSENT OF THE CONTRACTING PARTY PROVIDING GENETIC RESOURCES AND MUTUALLY AGREED TERMS ON WHICH ACCESS WAS GRANTED IN CONTRACTING PARTIES WITH USERS OF SUCH RESOURCES UNDER THEIR JURISDICTION

93. The Committee of the Whole of the Ad Hoc Open-ended Working Group took up agenda item 8 at its 3rd session, on 31 January 2006. In considering the item, the Working Group had before it a note by the Executive Secretary on measures to support compliance with prior informed consent of the Contracting Party providing genetic resources and mutually agreed terms on which access was granted in Contracting Parties with users of such resources under their jurisdiction (UNEP/CBD/WG-ABS/4/5); and as information documents a list of relevant documentation circulated in other forums (UNEP/CBD/WG-ABS/4/INF/1), an analysis of options for implementing disclosure of origin requirements in intellectual property applications, commissioned by the UNCTAD Secretariat (UNEP/CBD/WG-ABS/4/INF/2), a report on the commercial use of biodiversity: an update on currents trends in demand for access to genetic resources and benefit-sharing, and industry perspectives on ABS policy and implementation (UNEP/CBD/WG-ABS/4/INF/5), commissioned by the Secretariat, an analysis of claims of unauthorized access and misappropriation of genetic resources and associated traditional knowledge, commissioned by the Secretariat and co-financed by Environment Canada (UNEP/CBD/WG-ABS/4/INF/6), a note by the Executive Secretary containing a submission by Switzerland on measures to support compliance with prior informed consent of the Contracting Party providing genetic resources and mutually agreed terms on which access was granted in Contracting Parties with users of such resources under their jurisdiction (UNEP/CBD/WG-ABS/4/INF/12), and a note by the Executive Secretary containing a report by WIPO on the interrelation of access to genetic resources and disclosure requirements in applications for intellectual property rights (UNEP/CBD/COP/8/INF/7).

94. Statements were made by the representatives of Australia, Austria (on behalf of the European Union), Brazil, Canada, Colombia, India, Indonesia, Japan, Kenya, Malawi, New Zealand, Norway, Philippines, South Africa, Switzerland, Thailand and Uganda.

95. A statement was made by the representative of UPOV.

96. A statement was made by the representative of the International Indigenous Forum on Biodiversity.

97. As noted in paragraph 88 above, a contact group was established at the 5th meeting of the Committee of Whole to consider item 8 in conjunction with item 7.

98. At the 6th session of the Committee of the Whole, on 2 February 2006, the co-chair of the contact group gave a progress report of the group's work on item 8.

99. At its 7th session, the Committee of the Whole took up a draft recommendation submitted by the Chair and presented by one of the co-chairs of the contact group.

100. The draft, entitled "Measures to ensure compliance with prior informed consent and mutually agreed terms", was adopted for submission to the plenary as draft recommendation UNEP/CBD/WG-ABS/4/L.4.

Action by the Working Group

101. At the 2nd plenary session, on 3 February 2006, the Working Group took up draft recommendation UNEP/CBD/WG-ABS/4/L.4 and adopted it as recommendation 4/3. The text of the recommendation, as adopted, is contained in the annex to the present report.

ITEM 9. USE OF TERMS, DEFINITIONS AND/OR GLOSSARY, AS APPROPRIATE

102. The Committee of the Whole of the Ad Hoc Open-ended Working Group took up the agenda item at its 7th session, on 3 February 2006. In considering the item, the Working Group had before it a note by the Executive Secretary on further consideration of outstanding issues related to access and benefit-sharing: use of terms, definitions and/or glossary, as appropriate (UNEP/CBD/WG-ABS/4/7 and Corr.1).

103. The Committee proposed that the Working Group postpone consideration of the item until the negotiation of international regime on access and benefit-sharing had reached a more advanced stage.

Action by the Working Group

104. At the 2nd plenary session of the meeting, on 3 February 2006, the Working Group accepted the Committee's proposal referred to in paragraph 103 above.

ITEM 10. STRATEGIC PLAN: FUTURE EVALUATION OF PROGRESS – 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

105. The Committee of the Whole of the Ad Hoc Open-ended Working Group took up agenda item 10 at its 3rd session, on 31 January 2006. In considering the item, the Committee of the Whole had before it a note by the Executive Secretary on the Strategic Plan: future evaluation of progress – the need and possible options for indicators for access to genetic resources and in particular for the fair and equitable sharing of benefits arising out of their utilization: compilation of views and information provided by Parties, Governments, relevant international organizations, indigenous and local communities and all relevant stakeholders (UNEP/CBD/WG-ABS/4/6).

106. The Chair said that given the need further to consider targets and indicators for access and benefit-sharing while not impeding progress on other agenda items, the Committee of the Whole might wish to establish a small, regionally-balanced informal group to consider the matter on the margins of the meeting. Its conclusions would then be submitted to the plenary for its consideration.

107. Statements were made by the representatives of Austria (on behalf of the European Union), Canada and Colombia.

108. At its 7th session, on 3 February 2006, the Chair of the Committee of the Whole said that she had hoped that the Working Group would be able to establish a small, regionally balanced informal group to consider the matter of targets and indicators for access and benefit-sharing on the margins of the meeting, with its conclusions being submitted to the plenary for consideration. In view of the burden of work already being undertaken by other groups, however, it had not proved possible to establish a further, albeit informal, group.

109. Following a brief exchange of views, the Committee decided to ask the Secretariat to prepare a draft recommendation for the consideration of the plenary, stating that it had decided to postpone the issue of the Strategic Plan until the fifth meeting of the Working Group, reiterating its invitation to Parties, Governments, relevant international organizations, indigenous and local communities and all relevant stakeholders to submit their views and information on the issue, and requesting the Executive Secretary to compile that information and make it available to the Working Group at its fifth meeting. Owing to pressure of time, that draft recommendation would be available only in English.

Action by the Working Group

110. At the 2nd plenary session, on 3 February 2006, the Working Group took up a draft recommendation entitled "Strategic plan: Future evaluation of progress – 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” (UNEP/CBD/WG-ABS/4/L.5) and adopted it as recommendation 4/4. The text of the recommendation, as adopted, is contained in annex I to the present report.

ITEM 11. OTHER MATTERS

Participation of indigenous and local communities in the elaboration and negotiation of an international regime on access and benefit-sharing

111. At the 2nd plenary session of the meeting, on 3 February 2006, the representative of Norway reported that the open-ended informal consultative group set up to discuss the draft decision proposed by the International Indigenous Forum on Biodiversity (see paragraph 17 above) had met twice and had expressed views on each of the elements of the proposal, as well as on the support and level of participation already provided. It was recognized that the participation and support requested were, to a large extent, available under current practice. The representatives of Parties appreciated the explanations provided by the representatives of indigenous and local communities and expressed support for their fullest possible participation within the existing rules and practices applicable to subsidiary bodies of the Conference of the Parties.

112. The representative of Austria (on behalf of the European Union) proposed that the following text should be transmitted as a recommendation to the Conference of the Parties with a view to reflecting the improvement in understanding which had been achieved during the meeting:

“*Decides* to continue to support the participation of mandated indigenous and local community representatives, including the International Indigenous Forum on Biodiversity during the elaboration and negotiation of the proposed International Regime on Access and Benefit-sharing, on issues associated with traditional knowledge and associated genetic resources, through measures such as:

(a) Urging chairpersons to invite representatives of indigenous and local communities as participants in informal groups;

(b) Urging chairpersons to provide timely and appropriate participation in debates by representatives of indigenous and local communities;

(c) Facilitating participation through the availability of a meeting room, documentation, as well as a computer and photocopying facilities, subject to the availability of funds.”

113. The Secretariat drew attention to rule 35 of the rules of procedure, pursuant to which proposals were to be introduced in writing by Parties and handed to the Secretariat for circulation to delegations. As a general rule, such proposals should also have been translated into the official languages of the Conference of the Parties and circulated to delegations not later than the day preceding the session.

114. The representative of Austria (speaking on behalf of the European Union) pointed out that, under rule 35, the President could, in exceptional circumstances, and in cases of urgency, permit the discussion and consideration of proposals that had not been translated or circulated in the prescribed manner.

115. The representative of Argentina, supported by the representatives of Venezuela and Mexico, objected to the proposal. It had been submitted at a late stage and without prior notice, thus posing complications.

116. The representative of Norway wished to place on record her disappointment that no agreement had been reached concerning the participation of indigenous and local communities.

117. The representative of the International Indigenous Forum on Biodiversity (IIFB) regretted that the issue of participation by indigenous peoples and local communities in elaboration of the international regime had only been addressed at the Working Group’s last session. The critical negotiations had mostly taken place in informal groups, in which indigenous peoples and local communities did not participate.

She recalled that decision VII/19 D stated that the international regime should recognize and respect the rights of indigenous and local communities and in the forthcoming negotiations the necessary procedures and substantive requirements should be addressed seriously instead of being relegated to the sidelines. She appealed to all Parties to ensure that the issue of participation not be made subject to the difficult politics of the negotiations and strongly urged that some solution be found at the Conference of the Parties. The proposal made by the European Union set out the minimum requirements to promote the participation of indigenous peoples and local communities.

118. The eighth meeting of the Conference of the Parties should reaffirm the respective mandates of the Working Groups on Article 8(j) and on Access and Benefit-sharing in elaborating an international regime and clarify collaboration between them. The IIFB had made concrete proposals in that respect and urged the Conference of the Parties to mandate the Working Group on Article 8(j) to elaborate specific elements and measures relevant for the protection of traditional knowledge and associated genetic resources in relation to the proposed international regime. It also requested the Executive Secretary to create an advisory group of representatives of indigenous and local communities to advise the two Working Groups, *inter alia*, on effective measures to recognize and protect the rights of indigenous and local communities to their traditional knowledge and genetic resources and on the links between the work being carried out in both Working Groups on developing elements of *sui generis* systems for the protection of traditional knowledge, innovations and practices. She concluded by requesting that her remarks be reflected in the report of the meeting.

119. Following a further exchange of views during which no consensus was reached, the European Union requested that the text of its proposal be reflected in the report of the meeting with a view to further discussion of the subject during the eighth meeting of the Conference of the Parties to the Convention.

120. The representative of Canada proposed the following text as a compromise and requested that it also be included in the report of the meeting:

“*Decides* to continue to support the participation of mandated indigenous and local community representatives, during the elaboration and negotiation of the proposed international regime on access and benefit-sharing on issues related to genetic resources and associated traditional knowledge, in accordance with the Rules of Procedure, and to this end:

- (i) *Encourages* Parties and Governments to increase the participation of representatives of indigenous and local community organizations on official delegations to meeting of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing;
- (ii) *Requests* Chairs to provide opportunities for indigenous and local communities to make interventions in the Ad Hoc Open-Ended Working Group on Access and Benefit-sharing in order to provide indigenous and local community perspectives on issues of specific concern to their communities with respect to the elaboration and negotiation of an international regime on access and benefit-sharing;
- (iii) *Requests* the Secretariat to continue to provide administrative support representatives from indigenous and local communities through practical measures, including making available meeting rooms, access to documentation, and computer and photocopying facilities, subject to the availability of funds.”

121. A short video of images of Curitiba was then screened, following which the representative of Brazil reminded the meeting that the Convention on Biological Diversity had been opened for signature in Brazil in 1992 and said that Brazil was proud to be welcoming the Convention home for the eighth meeting of the Conference of the Parties and the third meeting of the Conference of the Parties serving as the Meeting of the Parties to the Cartagena Protocol on Biosafety, which would be held in Curitiba from 13 to 31 March 2006. He said that Brazil was a megadiverse country and Curitiba was a leading city in

the adoption of environmentally-friendly solutions. He also said that the Ministerial segment would be held at the same time and would be opened by Mr. Luiz Inácio Lula da Silva, President of Brazil. A report of the Ministerial segment would be prepared and presented to the Conference of the Parties.

ITEM 12. ADOPTION OF THE REPORT

122. The present report was adopted, as orally amended, at the 2nd plenary session, on 3 February 2006, on the basis of the draft report prepared by the Rapporteur (UNEP/CBD/WG-ABS/4/L.1).

ITEM 13. CLOSURE OF THE MEETING

123. At the closure of the meeting, on 3 February 2006, Mr Ahmed Djoghlaif, Executive Secretary of the Convention, asked the meeting to observe one minute of silence in memory of the passengers and crew who had died after the ferry on which they were travelling sank in the Red Sea earlier in the day.

124. Statements were made by the representatives of Austria (on behalf of the European Union), Brazil, Canada (on behalf of Japan, the United States of America, Canada, Australia, New Zealand, Norway and Switzerland (JUSCANZ)), Egypt, Ethiopia (on behalf of the African Group), India (on behalf of the Like-minded Megadiverse Countries), Japan, Mongolia (on behalf of the Asia-Pacific Group), the Russian Federation, Switzerland, the United States of America, and Venezuela (on behalf of the Latin American and Caribbean Group (GRULAC)).

125. In his statement, the representative of Egypt proposed, for the record, that at its eighth meeting, the Conference of the Parties consider entitling the international regime, once it had been finalized, the "Granada Instrument".

126. The representatives of the International Indigenous Forum on Biodiversity (IIFB) and the International Chamber of Commerce also made statements.

127. The Chair declared the fourth meeting of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing closed at 7 p.m. on Friday, 3 February 2006.

Annex I

**RECOMMENDATIONS ADOPTED BY THE AD HOC OPEN-ENDED WORKING GROUP ON
ACCESS AND BENEFIT-SHARING AT ITS FOURTH MEETING**

Granada, Spain, 30 January-3 February 2006

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4/1. International regime on access and benefit-sharing

The Ad Hoc Open-ended Working Group on Access and Benefit-sharing,

Recalling decision VII/19 D of the Conference of the Parties to the Convention on Biological Diversity,

Recalling also recommendation 3/1 of its third meeting,

1. *Decides* to transmit to the Conference of the Parties at its eighth meeting the annex to the present recommendation;

2. *Also decides* to transmit the matrix developed pursuant to the recommendation 3/1 for consideration at the eighth meeting of the Conference of the Parties;

3. *Recommends* that the Conference of the Parties at its eighth meeting:

(a) *Reviews* the progress made in the Working Group Access and Benefit Sharing to elaborate and negotiate an international regime;

(b) *Decides* to consider to reconvene the Ad Hoc Open Ended Working Group on Access and Benefit Sharing to continue its work in accordance with the terms of reference contained in decision VII/19 D and *determines* its work schedule so as to expedite and facilitate the early elaboration, negotiation and conclusion of the international regime on access and benefit sharing;

(c) *Requests* the Executive Secretary to prepare a final version of the gap analysis referred to in decision VII/19 D, annex, paragraph (a) (i), bearing in mind that this work will proceed in parallel and not hold up the work relating to the elaboration and negotiation of the international regime;

(d) *Urges* all donors to provide funds for the meetings of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing.

Annex

INTERNATIONAL REGIME ON ACCESS AND BENEFIT-SHARING

In accordance with the Convention on Biological Diversity,

Nature

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

[Potential] Objectives

To endeavour to create conditions to [facilitate] [regulate] access to genetic resources for environmentally sound uses by other Parties and not to impose restrictions that run counter to the objectives of this Convention.

To ensure the fair and equitable sharing of the monetary and non-monetary benefits arising from the use of [such] [genetic] resources and associated traditional knowledge, taking into account that the three objectives of the Convention are interlinked.

[To establish a mechanism providing certainty about the [legal provenance] [origin] [source] of genetic resources].

[[Subject to national legislation] To [protect] [respect, preserve and maintain the traditional knowledge of] the [rights] of indigenous and local communities to their traditional knowledge, innovations and practices [associated to genetic resources and derivatives] [related to the conservation and sustainable use of biological diversity] and to [encourage] [ensure] the fair and equitable sharing of the monetary and non-monetary benefits arising from the utilization of their knowledge, [consistent with human rights obligations] [subject to national legislation of the countries where these communities are located] [and applicable international law]].

[To ensure compliance with PIC in the context of MAT of countries of origin and of indigenous and local communities.]

To contribute to the effective implementation of articles 15, 8(j) [and 16 to 19] and the three objectives of the convention.

The conservation and sustainable use of biological diversity.

[To prevent the misappropriation and misuse of genetic resources, their derivatives and associated traditional knowledge]

[To ensure that fair and equitable sharing of benefits flow to the countries of origin of the genetic resources]

[[Promote] [Ensure] compliance with prior informed consent of the providing countries and of indigenous and local communities and mutually agreed terms;]

[Ensure and enforce the rights and obligations of users of genetic resources;]

[Ensure mutual supportiveness with relevant existing international instruments and processes] [and that they are supportive of and do not run counter to the objectives of the convention].

[Contribute or promote capacity-building and [to ensure] technology transfer to developing countries, in particular least developed countries and small island developing States]

Scope

1. The international regime applies to, [in accordance with national legislation and other international obligations]:

(a) Access to genetic resources [and derivatives and products] [subject to the national legislation of the country of origin];

(b) [[Conditions to facilitate access to and] transboundary [movement] [utilisation] of genetic resources [and derivatives and products] [or associated traditional knowledge]]

(c) Fair and equitable sharing of the monetary and non-monetary benefits arising out the utilization of genetic resources [and their derivatives and/or] associated traditional knowledge [and, where appropriate, their derivatives and products], in the context of mutually agreed terms [based on prior informed consent] [in accordance with the national legislation of the country of origin].

(d) [[Protection of] [Respect, preserve and maintain] traditional knowledge, innovations and practices of indigenous and local communities [embodying traditional lifestyles relevant for the conservation and sustainable use of biodiversity] [associated to genetic resources] [and their derivatives and products] in accordance with national legislation].

2. [The international regime applies to all genetic resources and associated traditional knowledge, innovations and practices and benefits arising from the utilization of such resources.]

3. [The international regime will not apply to the plant genetic resources [of those plant species] that are considered by [under annex 1 of] the International Treaty on Plant Genetic Resources for Food and Agriculture [or by the Commission on Genetic Resources for Food and Agriculture], [when those resources are used for the purposes of that Treaty].

4. [The international regime is without prejudice to the FAO International Treaty on Plant Genetic Resources for Food and Agriculture and will take into account the work of the WIPO/IGC on the intellectual property aspects of *sui generis* systems for the protection of traditional knowledge and folklore against misappropriation and misuse].

5. [The international regime ensures mutual supportiveness and complementarity with relevant existing international instruments and processes] [and that they are supportive of and do not run counter to the objectives of the Convention].

6. [The international regime will not apply to human genetic resources].

7. [The scope of the regime would be in compliance with national access and benefit-sharing regimes relating to the genetic resources within national jurisdictions [, in the context of the international trade and exchange of these genetic resources]].

[Potential] Elements [to be considered for inclusion in the international regime]

Access to genetic resources [and derivatives and products]

1. [States have sovereign rights over their own genetic resources, and the authority to determine access rests with national Governments and is subject to national legislation.]

2. [[Subject to national legislation,] conditions for access to genetic resources [derivatives and products] shall be [dependent upon] [related to] benefit sharing arrangements].

3. Access procedures shall be clear, simple and transparent and provide legal certainty to different kinds of users and providers of genetic resources with a view to the effective implementation of Article 15, [paragraph 2], of the Convention on Biological Diversity.

4. [Parties] [Countries of origin] providing genetic resources, [derivatives and products][, including countries of origin,] in accordance with Article 2 and Article 15 of the Convention [may] [shall] establish measures requiring that access to such genetic resources [derivatives and products] [for specific uses] shall be subject to prior informed consent.

5. [Parties that are not countries of origin of genetic resources or their derivatives they hold shall not give access to those genetic resources without the prior informed consent of the countries of origin of those genetic resources.]

6. [Where the countries of origin of genetic resources or derivatives can not be identified, the Parties in whose territories those genetic resources or derivatives are found will grant access to users on behalf of the international community.]

7. Mutually agreed terms for access to and specific uses of genetic resources [or derivatives], in accordance with Article 15, paragraph 4 of the Convention on Biological Diversity[, may include conditions for transfer of such genetic resources [or derivatives] to third parties, subject to national legislation of countries of origin].

[Recognition and protection of] traditional knowledge associated with genetic resources [derivatives and products]

The elements of the international regime should be developed and implemented in accordance with Article 8(j) of the Convention on Biological Diversity:

(a) [Parties may consider developing, adopting and/or recognizing, as appropriate, [international,] national and local *sui generis* [models] [systems] for the protection of traditional knowledge, innovations and practices associated to genetic resources, [derivatives and products;]]

(b) [Subject to its national legislation,] Parties [should] [recognize and protect the rights] [respect, preserve and maintain knowledge, innovations and practices] of indigenous and local communities and [ensure] [encourage] the equitable sharing of benefits arising from the utilisation of such knowledge, innovations and practices [regarding benefit-sharing derived from their traditional knowledge associated with genetic resources, [derivatives and products,] subject to the national legislation of the countries where these communities are located [and to applicable international law];

(c) [[Users [Parties] should comply with the prior informed consent of indigenous and local communities holding traditional knowledge associated with genetic resources, [derivatives and products] in accordance with Article 8(j) of the Convention on Biological Diversity, subject to national legislation of the country where these communities are located [and to applicable international law]].

(d) [Access and benefit sharing arrangements relating to traditional knowledge should be implemented in the context of national ABS regimes.]

Fair and equitable benefit-sharing

1. [Minimum conditions for the fair and equitable sharing of the benefits arising out of the use of genetic resources, derivatives or products shall be stipulated in relevant national [access] legislations [or] [and] under the international regime] and [shall] [may] be taken into consideration in mutually agreed terms [shall] [may] be based on prior informed consent between the provider and user of given resources.]

2. [Mutually agreed terms conditions may stipulate benefit-sharing arrangements regarding derivatives and products of genetic resources]

3. The conditions for the sharing of the benefits arising out of the use of traditional knowledge, innovations or practices and associated [with] genetic resources [derivatives and products] [will] [may] be stipulated in mutually agreed terms [between users and the competent national authority of the provider country with active involvement of concerned indigenous and local communities] [between the indigenous or local communities and the users, and where appropriate with the involvement of the provider country].

4. [Mutually agreed terms may contain provisions on whether intellectual property rights may be sought and if so under what conditions.]

5. Mutually agreed terms may stipulate monetary and/or non-monetary conditions for the use of genetic resources, [their derivatives and/or products] and associated traditional knowledge, innovations and practices.

6. [The international regime should establish basic benefit-sharing [obligations] [conditions], including the distribution of benefits through the financial mechanism, to be applicable in the absence of specific provisions in access arrangements.]
7. [Where the country of origin of the genetic resources or derivatives accessed cannot be identified, the monetary benefits there from shall accrue to the financial mechanism and the non-monetary benefits shall be made available to those Parties that need them.]
8. [Parties should establish, taking into account Article 20, paragraph 4 of the Convention, measures to ensure the fair and equitable sharing of benefits from the results of research and development, including through facilitating access to the results of such research and development and through technology transfer, and other utilization of genetic resources, [derivatives and products] and associated traditional knowledge, taking into account prior informed consent and mutually agreed terms and respecting national legislations of the country providing genetic resources.]
9. [Parties that develop technologies making use of genetic resources, derivatives and product should establish national legislation to facilitate access to and transfer of those technologies to developing countries that are the origin of such resources under mutually agreed terms.]
10. [Clarification of the actual nature of benefit sharing, emphasizing the need for differentiation of commercial versus non-commercial uses of genetic resources with resulting differentiated obligations/expectations.]
11. [Practical and enforceable benefit sharing clauses in material transfer agreements as agreed to between the providers and the users.]
12. [Benefits should be directed in such a way as to promote conservation and sustainable use of biological diversity [in countries of origin of genetic resources.]]
13. [Benefit sharing arrangements should not be limited to mutually agreed terms when these arrangements are supporting prior informed consent.]

[Disclosure [of [legal provenance] [origin] [prior informed consent and benefit-sharing]

1. Intellectual property rights applications whose subject matter [concerns or makes use of] [is directly based on] genetic resources [and/or derivatives and products] and/or associated traditional knowledge should disclose the country of origin or source of such genetic resources, [derivatives and products] or associated traditional knowledge[, as well as evidence that provisions regarding prior informed consent and benefit sharing have been complied with, in accordance with the national legislation of the country providing the resources].
2. [National legislation shall provide for remedies to sanction lack of compliance with the requirements set out in the above paragraph which must include inter alia revocation of the intellectual property rights in question, as well as co-ownership of the IPR and its transfer.]
3. [If the disclosed information is incorrect or incomplete, effective, proportionate and dissuasive sanctions should be envisaged outside the field of patent law.]]

[[Certificate of origin] [International certificate of [origin/source]/legal provenance]

1. The international regime may establish an international certificate of origin/source/legal provenance of genetic resources, [derivatives and/or products] to be issued by the [provider country] [country of origin].
2. The international regime [may] [shall] establish a system to certify the [origin/source/legal provenance of genetic resources] [legal utilization of traditional knowledge, innovations or practices of indigenous and local communities associated to genetic resources].
3. Such certificates of origin/source/legal provenance [or utilization] may be [an integral part] [evidence] of PIC and MAT arrangements.

4. [Such certificates of origin/source/legal provenance [or utilization] and, if existing, evidence of PIC and MAT related arrangements may be a precondition for patentability and other intellectually property applications.]
5. [An international certificate of origin/source/legal provenance could be an element of an international regime.]
6. [The potential needs, objectives, desirable characteristics/features, implementation, challenges, including costs and legislative implications of such an international certificate, are to be further explored.]
7. [The certificate of origin/source/legal provenance may be used as a means of complying with the disclosure requirements according to national legislation.]]

Implementation, monitoring and reporting

1. [Parties shall establish] mechanisms for monitoring implementation as well as reporting procedures [may be considered] for the international regime.
2. [Parties [may] [shall] develop national legislation[, as appropriate,] for the implementation of the international regime.]

[Compliance and enforcement]

1. [Recipients of genetic material, [derivatives and products] shall make no applications for patents related to such genetic materials, [derivatives or products] without the PIC of the [provider country] [country of origin.] [Non compliance of this provision shall, *inter alia*, result in the rejection of the patent application and where necessary the revocation of such patent.]
2. [Parties [may] [shall] develop national legislation[, as appropriate,] for the implementation of the international regime.]
3. [Each Party must comply with national legislation of the [countries providing genetic resources, derivatives and products] [country of origin], [including countries of origin], regarding access and benefit-sharing when accessing and/or using genetic resources, [derivatives and products] and associated traditional knowledge.]
4. [The international regime [may] [shall] ensure that whatever terms and conditions that may be stipulated under mutually agreed terms are complied with and enforced.]
5. [The international regime [may] [shall] contain] cooperative procedures and institutional mechanisms to [[promote] and [ensure]] compliance [may be considered for the international regime].
6. [International regime [shall] [may] contain measures to ensure compliance with the prior informed consent of [Parties] [indigenous and local communities regarding access to their traditional knowledge, innovations and practices associated with genetic resources[, derivatives and products].]]
7. [International regime [shall] [may] contain measures to [[promote] and [ensure]] compliance with the prior informed consent of the country providing genetic resources, [derivatives and products] including countries of origin, in accordance with Article 15, paragraph 3, of the Convention on Biological Diversity.]
8. [International regime [shall] [may] contain measures to prevent misappropriation and unauthorized access and use of genetic resources [, their derivatives and products] and associated traditional knowledge, innovations and practices.]
9. [Parties should take measures to ensure that genetic resources utilized within their jurisdiction comply with the Convention on Biological Diversity and the conditions under which access was granted.]
10. [Create mechanisms to facilitate collaboration among relevant enforcement agencies in both provider and user countries.]

11. [Without prejudice to specific remedies concerning IPR applications, national legislations shall provide for sanctions to prevent the use of genetic resources, derivatives and associated traditional knowledge without compliance with provisions of the international regime, in particular those related to access and benefit-sharing legislations from countries of origin.]

12. [The following are considered acts or cases of misappropriation:

(a) Use of genetic resources, their derivatives and products and/or associated traditional knowledge without compliance with the provisions of the international regime;

(b) Any acquisition, appropriation or utilization of genetic resources, their derivatives and products and/or associated traditional knowledge by unfair or illicit means;

(c) Deriving commercial benefits from the acquisition, appropriation or utilization of genetic resource, derivatives and products and/or associated traditional knowledge when the person, using genetic resource, derivatives and products, knows, or is negligent in failing to know, that these were acquired or appropriated by unfair means;

(d) Other commercial activities contrary to honest practices that gain in equitable benefit from the genetic resource, derivatives and product and/or associated traditional knowledge.]

[(e) Use of genetic resources, their derivatives and products and/or associated traditional knowledge for purposes other than for which it was accessed; and]

[(f) Obtaining unauthorized information that can be used for the reconstitution of genetic resources, derivatives or products or traditional knowledge.]

[Access to justice

1. Measures to [facilitate] [ensure] access to justice and redress.

2. Measures to [guarantee and] facilitate access to justice and redress, including administrative and judicial remedies, as well as alternative dispute resolution mechanisms [by providers and users].]

[Dispute settlement mechanism]

1. [Parties [shall] [may] establish a dispute settlement mechanism for the international regime.]

2. [Provisions of Article 27 of the Convention on Biological Diversity shall apply with respect to the settlement of disputes under the international regime.]

[Financial mechanism

Parties [shall] [may] establish a financial mechanism for the international regime including for benefit-sharing arrangements.]

[Capacity-building [and technology transfer]

1. The international regime should include provisions for the building and enhancement of capacity in developing countries, least developed countries and small-island developing states, as well as countries with economies in transition, for the implementation of the international regime at national, regional and international levels.

2. [Measures for effective technology transfer and cooperation so as to support the generation of social, economic and environmental benefits.]

3. [Building of human, institutional and scientific capacities including for putting in place a legal mechanism, taking into account Articles 18, 19 and 20.4 of the Convention.]

[Institutional support]

1. [Existing non-legislative international measures that support or promote the effective implementation of Articles 15, 8(j) and the three objectives of the Convention are identified and recognized.]

2. Environmentally sound research utilizing genetic resources and associated traditional knowledge is promoted, and commercial and non-commercial scientific research, including taxonomic research, are distinguished.

[Non-Parties]

4/2. Other approaches, as set out in decision VI/24 B, including consideration of an international certificate of origin/source/legal provenance

The Ad Hoc Open-ended Working Group on Access and Benefit-Sharing,

Recognizing that an international certificate of origin/source/legal provenance could be an element of an international regime on access and benefit-sharing, and deserves further examination,

Having considered the views of Parties, Governments, relevant international organizations, indigenous and local communities and all relevant stakeholders on the possible form and intent of an international certificate of origin/source/legal provenance (UNEP/CBD/WG-ABS/4/4), and *taking note* of the progress made,

Having compiled the list of potential rationale, needs and objectives, potential characteristics/features, implementation challenges, including costs and legislative implications, as annexed to the present recommendation, on the understanding that the list is not formally agreed, is not meant to be exhaustive and is meant to provide practical indications for further work,

Recommends that the Conference of the Parties at its eighth meeting:

(a) *Decides* to establish a regionally balanced ad hoc technical expert group, consisting of Party-nominated experts, to elaborate possible options for form and intent, practicality, feasibility and costs, for achieving the objectives of Articles 15 and 8(j), of an international certificate of origin/source/legal provenance, and to develop terms of reference for this group. The group should submit the report of its work to the Ad Hoc Open-ended Working Group on Access and Benefit-sharing at its fifth meeting;

(b) *Invites* Parties, Governments, relevant international organizations, indigenous and local communities and all relevant stakeholders including the private sector to undertake further work, including through research and submission of views, on the possible options for the form, intent, practicality, feasibility, costs, and functioning, for achieving the objectives of Articles 15 and 8(j), of an international certificate of origin/source/legal provenance, including consideration of certificate models, based, *inter alia*, on the list annexed hereto, as an input for the work of the ad hoc technical expert group.

Annex

LIST OF POTENTIAL RATIONALE, NEEDS AND OBJECTIVES, POTENTIAL CHARACTERISTICS/FEATURES, IMPLEMENTATION CHALLENGES, INCLUDING COSTS AND LEGISLATIVE IMPLICATIONS OF AN INTERNATIONAL CERTIFICATE OF ORIGIN/SOURCE/LEGAL PROVENANCE AS A POSSIBLE ELEMENT OF THE INTERNATIONAL REGIME ON ACCESS AND BENEFIT-SHARING

Rational, need and objectives may include, inter alia:

- Increase transparency and traceability throughout the whole chain of the access and benefit-sharing process
- Provide legal certainty to users, and thus contribute to build trust among users and providers
- Help ensure compliance with the provisions of the Convention and national access laws of Parties providing genetic resources, including countries of origin, in accordance with Articles 2 and 15 of the Convention, including prior informed consent, mutually agreed terms and benefit-sharing
- Facilitate cooperation in enforcement and compliance
- Not impede basic research
- Provide incentives for implementing national systems of issuance

- [May be one means, if required/applicable under national legislation, to comply with disclosure requirements [in intellectual property rights applications]] [If national legislation so requires, could be one means to comply with disclosure requirements in intellectual property rights applications]

Potential characteristics/features may include, inter alia:

- Integrity of the system at national and international levels
- Internationally recognized standard
- The authorization for access issued by the national authority of the [country of origin] [Party providing genetic resources, including country of origin, in accordance with Article 2 and Article 15, paragraph 3, of the Convention], may be internationally recognized as a certificate
- Simple and standard or compatible format or formats providing relevant information related to prior informed consent and mutually agreed terms
- Issued by official nationally designated competent authority
- Flexibility to cover both genetic resources [and derivatives, products and information,] and associated traditional knowledge
- Easily verifiable
- [Minimum checkpoints]
- Information exchange mechanisms, for instance through the clearing-house mechanism of the Convention
- Traceability throughout the whole chain of the access and benefit-sharing process
- Ability to differentiate between commercial, non-commercial and research purposes throughout the whole chain of the access and benefit-sharing process
- Reasonable transaction costs and low administrative costs
- Enable stakeholder feedback and provide for regular review as appropriate

Implementation challenges: practicality, feasibility and costs at national and international levels, and evaluation criteria, may include, inter alia:

- [Need for an international legal framework that recognizes internationally the certificates issued by [countries of origin] [Parties providing genetic resources, including countries of origin, in accordance with Article 2 and Article 15, paragraph 3, of the Convention,] to certify compliance with national access legislations]
- [Limits of “one size fits all” approaches]
- Assessment of feasibility and costs of implementation/operation/transaction of different systems and design options at national and international levels
- feasibility of streamlining tasks among different governmental departments/agencies
- [Challenges associated with extracts/derivatives of genetic resources]
- Options and limitations of using elements of existing systems (e.g. the Convention on International Trade in Endangered Species of Wild Fauna and Flora)
- [Existence of national access and use legislations as preconditions for the operation and enforcement of the certificate system]
- Evaluate paper-based versus electronic systems
- Practicality/feasibility for basic scientific research
- Evaluate practicality/feasibility against commercial practices
- [Need for practical implementation studies in different countries and in different sectors]
- Potential interface with existing intellectual-property law
- [The interface with the standard material transfer agreement under the multilateral system of the FAO International Treaty on Plant Genetic Resources for Food and Agriculture] [The standard material transfer agreement under the multilateral system of the FAO International Treaty on Plant Genetic Resources for Food and Agriculture should be excluded from the proposed certificate requirements]

4/3. Measures, including consideration of their feasibility, practicality and costs, to support compliance with prior informed consent of the Party providing genetic resources and mutually agreed terms on which access was granted in Parties with users of such resources under their jurisdiction

The Ad Hoc Open-ended Working Group on Access and Benefit-sharing,

Having examined the compilation of information provided in the note by the Executive Secretary (UNEP/CBD/WG-ABS/4/5),

Noting that the development of measures to support compliance with the prior informed consent of the Contracting Parties providing genetic resources, [derivatives, products, and associated traditional knowledge,] including countries of origin of genetic resources in accordance with Article 2 and Article 15, paragraph 3, of the Convention, and mutually agreed terms on which access was granted, in Contracting Parties with users, under their jurisdiction, is at different stages in different countries,

Recognizing the ongoing work on issues regarding the interrelation of access to genetic resources and disclosure requirements in intellectual property rights applications,

[Recalling the terms of Article 16, paragraphs 2 and 5, of the Convention and other relevant decisions, and of decision VII/19 D],

Recommends that the Conference of the Parties at its eighth meeting:

1. *[Reiterates* the terms of Article 16, paragraphs 2 and 5, of the Convention and other relevant decisions, and of decision VII/19 D and *notes* that the international regime negotiations shall consider disclosure of origin/source/legal provenance in intellectual property rights application,]

2. *Invites* Parties and Governments and relevant stakeholders to continue taking appropriate and practical measures to support compliance with prior informed consent of the Contracting Parties providing genetic resources, [derivatives, products, and associated traditional knowledge,] including countries of origin of genetic resources in accordance with Article 2 and Article 15, paragraph 3, of the Convention, and mutually agreed terms on which access was granted;

3. *Invites* [relevant organizations such as the Food and Agriculture Organization of the United Nations, the United Nations Conference on Trade and Development, the United Nations Environment Programme, the International Union for the Protection of New Varieties of Plants, the World Intellectual Property Organization and the World Trade Organization] [the World Intellectual Property Organization, the United Nations Conference on Trade and Development and other relevant international organizations] to address and/or continue their work on issues regarding the interrelation of access to genetic resources, [derivatives and associated traditional knowledge, and benefit sharing] and disclosure requirements in intellectual property rights applications, taking into account the need to ensure that this work is supportive of and does not run counter to the objectives of the Convention on biological diversity[, and is without prejudice to the negotiations of the international regime];

4. *Requests* the Working Group at its fifth meeting to further consider measures to ensure compliance with prior informed consent of the Contracting Parties providing genetic resources and mutually agreed terms on which access was granted, including the issue of disclosure of origin/source/legal provenance [, as one of the possible elements to be considered for inclusion in the international regime, in accordance with the annex to decision VII/19 D;]

5. *[Notes* the progress in international discussions regarding disclosure of origin/source/legal provenance in intellectual property rights applications, in particular in the framework of the Doha round of negotiations of the World Trade Organization, and requests the Executive Secretary to renew the request for accreditations of the Convention on Biological Diversity as an observer at the Council on Trade-related Aspects of Intellectual Property Rights of the World Trade Organization.]

4/4. Strategic Plan: Future evaluation of progress – 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 Ad Hoc Open-ended Working Group on Access and Benefit-sharing

Recommends that the Conference of the Parties at its eighth meeting:

1. *Requests* the Ad Hoc Open-ended Working Group on Access and Benefit-sharing at its fifth meeting to further address this issue 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;

2. *Invites* Parties, Governments, relevant international organizations, indigenous and local communities and all relevant stakeholders to submit their views and information to the Executive Secretary in accordance with recommendation 3/5 of the third meeting Ad Hoc Open-ended Working Group on Access and Benefit-sharing;

3. *Requests* the Executive Secretary to compile the views and information referred to above and make such compilation available to the Ad Hoc Open-ended Working Group on Access and Benefit-sharing at its fifth meeting.

Annex II

TRIBUTE TO THE GOVERNMENT AND PEOPLE OF THE KINGDOM OF SPAIN

We, the participants in the fourth meeting of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing,

Having met in Granada from 31 January to 3 February 2006 at the kind invitation of the Government of the Kingdom of Spain,

1. *Express our gratitude* to the Government and people of Spain for their warm hospitality and generosity;

2. *Invite* the Minister of Environment of the Kingdom of Spain, H.E. Doña Cristina Narbona Ruiz, to convey the results of the Granada meeting of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing to the participants in the High-Level Segment of the eighth meeting of the Conference of the Parties of the Convention on Biological Diversity, to be held in Curitiba, Brazil, on 27-28 March 2006.

Granada, 3 February 2006
