



## CONVENTION ON BIOLOGICAL DIVERSITY

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### AD HOC OPEN-ENDED WORKING GROUP ON ACCESS AND BENEFIT-SHARING

Third meeting  
Bangkok, 14-18 February 2005

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

#### ITEM 1. OPENING OF THE MEETING

1. The third meeting of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing was held at the United Nations Conference Centre, Bangkok, from 14 to 18 February 2005, at the kind invitation of the Government of the Kingdom of Thailand.

2. The meeting was opened at 9 a.m. on Monday, 14 February 2005, by Dato' Suboh Mohd Yassin, Deputy Secretary-General, Ministry of Natural Resources and the Environment of Malaysia, and President of the Conference of the Parties, who welcomed participants. He thanked the Government of the Kingdom of Thailand for its generosity in hosting the meeting in the difficult times following the tragedy of the tsunami that had taken place on 26 December 2004. He joined all delegates in extending his deepest sympathy to the Thai people and all who had personally suffered, and expressed the hope that some good might come out of it by helping to prevent and better prepare for natural disasters in the future. He said that the decision of the seventh meeting of the Conference of the Parties, held in Kuala Lumpur in February 2004, to negotiate an international regime on access and benefit-sharing raised a number of difficult, complex and sensitive issues, which were to be addressed during the current meeting. He invited delegates to work constructively and in a spirit of compromise to achieve their common goals.

3. The Ad Hoc Open-ended Working Group then heard an address of welcome by Dr. Suwit Khunkitti, Minister of Natural Resources and the Environment of Thailand. He said that immediately after the tsunami had struck he had visited the areas affected in the south of the country at the request of the Prime Minister. The human toll had been immense – 4,000 bodies had been recovered and 10,000 people were still missing – and he was in no doubt that the area's biological diversity had been seriously affected as well. Thailand had been very grateful for the help it had received from other countries and was convinced of the importance of enhancing cooperation between countries that had been affected by the tsunami and those that had not yet experienced one. It was essential to undertake long-term studies on the effects of tsunamis. Thailand was honoured to be hosting the meeting.

4. The ceremonial part of the opening of the meeting was concluded with a performance of traditional Thai *terd-terng klong yao* drum-playing and dancing.

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5. A keynote statement was then made by Dr. Suwit Khunkitti, who said that the meeting was of crucial importance for many countries. The fair and equitable sharing of benefits arising from the utilization of genetic resources was one of the Convention's three basic objectives. The international regime that the working group had been mandated to negotiate should translate that objective into reality. In particular, the international regime should ensure that access was subject to the prior informed consent of the country of origin of genetic resources and that the conditions of access were respected. The objective would to a large extent determine the success or failure of the Convention itself. The negotiations that were to be undertaken were possibly the most crucial since the inception of the Convention, and might well play a key role in its future.

6. Mr. Hamdallah Zedan, Executive Secretary of the Convention on Biological Diversity, welcomed participants and expressed his deep appreciation to the Government and people of Thailand for their generosity in hosting the meeting and for their warm hospitality. He also thanked the Governments of Austria, Norway, Switzerland and the host country, Thailand, as well as the Christensen Foundation, for their contributions to enable the participation of representatives from developing countries and countries with economies in transition as well as representatives of non-governmental organization and indigenous and local communities. He then briefly reviewed the outcomes of the tenth meeting of the Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA), which had adopted a total of 13 recommendations, including those on island biodiversity, various strategic issues linked to the achievement of the 2010 target and the Millennium Development Goals, and other scientific and technical issues, referred to it by the Conference of the Parties. Particularly gratifying had been the progress made on the draft programme of work on island biodiversity and on developing and refining the indicators and sub-targets to assess progress in the achievement of the 2010 biodiversity target. Of particular relevance to the current meeting was the reaffirmation of the importance of the development in the Working Group of headline indicators on the status of access and benefit-sharing.

7. The current meeting had two major tasks before it: first, to continue ongoing work in such areas as the use of terms, other approaches to complement the Bonn Guidelines, and measures to support compliance; and, secondly, to start the process of negotiating an international regime on access to genetic resources and benefit-sharing, as mandated by the Conference of the Parties. With regard to the latter, he said that the negotiations were a direct response to the call made at the World Summit on Sustainable Development and marked a new phase in the implementation of the Convention. They therefore had a wider significance in that they represented a test of the Convention's ability to respond to tasks set by the broader international community and to deliver on the expectations that had been placed in it.

8. The use of terms, other approaches to complement the Bonn Guidelines, and compliance measures had already been considered by the Working Group. They had first arisen in the context of discussions leading to the adoption of the Bonn Guidelines but might require further consideration in light of the negotiations for the international regime.

9. With regard to the final matter on the agenda, he recalled that, in decision VII/30, the Conference of the Parties had requested the Working Group to identify indicators for access and benefit-sharing and to report back to the Conference of the Parties at its eighth meeting, to be held in Brazil in May 2006. Some suggestions regarding indicators were contained in the documentation for the meeting.

10. In conclusion, he invited the Working Group to keep in mind the importance of capacity-building and to take into account the Action Plan on Capacity-building for Access and Benefit-sharing adopted by the Conference of the Parties in decision VII/19 F in the negotiations on an international regime on access and benefit-sharing.

11. Mr. Nehemiah Rotich, speaking on behalf of the Executive Director of the United Nations Environment Programme (UNEP),\* Mr. Klaus Töpfer, extended sympathies to the Government and people of Thailand over their suffering as a result of the tsunami of 26 December 2004. He said that significantly more and better capacities were needed by countries – especially developing countries and countries with economies in transition – in order to realize the potential benefits of modern biotechnology for biodiversity conservation and to minimize the potential risks. It was incumbent upon the international community to facilitate or support the formulation of the necessary legislative, administrative, regulatory and oversight frameworks along with the built-in capacities to implement them ahead of or side by side with the proliferation of modern biotechnology applications.

12. While many biotechnologies were already in the public domain, intellectual property rights (IPRs) had become a key feature in biotechnological development, which meant for many developing countries the introduction of new or revised intellectual property protection (IPP) regimes which allowed for the patenting of life forms. It was important for the present meeting to examine the relationships between the Convention and international biotechnology transfer, particularly as they exercised an impact on developing countries and in light of the World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). There were real contradictions in essential points between TRIPS and the Convention that had to be resolved. Intellectual Property Rights applied to life forms under TRIPS ran counter to and did not support the objectives of the Convention.

13. Furthermore, the private property regime established by the TRIPS Agreement would undermine implementation of the access and benefit-sharing provisions of the Convention. Private monopoly could begin only where national or community sovereignty had been effectively suspended. Therefore, under TRIPS the very genetic resources to which nations and communities were supposed to control access would be under the control of IPR holders. Governments and communities would have no means of regulating access or demanding a share of benefits because they would be subject to private ownership, and that was contrary to the objectives of the Convention.

14. The UNEP Initiative on Access and Benefit-sharing of Genetic Resources, launched at the sixth meeting of the Conference of the Parties to the Convention, was operational through a participatory process involving all stakeholders at subregional, regional and international levels. To that end, an international, regionally balanced informal advisory group of experts on access and benefit-sharing had been established to give advice to the Executive Director of UNEP. That group would be holding its second meeting on the margins of the present meeting.

15. At the 1st plenary session of the meeting, on 14 February 2005, the Ad Hoc Open-ended Working Group heard general statements on the issues before the Working Group.

16. The representative of the Netherlands, speaking on behalf of the European Union and the candidate countries, emphasized the importance of the discussions on the international regime on access and benefit-sharing in particular, constituting as it did a vital component of the third objective of the Convention on Biological Diversity. Those discussions should focus on the elements essential to any successful regime: a comprehensive “gap” analysis; possible access-related measures; studies and pilot projects on an internationally recognized certificate of origin/source/legal provenance; a request to the World Intellectual Property Organization (WIPO) to share experience on the issue of disclosure in patent applications; and measures to promote and safeguard equitable benefit-sharing and the rights of indigenous and local communities over their traditional knowledge.

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\* Subsequent to this statement, the UNEP Executive Director clarified the organization’s position in a communication to Dr. Suwit Khunkitti, Chairman of the meeting. In a letter dated 18 February, he wrote: “This is to advise you that the speech made by the United Nations Environment Programme (UNEP) staff member does not represent or reflect the position of the Executive Director and UNEP. This was not the speech of the Executive Director of UNEP.” Mr. Töpfer also requested that the official records of the meeting clearly state UNEP’s clarification and that it be distributed urgently to all delegates.

17. The representative of Egypt, speaking on behalf of the African Group, said that an international regime on access and benefit-sharing was the most effective approach to fulfilling the objectives of the Convention on Biological Diversity. His group intended to make a constructive and positive contribution to the process of crafting that regime.

18. The representative of Ecuador, speaking on behalf of the Latin American and Caribbean Group, stressed the immense importance of reaching an agreement that would enable the establishment of effective mechanisms to prevent illegal access to genetic resources and ensure equitable benefits for the countries of origin of those resources, their derivatives and associated traditional knowledge.

19. The representative of Ethiopia said it was now recognized that, without reciprocal benefits, access to genetic resources would no longer be provided. While it was important to seek and listen to WIPO advice, it was now time for the Working Group to come to a decision on the subject without incurring any further delay.

20. The representative of India, speaking on behalf of the Group of Like-Minded Megadiverse Countries (LMMCs), said that the Group accorded high priority to the development of a legally binding international regime on access and benefit-sharing, a subject on which the LMMCs had very recently adopted a ministerial declaration. The regime should cover such elements as the prior informed consent of the country of origin, agreed terms between the country of origin and user, mandatory disclosure by the country of origin of biological material and associated traditional knowledge, along with an undertaking of respect for its own laws and practices, and mandatory consequences for failure to disclose the country of origin.

21. The representative of Mongolia, speaking on behalf of the Asian and the Pacific Group, pointed out the importance of access to and benefit-sharing of genetic resources to her region, which was characterized by widely diverse ecosystems and culture. Negotiations for an international regime were vital to the core objectives of the Convention; all the items on the agenda of the meeting would contribute to that goal, and it was important that the two sub-working groups coordinate their efforts. In view of the varying levels of the necessary capacity in the region, funding would be required for a capacity-building.

22. The representative of China committed his country to furthering fair and equitable access to genetic resources. The issue was, however, highly complex, involving economic, social, ecological and technical aspects at local, national and international levels. Agreement could be reached only with open expression and understanding of the diverse views.

23. The representative of the Food and Agriculture Organization of the United Nations (FAO) recalled that the Commission on Genetic Resources for Food and Agriculture had negotiated the International Treaty on Plant Genetic Resources for Food and Agriculture, which had entered into force in June 2004. Support for that activity had been received from the Conference of the Parties to the Convention, and FAO cooperation with the Convention continued to expand. Sustainable use of genetic resources for food was crucial to attainment of the Millennium Goals, and the International Treaty established a multilateral system of access and benefit-sharing, governed by standard material transfer agreements with Governments.

24. The representative of the Institute of Advanced Studies of the United Nations University (IAS/UNU) described the Biodiplomacy Initiative, which explored policy-making concerning the use of biological resources. It also conducted training programmes in Central Asia, the Pacific island countries and South-East Asia. The Institute was ready to support mobilization of the resources and expertise necessary to negotiate access and benefit-sharing, including understanding of traditional knowledge, intellectual property rights and the private sector.

25. The representative of the World Intellectual Property Organization (WIPO) described in detail activities that had been undertaken in response to requests from the seventh meeting of the Conference of the Parties, including a request for regular reports on the activities of his Organization with respect to access and benefit-sharing and on cooperative activities that it had undertaken with the Conference of the Parties. He also described preliminary work on intellectual property and technology transfer and draft

provisions which had been developed in WIPO on traditional knowledge and folklore protection and invited comments on them from the members of the Working Group which also participated in the WIPO Intergovernmental Committee. The activities included a number of activities related to implementation of decisions VII/19 A-F, VII/16 and VII/29.

26. The representative of Nepal said that his country was committed to implementing the provisions of the Convention. Nevertheless, support would be required to build the capacity necessary for many of the projected activities, including access to and benefit-sharing of genetic resources.

27. The representative of Japan emphasized the importance of biotechnology for the lives of individuals and for industry throughout the world. As sound development of biotechnology would require facilitated access to genetic resources, excessive regulation of access and benefit-sharing would inevitably reduce the commercial benefits of businesses based on use of those resources. His country had prepared guidelines for such users, which stipulated that they must follow the relevant laws of the countries from which they obtained genetic resources.

28. The representative of the Republic of Korea said that the concept of genetic resources for which access and benefit-sharing was required should be harmonized with reference to other international organizations. The guidelines developed by FAO for its International Treaty on Plant Genetic Resources for Food and Agriculture and by WIPO and the WTO TRIPS Agreement could be applied, with the necessary modifications. The work of the Ad Hoc Working Group should be reviewed for scientific content by appropriate international institutes.

29. The representative of the International Union for the Protection of New Varieties of Plants (UPOV) said that harmonized implementation of the UPOV Convention and the Convention on Biological Diversity was of common interest to the countries bound by the two conventions. At the request of the Secretariat, his organization had prepared a document (UNEP/CBD/WG-ABS/3/INF/1, pp. 102-107) on the process, nature, scope, elements and modalities of an international regime on access to genetic resources and benefit-sharing. That document emphasized UPOV's concern about the introduction of unnecessary barriers to progress in breeding and the use of genetic resources.

30. The representative of the International Indigenous Forum on Biodiversity expressed the concern of indigenous peoples about the proposed international regime on access and benefit-sharing. They had inherent, proprietary, inalienable rights to their knowledge and biological resources, and the proposed regime must be consistent with international human rights law and standards. She was particularly concerned about any misinterpretation of that body of law, and recommended that expert advice be sought within the United Nations human rights system.

31. At the 2nd plenary session of the meeting, on 14 February 2005, the Working Group continued to hear general statements from participants:

32. The representative of Brazil noted that there had been no spectacular increase in benefit-sharing in recent years, whereas access to genetic resources had increased dramatically. Discussions on the international regime should commence by negotiations on benefit-sharing, because without benefit-sharing arrangements, access to genetic resources would dry up and access should be restrained until there was a satisfactory arrangement on benefit-sharing. In WIPO, developing countries had presented a development agenda that was important in her view, but it had not yet been mentioned at the present meeting.

33. The representative of Bangladesh drew attention to the hard work already carried out by the two previous meetings of the Ad Hoc Open-ended Working Group. He hoped that participants would bear in mind decision VII/19 A and reach a consensus to develop a legally-binding international regime.

34. The representative of the World Trade Organization (WTO) informed the meeting of the latest developments in the Council on Trade-Related Aspects of Intellectual Property Rights (TRIPS) within WTO. There was a consensus among WTO members that the concerns raised with regard to the relationship between the TRIPS Agreement and the Convention in general had to be addressed, and the

need for prior informed consent and benefit-sharing in particular. Nevertheless, there were divergent views concerning the best way of addressing them and three different approaches had been put forward: one approach was that there was an inherent conflict between the TRIPS Agreement and the Convention that would have to be reconciled, for example, by amending the TRIPS Agreement to exclude living organisms, including plants, animals and microorganisms, from patentability. The second approach was that there was no conflict between the two agreements and measures could be taken at the national level to ensure that they were implemented without involving the patent system in a mutually supportive manner. The third approach was that, although there might not be any inherent conflict between the two instruments, there was considerable overlap and interaction between them, which might necessitate some international action in order to ensure that they were implemented in a mutually supportive manner. The three approaches were not mutually exclusive, however, as some Members advocating one approach could accept the complementarity of others. Finally, with regard to capacity-building, although the WTO secretariat had no specific project relating to access and benefit-sharing, it did provide technical assistance to developing countries on an ongoing basis to facilitate their effective participation in the work programme of the TRIPS Council, including the relationship between the TRIPS Agreement and the Convention and the protection of traditional knowledge and folklore.

35. The representative of Uganda emphasized that substantial work had already been done and it was now time to develop a legally binding regime that would ensure continued access by giving the custodians of resources the benefits that had been eluding them for so many years.

36. The representative of Colombia said that an appropriate solution to the issue of access and benefit-sharing was critical to the success of the Convention's objectives. The future regime must safeguard and promote fair and equitable participation in the distribution of benefits arising from genetic resources, derivatives and traditional knowledge, innovations and practices associated with those resources and derivatives. It should reinforce national legislation on access and should ensure compliance with the conditions for access, as well as the prior informed consent of countries of origin. The rights of developing countries, which were the origin of genetic resources, derivatives and associated traditional knowledge, had to be distinguished from those of developed countries, which utilized them.

37. The representative of Peru stated that the meeting faced a daunting task and she hoped that it would achieve tangible results. Peru attached particular importance to the negotiation of the international regime because of its significance for the achievement of the objectives of the Convention. A commission to combat biopiracy existed in Peru, but found it difficult to resolve cases of illegal access to genetic resources and recognition of the country of origin. The cornerstones of the regime should be prior informed consent and mutually agreed terms.

38. The representative of Costa Rica said that his country had been one of the first to adopt a law on biodiversity and considered that access and benefit-sharing was of particular importance in view of the fact that Costa Rica had 5 per cent of the world's biodiversity, and 25 per cent of its surface area was protected. It had clear rules on access to genetic resources and shared the view that the international regime should complement national legislation.

39. The representative of El Salvador said that the international regime should be a legally binding instrument that was transparent, balanced and clear. It should guarantee access that respected the rights of countries of origin and should facilitate the development of related industrial activities. Together with national legislation, it should form a comprehensive framework and should ensure that the origin or source of genetic resources was disclosed in applications for intellectual property rights. El Salvador believed that respect for sovereignty over genetic resources was a prerequisite for, and a guarantee of, a fair and equitable system for the distribution of the related benefits.

40. The representative of the Third World Network said that it had at last been recognized that intellectual property rights often ran counter to the interests of biodiversity. In the United States recently, concerns had been raised about questionable patents and it was time to review the whole system now that patents were being sought for life forms and biodiversity. She welcomed the proposals being made in the

TRIPS Council in that respect and advocated a review of the linkages between the TRIPS Agreement and the Convention.

41. The representative of the Task Force on Access and Benefit-sharing of the International Chamber of Commerce (ICC) pointed out that industry had a major stake in the success of the negotiations. The Task Force comprised three major economic sectors that represented significant but very distinct interests in the use of genetic resources. The first was the pharmaceuticals, where the demand for natural genetic materials had declined considerably over the past decade as progress in science and technology meant that natural genetic resources could be replaced by synthetic molecules. The second was industry, where interest was growing as a result of industrial application of microbial resources. The third was agriculture, which was highly dependent upon genetic resources. All three sectors had to work within frameworks established by States, but so far only a handful of States had such national regimes. Some of the latter had provisions that actually discouraged access and therefore reduced the potential for benefit-sharing, but the greatest disincentive was failure to provide any national guidance.

42. The representative of Burkina Faso expressed the view that the regime should be operationalized within national frameworks for access and benefit-sharing and agreed with previous speakers that it should be underpinned by national legislation. Nevertheless, it was difficult for developing countries to put such frameworks in place and they would need financial support.

## **ITEM 2. ORGANIZATIONAL MATTERS**

### ***A. Attendance***

43. The meeting was attended by representatives of the following Parties and other Governments: Albania, Antigua and Barbuda, Argentina, Armenia, Australia, Austria, Bahamas, Bangladesh, Barbados, Belgium, Benin, Bhutan, Bosnia and Herzegovina, Botswana, Brazil, Brunei Darussalam, Bulgaria, Burkina Faso, Cambodia, Cameroon, Canada, Chad, 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, Equatorial Guinea, Estonia, Ethiopia, European Community, Fiji, Finland, France, Gabon, Gambia, Germany, Ghana, Guatemala, Guinea, Guinea-Bissau, Haiti, Hungary, India, Indonesia, Iran (Islamic Republic of), Ireland, Italy, Jamaica, Japan, Kenya, Kiribati, Lao People's Democratic Republic, Latvia, Liberia, Lithuania, Madagascar, Malawi, Malaysia, Maldives, Mali, Marshall Islands, Mauritania, Mauritius, Mexico, Micronesia (Federated States of), Mongolia, Myanmar, Namibia, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Norway, Pakistan, Palau, Panama, Paraguay, Peru, Philippines, Poland, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Rwanda, Saint Kitts and Nevis, Saint Lucia, Samoa, Senegal, Seychelles, Singapore, Slovakia, Solomon Islands, South Africa, Spain, Sri Lanka, Sudan, Swaziland, Sweden, Switzerland, Syrian Arab Republic, , Tajikistan, Thailand, Togo, Tonga, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Tuvalu, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, Uzbekistan, Vanuatu, Venezuela, Viet Nam, Yemen, Zambia.

44. Observers from the following United Nations bodies, specialized agencies and other bodies also attended: Food and Agriculture Organization of the United Nations (FAO), Global Environment Facility (GEF), Permanent Forum on Indigenous Issues, United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP), United Nations Environment Programme (UNEP), United Nations University (UNU), World Intellectual Property Organization (WIPO), World Trade Organization (WTO);

45. The following were also represented by observers: African Indigenous Women's Organization, African Women's Organization -Central African Network, Agricultural Biotechnology Center, American Enterprise Institute, Association of South-East Asian Nations (ASEAN), Asia Indigenous Peoples Pact, Asociacion Interetnica de Desarrollo de la Selva Peruana, Asociación Napguana, Asociacion para la naturaleza y el desarrollo, Australia Asia Pacific Economic Cooperation (APEC) Study Centre, Australian Conservation Foundation, Berne Declaration, Biotechnology Industry Organization (BIO), Bristol-Myers Squibb Canada, Call of the Earth, Canadian Indigenous Biodiversity Network, Center for International

Environmental Law, Center for International Sustainable Development Law, Centre for Economic and Social Aspects of Genomics, Church Development Service (Evangelischer Entwicklungsdienst), Creator's Right Alliance, CropLife International, Food Industry Research and Development Institute, Forest Genetics Group, Forum Environment & Development, Friends of the Siberian Forests, Global Forest Coalition, Indigenous People of New South Wales, Indigenous Peoples Biodiversity Information Network (IBIN), Indigenous Peoples Council on Biocolonialism, Indigenous Peoples Organization, Institute for Liberty, Instituto SocioAmbiental, Inter Mountain Peoples Education and Culture in Thailand Association, International Alliance of Indigenous and Tribal Peoples of the Tropical Forests, International Alliance of Indigenous and Tribal Peoples of the Tropical Forests, International Centre of Insect Physiology and Ecology (ICIPE), International Chamber of Commerce, International Environmental Resources, International Indian Treaty Council, International Indigenous Forum on Biodiversity, International Institute for Sustainable Development, International Plant Genetic Resources Institute (IPGRI), International Ranger Federation, International Rice Research Institute, International Seed Federation, International Union for the Protection of New Varieties of Plants (UPOV), Inuit Circumpolar Conference, IUCN-The World Conservation Union, Kawatea Chambers, Kitasso Xai'xais Nation, Ministry of Maori Development - Te Puni Kokiri, Na Koa Ikaika o Ka Lahui Hawai'i, National Aboriginal Health Organization (NAHO), Netherlands Center for Indigenous Peoples (NCIV), Nordic Genetic Resources Council, PACOS Trust, Pesticide Action Network Biotani Indonesia, Pfizer Inc., PhRMA (Pharmaceutical Research & Manufacturers of America), Rare Breeds International, Russian Association of Indigenous Peoples of the North, , Seeds of Diversity Canada, Social Equity in Environmental Decisions, South Asia Indigenous Women Forum, Southeast Asia Regional Initiatives for Community Empowerment (SEARICE), South Pacific Regional Environment Programme (SPREP), Stratos Inc. - Strategies to Sustainability, Syngenta, Tebtebba Foundation, The Edmonds Institute, Third World Network, Torres Strait, Tourism Investigation and Monitoring Team, Tulalip Tribes, Universidade Federal de Santa Catarina, University of Birmingham, University of Bratislava, University of Kassel, University of New South Wales, University of Technology, Sydney, University of the Philippines, World Foundation for Environment and Development, WWF International.

### ***B. Officers***

46. The Bureau of the Conference of the Parties served as the Bureau of the meeting.
47. On the proposal of the President of the Conference of the Parties, the Working Group agreed that Dr. Suwit Khunkitti, Minister for Natural Resources and the Environment of Thailand, would chair the meeting on his behalf. At the 3rd plenary session of the meeting, Mrs. Nisakorn Kositrat, Secretary-General of the Office of Natural Resources and Environmental Policy and Planning of Thailand, was delegated by Dr. Suwit Khunkitti to chair the meeting on his behalf.
48. Mr. Alexander Shestakov (Russian Federation) served as Rapporteur.

### ***C. Adoption of the agenda***

49. At the 1st plenary session of the meeting, on 14 February 2005, the Meeting adopted the following agenda, on the basis of the provisional agenda (UNEP/CBD/WG-ABS/3/1):
1. Opening of the meeting.
  2. Organizational matters:
    - 2.1. Officers.
    - 2.2. Adoption of the agenda.
    - 2.3. Organization of work.
  3. Reports on the implementation of the Bonn Guidelines, developments in relevant international processes and capacity-building.
  4. International regime on access and benefit-sharing: nature, scope and elements.

5. Use of terms, definitions and/or glossary, as appropriate.
6. Other approaches, as set out in decision VI/24 B, including consideration of an international certificate of origin/source/legal provenance.
7. 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.
8. 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.
9. Other matters.
10. Adoption of the report.
11. Closure of the meeting.

#### ***D. Organization of work***

50. At the 1st plenary session of the meeting, on 14 February 2005, the representative of the Netherlands, speaking on behalf of the European Union and supported by the representatives of Ethiopia and Canada, proposed that, in order to avoid duplication of work, facilitate the work of small delegations and arrive at a better understanding of the issues at stake, agenda item 4 (International regime on access and benefit-sharing: nature, scope and elements) should be discussed in plenary before the sub-working groups commenced their discussions.

51. The Ad Hoc Open-ended Working Group established two sessional sub-working groups for its third meeting: Sub-Working Group I, with Mr. Sem Taukondjo Shikongo (Namibia) and Mr. Geoff Burton (Australia) as Co-Chairs, to consider further agenda item 4 (International regime on access and benefit-sharing: nature, scope and elements), and Sub-Working Group II, with Ms. Birthe Ivars (Norway) and Mr. Orlando Rey Santos (Cuba) as Co-Chairs, to consider agenda item 5 (Use of terms, definitions and/or glossary, as appropriate), item 6 (Other approaches, as set out in decision VI/24 B, including consideration of an international certificate of origin/source/legal provenance), item 7 (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) and item 8 (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).

52. The Ad Hoc Open-ended Working Group also approved the proposed organization of work for the meeting contained in annex II to the annotated provisional agenda (UNEP/CBD/WG-ABS/3/1/Add.1/Rev.1), as amended in accordance with the proposal made by the representative of the Netherlands (see para. 50 above).

#### ***E. Work of the sessional sub-working groups***

53. As decided by the Ad Hoc Open-ended Working Group on Access and Benefit-sharing at the 1st plenary session of the meeting, Sub-Working Group I met under the co-chairmanship of Mr. Sem Taukondjo Shikongo (Namibia) and Mr. Geoff Burton (Australia) to consider agenda item 4 (International regime on access and benefit-sharing: nature, scope and elements).

54. The Sub-Working Group held eight meetings from 15 February 2005 to 18 February 2005. It adopted its report (UNEP/WG-ABS/3/L.1/Add.1) at its 8th meeting, on 18 February 2005.

55. As decided by the Ad Hoc Open-ended Working Group on Access and Benefit-sharing at the 1st plenary session of the meeting, Sub-Working Group II met under the co-chairmanship of Ms. Birthe Ivars (Norway) and Mr. Orlando Rey Santos (Cuba) to consider agenda items 5, 7 and 8.

56. The Sub-Working Group held seven meetings, from 15 February 2005 to 18 February 2005. It adopted its report (UNEP/WG-ABS/3/L.1/Add.2) at its 7th meeting, on 18 February 2005.

#### ***F. Documentation***

57. 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 note by the Executive Secretary transmitting a discussion paper prepared by the Commission on Biosociety and Commission on Intellectual Property of the International Chamber of Commerce (ICC) on access and benefit-sharing for genetic resources (UNEP/CBD/WG-ABS/3/INF/2); a note by the Executive Secretary containing a position paper submitted by the International Seed Federation on disclosure of origin in intellectual property protection applications (UNEP/CBD/WG-ABS/3/INF/3); a note by the Executive Secretary transmitting a submission by the European Community on the global status and trends in intellectual property claims: genomics, proteomics and biotechnology (UNEP/CBD/WG-ABS/3/INF/4); a note by the Executive Secretary transmitting a paper submitted by the United Nations University on the feasibility, practicality and cost of a certificate of origin system for genetic resources: preliminary results of comparative analysis of tracking material in biological resource centres and of proposals for a certification scheme (UNEP/CBD/WG-ABS/3/INF/5); a note by the Executive Secretary transmitting a record of discussion of the International Expert Workshop on Access to Genetic Resources and Benefit-sharing: generating new ideas and thinking (UNEP/CBD/WG-ABS/3/INF/6); a note by the Executive Secretary transmitting proposals by Switzerland regarding the declaration of the source of genetic resources and traditional knowledge in patent applications (UNEP/CBD/WG-ABS/3/INF/7); a note by the Executive Secretary transmitting a submission by Switzerland on a guide to using the working draft ABS management tool (UNEP/CBD/WG-ABS/3/INF/8); a note by the Executive Secretary containing a background research report submitted by Switzerland on review of existing norms, standards and practices relevant to access and benefit-sharing – ABS Management Tool Project (UNEP/CBD/WG-ABS/3/INF/9); and a note by the Executive Secretary transmitting a document prepared by IUCN-Canada on a summary analysis: legal certainty for users of genetic resources under existing access and benefit-sharing (ABS) legislation and policy (UNEP/CBD/WG-ABS/3/INF/10).

### **ITEM 3. REPORTS ON THE IMPLEMENTATION OF THE BONN GUIDELINES, DEVELOPMENTS IN RELEVANT INTERNATIONAL PROCESSES AND CAPACITY-BUILDING**

58. The Ad Hoc Open-ended Working Group took up agenda item 3 at the 2nd plenary session of the meeting, on 14 February 2005. In considering the item, the Working Group had before it a note by the Executive Secretary containing a compilation of submissions provided by Parties, Governments, international organizations, indigenous and local communities and relevant stakeholders in preparation for the third meeting of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing (UNEP/CBD/WG-ABS/3/INF/1 and Add.1).

59. The representative of the Secretariat introduced the item, saying that it was intended to provide an opportunity to allow participants to share views and information on the topic.

60. Statements were made by the representatives of Australia, Belgium, Brazil, Cameroon, Canada, China, the European Community, Finland, Gambia, Germany, India (also on behalf of the Group of Like-Minded Megadiverse Countries), Japan, the Netherlands (on behalf of the European Union and the candidate countries), Norway, Palau, the Philippines, Switzerland, Tunisia, the United Kingdom, the United Republic of Tanzania, and the United States of America.

**ITEM 4. INTERNATIONAL REGIME ON ACCESS AND BENEFIT-SHARING:  
NATURE, SCOPE AND ELEMENTS**

61. Agenda item 4 was taken up by the Working Group at the 2nd plenary session of the meeting, on 14 February 2005. In considering the item, the Working Group had before it a note by the Executive Secretary containing an analysis of existing national, regional and international legal instruments relating to access and benefit-sharing and experience gained in their implementation, including identification of gaps (UNEP/CBD/WG-ABS/3/2), and a note by the Executive Secretary containing a compilation of views, information and analysis on the elements of the international regime on access and benefit-sharing (UNEP/CBD/WG-ABS/3/3).
62. Dato' Suboh Mohd Yassin, President of the Conference of the Parties, introduced the item.
63. Following the introduction, statements were made by representatives of Argentina, Australia, Botswana, Brazil, Canada, Colombia, Ethiopia, Gabon, the Gambia, Indonesia, Mexico, Namibia, the Netherlands (on behalf of the European Union, Croatia and Turkey), New Zealand, the Philippines, Switzerland, Uganda (on behalf of the African Group), the United Republic of Tanzania and Yemen.
64. Agenda item 4 was taken up by Sub-Working Group I at its 1st meeting, on 15 February 2005.
65. Mr. Sem Taukondjo Shikongo (Namibia), Co-Chair, proposed that the Sub-Working Group focus first on the Working Group's goal, namely to elaborate and negotiate the nature, scope and elements of an international regime on access and benefit-sharing, within the framework of the Convention.
66. Introducing the item, the representative of the Secretariat said that, as a first step, the meeting might wish to decide how to approach the negotiations, deciding on the objectives and structure of the international regime, taking as a basis the annex to decision VII/19 D, which set out the terms of reference for the Ad Hoc Open-ended Working Group.
67. Following the introduction, statements were made by the representatives of Bahamas, Bangladesh, Botswana, Brazil, Canada, Colombia, Costa Rica, Ecuador, Egypt, El Salvador, Ethiopia (on behalf of the African Group), Fiji, Ghana, India, Kenya, Malaysia, Mexico, the Netherlands (on behalf of the European Union, Croatia and Turkey), New Zealand, Norway, Peru, the Philippines, the Republic of Korea, South Africa, Sri Lanka, Switzerland, Thailand, Uganda, Ukraine and the United Republic of Tanzania .
68. A statement was also made by the representative of the International Indigenous Forum on Biodiversity.
69. Mr. Sem Taukondjo Shikongo (Namibia), Co-Chair, proposed that the Sub-Working Group turn to the objectives of the regime, in particular, what the regime aimed to achieve, how existing instruments addressed the objectives and what additional instruments were needed to address the gaps.
70. Statements were made by the representatives of Colombia, Ethiopia, Haiti, India (on behalf of the Group of Like-minded Megadiverse Countries), Norway, Switzerland, Thailand and Uganda.
71. At the 2nd meeting, on 15 February 2005, statements were made by the representatives of Bhutan, Botswana, Brazil, Canada, China, Costa Rica, Egypt, Fiji, Ghana, the Netherlands, New Zealand, Palau, Peru, the Philippines, Republic of Korea, South Africa, Tunisia and Ukraine.
72. Statements were also made by the representatives of the United Nations Permanent Forum on Indigenous Issues and the United Nations University.
73. The representative of the International Indigenous Forum on Biodiversity also made a statement.
74. In accordance with suggestions made during the 1st plenary meeting to ensure coordination between the two sub-working groups, Mr Orlando Rey Santos (Cuba), Co-Chair of Sub-Working Group II, gave a short report on progress made during the 1st meeting of the Sub-Working Group.
75. Mr. Sem Taukondjo Shikongo (Namibia), Co-Chair, proposed that the Sub-Working Group turn to the structure and content of the regime, in particular, what elements were addressed by existing

instruments and what elements needed to be addressed by one or several new instruments. He referred delegates to the list of elements in the annex to decision VII/19 D.

76. The Sub-Working Group held a discussion on the best way to proceed with its work, in which Bangladesh, Brazil, Canada, Colombia, Ethiopia, Haiti, India, Malaysia, Mexico, the Netherlands (on behalf of the European Union), the Philippines, Switzerland, Thailand and Uganda took part.

77. Mr. Sem Taukondjo Shikongo (Namibia), Co-Chair, then requested representatives to propose new elements which they considered should be included in the list.

78. Proposals were made by the representatives of Botswana, Brazil, Colombia, Ecuador, Ghana, India, Malaysia, the Netherlands, Norway, Peru, the Philippines, Thailand, Uganda and the United Republic of Tanzania.

79. A representative of the Indigenous Women's Biodiversity Network also made a proposal.

80. Mr. Sem Taukondjo Shikongo (Namibia), Co-Chair, said that the Co-Chairs would prepare a text on the basis of the discussions, covering the scope, potential objectives and elements of a regime.

81. At its 3rd meeting, on 16 February 2005, the Sub-Working Group considered a text prepared by the Co-Chairs. In introducing the text, Mr. Sem Taukondjo Shikongo (Namibia), Co-Chair, said that it represented a summary of views expressed by representatives at the previous meeting of the Sub-Working Group. Mr. Geoff Burton (Australia), Co-Chair, added that the document was intended to provide the basis for a more structured discussion on the scope, potential objectives and elements of an international regime.

82. Mr. Geoff Burton (Australia), Co-Chair, invited participants to make initial general comments on the text that the two Co-Chairs had prepared.

83. In response, statements were made by the representatives of Australia, Brazil, Burkina Faso, Canada, Colombia, Ecuador, Ethiopia (on behalf of the African Group), Haiti, India (also on behalf of the Like-minded Megadiverse Countries), Malawi, Malaysia, Nepal, the Netherlands (on behalf of the European Union), Peru, the Philippines, the Russian Federation, Sudan, Switzerland, Thailand, Uganda, the United Republic of Tanzania, and the Zambia.

84. A statement was made by the representative of the Food and Agriculture Organization of the United Nations (FAO).

85. Statements were also made by representatives of the International Chamber of Commerce and the International Indigenous Forum on Biodiversity.

86. Mr. Sem Taukondjo Shikongo (Namibia), Co-Chair, called for comments on the nature of the regime, in particular on the necessary legal character of the instrument.

87. At the 4th meeting of the Sub-Working Group, on 16 February 2005, statements were made by the representatives of Australia, Bangladesh, Botswana, Burkina Faso, Cameroon, Canada, China, Cuba, El Salvador, Ethiopia, (on behalf of the African Group), Fiji, Haiti, India (also on behalf of the Like-minded Megadiverse Countries), Japan, Kenya, Malawi, Malaysia, the Netherlands (on behalf of the European Union), Norway, Palau, the Russian Federation, South Africa, Swaziland, Thailand, Uganda and the United Republic of Tanzania.

88. Following the statements, Mr. Sem Taukondjo Shikongo (Namibia), Co-Chair, invited participants to comment on the process by which the objectives of the instrument could be achieved.

89. Statements were made by the representatives of the Bahamas, Brazil, Burkina Faso, Canada, Colombia, Cuba, Ecuador, Ethiopia (on behalf of the African Group), Haiti, Malawi, Malaysia, Mexico, the Netherlands (on behalf of the European Union), Peru, the Philippines, Switzerland and Uganda.

90. Mr. Sem Taukondjo Shikongo (Namibia), Co-Chair, called for proposals on any additional issues that were not covered in the Co-Chairs' text.

91. Proposals were made by the representatives of Brazil, Ghana, Haiti and the Philippines.
92. Following the statements, Mr. Sem Taukondjo Shikongo (Namibia), Co-Chair, noted that there appeared to be consensus that the text constituted a basis for the Sub-Working Group's future discussions and invited participants to make specific proposals for amendment of the scope, potential objectives and elements set out in the Co-Chairs' text.
93. Statements were made by the Bahamas, Brazil, Canada, China, Ecuador, Ethiopia, India (also on behalf of the Like-minded Megadiverse Countries), Malawi, Malaysia, the Netherlands (on behalf of the European Union), the Philippines, the Republic of Korea, Singapore and Switzerland.
94. Mr. Sem Taukondjo Shikongo (Namibia), Co-Chair, said that, together with his Co-Chair, he would prepare a revision of the Co-Chairs' text.
95. At its 5th meeting, on 17 February 2005, the Sub-Working Group considered a draft recommendation submitted by the Co-Chairs entitled "International regime on access and benefit-sharing: nature, scope and elements".
96. Mr. Sem Taukondjo Shikongo (Namibia), Co-Chair, introduced the document, explaining the basis for the text in the various sections.
97. In the ensuing discussion, all representatives congratulated the Co-Chairs on the document, which reflected the comments made at previous meetings.
98. After the meeting had discussed the preambular paragraph and operative paragraph 1, Mr. Sem Taukondjo Shikongo (Namibia), Co-Chair, requested a group of friends of the Co-Chairs comprising the representatives of Brazil, Canada, Ethiopia, Gabon, Malaysia, Mexico and the Netherlands to prepare a revised text of operative paragraph 2 that reconciled the divergent views expressed.
99. At its 6th meeting, on 17 February 2005, the Sub-Working Group agreed to the text proposed by the friends of the Co-Chairs and, after an exchange of views, approved the body of the draft recommendation, as amended.
100. The Sub-Working Group then discussed the annex to the draft recommendation.
101. After a discussion of part 1 of the annex, on the nature of the international regime, it was agreed that the following two paragraphs should form part of the report of the Sub-Working Group: "Some Parties affirmed the importance of keeping options open with regard to the nature of the regime. Some Parties affirmed the need for the core part of the regime to be legally binding."
102. The Sub-Working Group then discussed part 2 of the annex on the scope of the international regime. After an exchange of views, Mr. Geoff Burton (Australia), Co-Chair, requested a group of friends of the Co-Chairs comprising the representatives of Colombia, Ecuador, Ethiopia, India, Malaysia, Mexico, the Netherlands, Republic of Korea, Switzerland and Uganda to consult and prepared a revised text for parts 2 and 3 of the annex relating to the scope of the international regime and its potential objectives.
103. At the 7th meeting, on 17 February 2005, the friends of the Co-Chairs proposed a revised text for parts 2 and 3, which would enable all Parties to submit options after the meeting, with a consequential amendment to the first preambular paragraph of the draft recommendation.
104. The Sub-Working Group agreed to the revised text proposed by the friends of the Co-Chairs.
105. The Sub-Working Group then considered part 4 of the annex setting out the elements of the regime and, after an exchange of views, agreed to the text, as amended.
106. Section 5 containing additional elements identified was discussed by the meeting and it was agreed that the list, which corresponded to concerns expressed by Parties, should be retained, with the addition of any new elements proposed by the Parties.

107. Mr. Sem Taukondjo Shikongo (Namibia), Co-Chair, introduced the matrix, which Parties would be asked to complete during the inter-sessional period and forward to the Secretariat.

108. The Sub-Working Group discussed the status of the matrix and whether it should be included with the annex for negotiation or should simply be an information document.

109. Mr. Geoff Burton (Australia), Co-Chair, noted that there was a general desire to ensure that the matrix was made available as a tool for the next meeting of the Ad Hoc Open-ended Working Group, but that views differed as to whether it should be an integral part of the annex. He therefore called on a group of friends of the Co-Chairs comprising the Netherlands (on behalf of the European Union) and Malaysia, together with any other interested Parties, to prepare a revised text that reconciled the differing views.

110. The Sub-Working Group considered the revised text prepared by the friends of the Co-Chairs and, after an exchange of views, agreed that it should become annex II to the draft recommendation, with the addition of a new section 6 explaining its content.

111. After having approved the draft recommendation and the annexes thereto, the Sub-Working Group agreed to review the revised text as a whole at its next meeting.

112. At the 8th meeting, on 18 February 2005, the Sub-Working Group agreed to transmit the draft recommendation, as orally amended, to the plenary as draft recommendation UNEP/CBD/WG-ABS/3/L.6.

#### ***Action by the Working Group***

113. At the 3rd plenary session of the meeting, on 18 February 2005, the Working Group took up draft recommendation UNEP/CBD/WG-ABS/2/L.6, and adopted it, as orally amended, as recommendation 3/1. The text of the recommendation as adopted is contained in the annex to the present report.

114. The representative of New Zealand said that he attached particular importance to the recognition of the right of all Parties, set forth in paragraph 2 of the recommendation, to submit further options for inclusion in annex I attached thereto. His Government had not been in a position to submit proposals during the present meeting; it was still in the process of developing policy in that area and would subsequently be exploring the potential contributions which it might make in due course. It was of fundamental importance that options submitted at a later date should have equal weight with those already included in the recommendation. He also wished to place on record his understanding that the elements and options included in annex I were simply proposals which had been submitted for further consideration and on which agreement had not yet been reached.

115. The representative of Canada said that he wished to place on record his understanding that the recommendations adopted during the meeting would provide guidance for the work to be undertaken both inter-sessionally and at the fourth meeting of the Working Group. In so far as they invited Parties to take measures to support and enforce compliance, however, those recommendations should not be interpreted as a means of bypassing the role and mandate of the Conference of the Parties.

116. The representative of Australia said that, in the coming months, his Government looked forward to making its first submissions concerning the matters listed in annex I to the recommendation. In that regard, he wished to reaffirm his understanding that submissions made in response to the request contained in paragraph 2 of the recommendation would be considered equally with those already set forth in that annex.

#### **ITEM 5. USE OF TERMS, DEFINITIONS AND/OR GLOSSARY, AS APPROPRIATE**

117. Agenda item 5 was taken up by Sub-Working Group II at its 1st meeting, on 15 February 2005. In considering the item, the Sub-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/3/4).

118. Introducing the item, the representative of the Secretariat drew attention to decision VII/19 B in which the Conference of the Parties had noted that the terms as defined in Article 2 of the Convention should apply to the Bonn Guidelines and that a number of other relevant terms not defined in the Convention might need to be examined. The Secretariat had compiled information communicated by Parties, Governments, relevant organizations, indigenous and local communities and all relevant stakeholders, and one possible outcome might be that the Sub-Working Group, taking into account discussions on the international regime for access and benefit-sharing, might wish to make a recommendation to the Conference of the Parties regarding the need for definitions and/or a glossary and the possible establishment of an expert group.

119. Following the introduction, statements were made by the representatives of Brazil, Canada, Colombia, Gambia, Liberia, Malaysia, the Netherlands (on behalf of the European Union), Norway, South Africa, Switzerland, Turkey and the United States of America.

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

121. The Co-Chair said that the general feeling of the Sub-Working Group was that it was premature to address the use of terms and definitions in detail, and that the Secretariat should continue its information gathering exercise, including, where appropriate, terms and definitions used in other international agreements. The Chair said that on the basis of the discussion the Co-Chairs would prepare a conference room paper on the item for consideration by the Sub-Working Group.

122. At its 3rd and 4th meetings, on 16 February 2005, the Sub-Working Group considered a draft recommendation on further consideration of outstanding issues related to access and benefit-sharing: use of terms, definitions and/or glossary, as appropriate, submitted by the Co-Chairs, and agreed to transmit the draft recommendation, as orally amended, to the plenary as draft recommendation UNEP/CBD/WG-ABS/3/L.2.

***Action by the Working Group***

123. At the 3rd plenary session of the meeting, on 18 February 2005, the Working Group took up draft recommendation UNEP/CBD/WG-ABS/3/L.2, and adopted it as recommendation 3/2. The text of the recommendation as adopted is contained in the annex to the present report.

**ITEM 6. OTHER APPROACHES, AS SET OUT IN DECISION VI/24 B, INCLUDING CONSIDERATION OF AN INTERNATIONAL CERTIFICATE OF ORIGIN/SOURCE/LEGAL PROVENANCE**

124. Agenda item 6 was taken up by Sub-Working Group II at its 1st meeting, on 15 February 2005. In considering the item, the Sub-Working Group had before it a note by the Executive Secretary containing an analysis of measures to ensure compliance with prior informed consent of the Contracting Party providing genetic resources and mutually agreed terms on which access was granted, and of other approaches, including an international certificate of origin/source/legal provenance (UNEP/CBD/WG-ABS/3/5).

125. Introducing the item, the representative of the Secretariat said that, at its seventh meeting, the Conference of the Parties had stressed the need to further examine other approaches set out in decision VI/24 B, and additional approaches such as interregional and bilateral arrangements as well as an international certificate of origin/source/legal provenance, in particular the operational functionality and cost-effectiveness of such an international certificate. An overview of existing approaches adopted by different actors, including Governments, institutions, professional associations, the private sector and inter-governmental organizations to manage access to genetic resources and benefit-sharing was contained in a note by the Executive Secretary prepared for the second meeting of the Working Group

(UNEP/CBD/WG-ABS/2/2). An update of those existing approaches was contained in section III A of the note by the Executive Secretary prepared for the current meeting (UNEP/CBD/WG-ABS/3/5), while additional and other approaches were examined in section III B.

126. He said that, further to its consideration of the item, the Sub-Working Group might wish to recommend that the Conference of the Parties invite Parties, Governments and relevant international organizations and non-governmental organizations to provide their views on the practical implications, at national and international levels, of an international certificate of origin/source/legal provenance, in order to assist the Conference of the Parties in its assessment of the practicability and feasibility of such a system and to ensure that the costs did not outweigh the benefits.

127. Following the introduction, statements were made by the representatives of Brazil, Canada, China, Colombia, India (on his own behalf, and then on behalf of the Group of Like-Minded Megadiverse Countries), Japan, Malaysia, Mexico, the Netherlands (on behalf of the European Union), New Zealand, Norway, the Philippines, Turkey, Switzerland and the United States of America.

128. A statement was also made by the representative of the United Nations University.

129. Further statements were made by the representatives of the International Indigenous Forum on Biodiversity and the International Chamber of Commerce.

130. Following the statements, the Chair said that, on the basis of the discussion which had taken place, the Co-Chairs would prepare a conference room paper on the item for consideration by the Sub-Working Group.

131. At its 3rd and 4th meetings, on 16 February 2005, the Sub-Working Group considered a draft recommendation on other approaches as set out in decision VI/24 B, including consideration of an international certificate of origin/source/legal provenance, submitted by the Co-Chairs, and agreed to transmit the draft recommendation, as orally amended, to the plenary as draft recommendation UNEP/CBD/WG-ABS/3/L.3.

#### *Action by the Working Group*

132. At the 3rd plenary session of the meeting, on 18 February 2005, the Working Group took up draft recommendation UNEP/CBD/WG-ABS/2/L.3, and adopted it as recommendation 3/3. The text of the recommendation as adopted is contained in the annex to the present report.

#### **ITEM 7. 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**

133. Agenda item 7 was taken up by Sub-Working Group II at its 2nd meeting, on 15 February 2005. In considering the item, the Sub-Working Group had before it a note by the Executive Secretary containing an analysis of measures to ensure compliance with prior informed consent of the Contracting Party providing genetic resources and mutually agreed terms on which access was granted, and of other approaches, including an international certification of origin/source/legal provenance (UNEP/CBD/WG-ABS/3/5).

134. Introducing the item, the representative of the Secretariat reviewed the relevant sections of the note by the Executive Secretary (UNEP/CBD/WG-ABS/3/5) and said that the Working Group might wish to recommend that the Conference of the Parties urge Parties with users under their jurisdiction to take appropriate measures to support compliance with prior informed consent and mutually agreed terms on which access was granted; to invite Parties to provide information to the Secretariat on the measures taken to ensure compliance with prior informed consent and mutually agreed terms; to invite Parties to review

existing judicial and administrative remedies available under their national jurisdiction to ensure that appropriate remedies were available to address situations of non-compliance; and to invite Parties, Governments, indigenous and local communities and all relevant stakeholders to continue to promote the implementation of the Bonn Guidelines with a view to providing greater legal certainty and clarity in the development of national measures on access and benefit-sharing. Finally, he said that the Working Group was also invited to identify issues related to the disclosure of the origin of genetic resources and associated traditional knowledge in applications for intellectual property rights and to transmit the results of that examination to the World Intellectual Property Organization (WIPO); developments in WIPO following the invitation from the Conference of the Parties to carry out further work on issues related to the disclosure of the origin of genetic resources and associated traditional knowledge in applications for intellectual property rights had been made available in document UNEP/CBD/WG-ABS/3/2.

135. Following the introduction, statements were made by the representatives of Australia, Brazil, Canada, Ethiopia, Japan, Liberia, Malaysia, the Netherlands (on behalf of the European Union), New Zealand, Norway, the Philippines, Switzerland, Thailand and the United States of America.

136. Statements were also made by the representatives of the International Indigenous Forum on Biodiversity and Third World Network.

137. The Co-Chair said that on the basis of the discussion and the recommendations contained in a note by the Executive Secretary (UNEP/CBD/WG-ABS/3/5) the Co-Chairs would prepare a conference room paper for the consideration of the Sub-Working Group. Among other things, it would reflect the calls that had been made for more work to be done on the issues in question.

138. At its 4th meeting on 16 February 2005 and at its 5th and 6th meetings on 17 February 2005, the Sub-Working Group considered a draft recommendation on 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, submitted by the Co-Chairs. At the 6th meeting on 17 February 2005, the Co-Chair announced that she would convene a group of friends of the Co-Chairs, comprising the representatives of Australia, Brazil, Canada, Colombia, Egypt, Ethiopia, Liberia, Malaysia, the Netherlands and Switzerland, in order to address the outstanding issues outlined following the exchange of views which had taken place on the draft recommendation.

139. At its 5th and 6th meetings on 17 February 2005, the Sub-Working Group continued its consideration of the draft recommendation submitted by the Co-Chairs.

140. At the 6th meeting, the Co-Chair announced that she would convene a group of friends of the Co-Chairs, comprising the representatives of Australia, Brazil, Canada, Colombia, Egypt, Ethiopia, Liberia, Malaysia, the Netherlands and Switzerland, in order to address the outstanding issues outlined following the exchange of views which had taken place on the draft recommendation.

141. At the 7th meeting, on 18 February 2005, the Sub-Working Group considered the draft recommendation, as amended by the group of friends of the Co-Chairs, and agreed to transmit it to the plenary as draft recommendation UNEP/CBD/WG-ABS/3/L.4.

142. The representative of Mexico requested that, when drawing up the agenda for the fourth meeting of the Working Group, the Secretariat should set specific timetables for discussion of the subjects covered in paragraphs 8 (a), (b) and (c) of draft recommendation UNEP/CBD/WG-ABS/3/L.4 and those covered in paragraphs 1 (a), (b) and (c) of draft recommendation UNEP/CBD/WG-ABS/3/L.3.

#### ***Action by the Working Group***

143. At the 3rd plenary session of the meeting, on 18 February 2005, the Working Group took up draft recommendation UNEP/CBD/WG-ABS/2/L.4, and adopted it as recommendation 3/4. The text of the recommendation as adopted is contained in the annex to the present report.

**ITEM 8. 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**

144. Agenda item 8 was taken up by Sub-Working Group II at its 2nd meeting on 15 February 2005 and at its 3rd meeting on 16 February 2005. In considering the item, the Sub-Working Group had before it a note by the Executive Secretary on future evaluation of progress in the Strategic Plan (UNEP/CBD/WG-ABS/3/6).

145. Introducing the item, the representative of the Secretariat said that, in decision VII/30, the Conference of the Parties had decided to develop a framework to facilitate the assessment of progress towards the 2010 target. The framework covered seven focal areas, including that of ensuring the fair and equitable sharing of benefits arising out of the use of genetic resources. With respect to access and benefit-sharing, it had requested the Ad Hoc Open-ended Working Group on Access and Benefit-sharing respectively, to explore 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, and to report the results to the Conference of the Parties at its eighth meeting. A note by the Executive Secretary (UNEP/CBD/WG-ABS/3/6) had been prepared with a view to assisting that task.

146. He added that the Parties might wish to consider whether the establishment of outcome-oriented indicators was a priority at the present time or whether attention should rather be focused on process-oriented indicators as a first step.

147. Following the introduction, statements were made by the representatives of Brazil, Canada, China, Colombia, Gabon, Gambia, Liberia, Malaysia, Mexico, the Netherlands (on behalf of the European Union), Thailand, Turkey and South Africa.

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

149. Following the statements, the Chair said that the Co-Chairs would prepare a conference room paper on the item for consideration by the Sub-Working Group. In particular, the paper would reflect the views that further information on the subject should be gathered and that targets and indicators should be interlinked.

150. At its 4th and 5th meetings on 16 and 17 February, respectively, the Sub-Working Group considered a draft recommendation on 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, submitted by the Co-Chairs, and agreed to transmit the draft recommendation, as orally amended, to the plenary as draft recommendation UNEP/CBD/WG-ABS/3/L.5.

***Action by the Working Group***

151. At the 3rd plenary session of the meeting, on 18 February 2005, the Working Group took up draft recommendation UNEP/CBD/WG-ABS/2/L.5 and adopted it as recommendation 3/5. The text of the recommendation as adopted is contained in the annex to the present report.

**ITEM 9. OTHER MATTERS**

152. At the request of the representatives of the Netherlands (speaking on behalf of the European Union) and Ethiopia (speaking on behalf of the African Group), the Chair gave the floor to the representative of the International Indigenous Forum on Biodiversity.

153. The representative of the International Indigenous Forum on Biodiversity said that his organization believed that any discussion of access and benefit-sharing must recognize the unique role of indigenous peoples as traditional knowledge holders and called for their full and effective participation in the processes on access and benefit-sharing. To that end his organization was submitting a proposal for

the consideration of the plenary, which called upon the Working Group to adopt more progressive and inclusive working practices in the course of its deliberations. Such working practices were consistent with the processes of the Convention and were already in use by the Ad Hoc Open-Ended Working Group on Article 8(j) and Related Provisions. The deliberations of the Convention's various bodies had serious and direct impacts on the lives of indigenous peoples.

154. The proposal, which took the form of a draft decision to be submitted for adoption by the Conference of the Parties at its eighth session, read as follows:

*“Reaffirming* the importance of the full and effective participation of indigenous and local communities in the work of the Ad Hoc Open-Ended Working Group on Access and Benefit-sharing and *recognizing* the progressive nature of the working practices of the Ad Hoc Open-Ended Working Group on Article 8(j) and related provisions,

*“Decides* to continue to support the participation of the International Indigenous Forum on Biodiversity through the adoption of measures such as: (a) providing timely and appropriate indigenous participation in debates; (b) enhanced participation in Friends of the Chair and contact groups; (c) advising the Bureau; and (d) to provide the administrative support necessary to facilitate the participation of the International Indigenous Forum on Biodiversity in its advisory roles to Parties in meetings of the Ad Hoc Open-Ended Working Group on Access and Benefit-sharing.”

155. The representative of Canada said that his country had been a strong proponent of improving indigenous participation in the deliberations of the Convention's bodies. His delegation was very interested in the proposal, but would welcome an opportunity to look more closely at its text.

156. The representative of Australia welcomed indigenous participation and had been making statements on the subject ever since the fifth meeting of the Conference of the Parties. Australia expressed general support for indigenous participation in the Working Group and supported the general sentiments underlying the proposed draft decision, but in order better to understand its implications sought clarification of the meaning of the terms “administrative support” and “advising the Bureau”.

157. The representative of Brazil said his country attached special importance to the participation in meetings under the Convention of indigenous peoples and local communities, giving particular priority to those from developing countries and small island developing States. Brazil firmly believed that one of the objectives of the future international regime should be the provision of effective participation for the traditional knowledge of indigenous and local communities. Extension to the Working Group of the treatment that indigenous and local communities received under Article 8(j) merited attention.

158. The representative of the Netherlands (speaking on behalf of the European Union) and the representative of Norway supported the proposed draft decision.

159. The representative of New Zealand said his country firmly supported the rights of indigenous and local communities to participate fully and effectively in the Working Group. New Zealand was content to support any practical measures agreed upon by all delegations that would help to enhance that participation.

160. The representative of Ethiopia (speaking on behalf of the African Group) said that the request for indigenous participation was firmly based since there was no group more directly concerned and affected by the Working Group's activities than indigenous peoples and local communities. Their participation should be supported to the extent possible.

161. The representative of India (speaking on behalf of the Group of Like-Minded Megadiverse Countries) said that the Group was megadiverse not only in the biological sense but also in terms of its indigenous and local communities. The Group considered that it was its duty to support the proposed draft decision in principle, and would give it serious consideration.

162. Statements of support were also made by the representatives of Burkina Faso, Jamaica, Malaysia, Mexico, Namibia, Peru, the Philippines and Uganda.

163. The representative of the International Indigenous Forum on Biodiversity said that during the present meeting of the Working Group it had held extensive consultations with the representatives of Australia, Canada and other countries. He expressed the hope that further discussions would proceed in good faith, and specifically that the delegations of Australia and Canada would adopt positive and constructive positions on the matter of effective indigenous participation.

164. The Working Group expressed its support in principle for the proposal made by the representative of the International Indigenous Forum on Biodiversity but needed more time to give it further consideration. The Working Group decided to submit the proposed draft decision for consideration by the Working Group at its fourth meeting.

165. The representative of Australia announced that in its preparations for the fourth meeting of the Working Group, his country would be consulting indigenous representatives and taking their views fully into account.

166. The representative of Canada said that his country had noted the importance of the concerns and perspectives of indigenous peoples as they related to access to genetic resources and the sharing of the benefits thereof. That concern had been particularly noted at the Canada-Mexico international experts' meeting held in October 2004. As a result, Canada announced its aim of organizing an international workshop in the autumn of 2005 to help focus international attention on indigenous concerns and perspectives prior to the fourth meeting of the Working Group.

167. The representative of Canada said that Canada offered to provide an additional contribution to support the holding of the Ad Hoc Open-ended Working Group on Article 8(j) and Related Provisions.

168. The representative of Spain said his country would welcome contributions to enable as many participants as possible to attend the meetings of the Ad Hoc Open-ended Working Group on Article 8(j) and Related Provisions and the Ad Hoc Open-ended Working Group on Access and Benefit-sharing, which would be held in that order in consecutive weeks in Spain in March 2006.

169. The representative of Norway said that her country offered to host an expert workshop on access and benefit-sharing in late 2005 as a contribution to the work of the fourth meeting of the Ad Hoc Open-ended Working Group.

170. The representative of the Netherlands, speaking on behalf of the European Union, said that the European Union would continue to provide support for the attendance of the *Earth Negotiations Bulletin* at meetings of the Ad Hoc Open-ended Working Group.

171. The representative of France said that his country offered to organize a high-level seminar in Paris at the end of 2005 or early in 2006 as a contribution to the inter-sessional work.

172. Mr. Shestakov (Russian Federation), Rapporteur, introduced a proposal by the Bureau paying tribute to the Government and people of the Kingdom of Thailand (UNEP/CBD/WG-ABS/3/L.7).

173. The meeting adopted the proposal by the Bureau as recommendation 3/6, which is contained in the annex to the present report.

## **ITEM 10. ADOPTION OF THE REPORT**

174. The present report was adopted at the 3rd plenary session of the meeting, on 18 February 2005, on the basis of the draft report prepared by the Rapporteur (UNEP/CBD/WG-ABS/3/L.1) and the reports of the two sub-working groups (UNEP/CBD/WG-ABS/3/L.1/Add.1 and Add.2).

175. During the adoption of the report, the representative of the Netherlands, speaking on behalf of the European Union, stressed that he did not share the views expressed by the representative of UNEP as reflected in paragraph 12 of the document. The European Community and its member States, as Parties to both the TRIPS Agreement and the Convention on Biological Diversity, considered that there was no contradiction between the two. They implemented their international commitments in a mutually

supportive way and would continue to do so. They hoped that there had been a misunderstanding within UNEP.

176. The representative of Australia also expressed serious concern about the statement made by the representative of UNEP during the opening session of the Working Group regarding the relationship between the Convention on Biological Diversity and the TRIPS Agreement. He questioned the appropriateness of UNEP making statements on matters that were the mandate of a separate organization. His Government also strongly questioned certain unsubstantiated assertions made by the representative of UNEP, such as that TRIPS would undermine implementation of the access and benefit-sharing provisions of the Convention on Biological Diversity. It was Australia's position, as expressed repeatedly in meetings of the Working Group and in other forums, that the Convention on Biological Diversity and the TRIPS Agreement were mutually supportive. The two instruments could and should be implemented in a mutually supportive manner. He therefore supported the statement by the Netherlands on behalf of the European Union.

177. Those views were supported by the representatives of Japan, Switzerland and New Zealand.

178. The representative of Ethiopia, speaking on behalf of the African Group, said that paragraph 12 of the draft report accurately reflected the statement that had been made. It was also an accurate reflection of the situation: in their view, there was an inherent contradiction between the Convention on Biological Diversity and the TRIPS Agreement, and they were not mutually supportive. The two would be mutually supportive only when the TRIPS Agreement was amended to take into account the proprietary rights of indigenous and local communities throughout the world. The Convention on Biological Diversity and the TRIPS Agreement were not supportive when it was still the norm to confiscate and patent biodiversity.

179. The representative of Brazil echoed the views expressed by the representative of Ethiopia and asked the representative of UNEP to convey to the Executive Director of UNEP Brazil's agreement with the statement that there were contradictions between the Convention on Biological Diversity and the TRIPS Agreement.

180. The representative of the United States of America said that he wished to associate himself with the views expressed by the representatives of the European Union, Australia, Japan, Switzerland and New Zealand. It was unfortunate that UNEP had ignored its mandate and inappropriately set out to interpret the TRIPS Agreement. It had no competence in that regard.

181. The representative of several non-governmental organizations called attention to the fact that during the past few years, thousands of civil society organizations had taken positions and supported statements on the relation between intellectual property rights and access and benefit-sharing. All had come to conclusions similar to those expressed by the representative of UNEP at the opening session of the Working Group. They fully supported his statement.

#### **ITEM 11. CLOSURE OF THE MEETING**

182. After the customary exchange of courtesies, the meeting was closed at 5.15 p.m. on Friday 18 February 2005.

*Annex*

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

<i>Recommendation</i> .....	<i>Page</i>
3/1. International regime on access and benefit-sharing.....	23
3/2. Further consideration of outstanding issues related to access and benefit-sharing: use of terms, definitions and/or glossary, as appropriate .....	40
3/3. Other approaches as set out in decision VI/24 B, including consideration of an international certificate of origin/source/legal provenance.....	41
3/4. 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 .....	42
3/5. 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 .....	44
3/6. Tribute to the Government and people of the Kingdom of Thailand.....	45

**3/1. International regime on access and benefit-sharing**

In accordance with the terms of reference set out in the annex to decision VII/19 D of the Conference of the Parties,

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

*Having undertaken* an initial review of the process, scope, nature, potential objectives and elements of an international regime on access and benefit-sharing,

*Having compiled* views and proposals on the international regime in the attached annex I,

1. *Reaffirms* that it will continue working in accordance with the terms of reference set out in the annex to decision VII/19 D of the Conference of the Parties;

2. *Agrees* to transmit annex I to the present recommendation, 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 of the Conference of the Parties, for further elaboration and negotiation by Parties;

3. *Invites* Parties, Governments, indigenous and local communities, international organizations and all relevant stakeholders to submit to the Executive Secretary written comments and proposals on the items in annex I attached hereto as soon as possible and, in any case, no later than three months prior to the next meeting of the Working Group;

4. *Requests* the Executive Secretary to prepare a compilation and a consolidated text of the comments and proposals submitted by Parties, Governments, indigenous and local communities, international organizations and all relevant stakeholders for consideration by the fourth meetings of the Working Group on Access and Benefit-sharing and the Working Group on Article 8(j), pursuant to decisions VII/19 D and VII/16;

5. In order to facilitate further analysis of gaps in existing national, regional and international legal and other instruments relating to access and benefit-sharing, *invites* Parties, Governments, indigenous and local communities, international organizations and all relevant stakeholders to provide information to the Executive Secretary on the basis of the matrix contained in annex II to the present recommendation and the potential additional elements and options three months before the fourth meeting of the Working Group;

6. *Requests* the Executive Secretary to consolidate the information provided by Parties, Governments, indigenous and local communities, international organizations and all relevant stakeholders on the basis of annex II to the present recommendation and make it available to the Working Group on Access and Benefit-sharing at its fourth meeting;

7. *Encourages* Parties to hold regional and other meetings as well as participate in electronic forums in order to exchange views, including on experience with relevant instruments, on the process, nature, scope, objectives and elements of an international regime and transmit the outcomes to the Secretariat, and requests the Executive Secretary to disseminate these outcomes through the clearing-house mechanism of the Convention;

8. *Encourages* countries and donor organizations to provide funding to assist in the holding of the above-mentioned regional meetings and electronic forums.

*Annex I***INTERNATIONAL REGIME ON ACCESS AND BENEFIT-SHARING <sup>1/</sup>****1. 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.*

**2. Scope**

*Access to genetic resources and promotion and safeguarding of fair and equitable sharing of the benefits arising out of the utilization of genetic resources in accordance with relevant provisions of the Convention on Biological Diversity; (i)*

*Traditional knowledge, innovations and practices in accordance with Article 8(j). (ii)*

*Option 1:*

The legally binding instrument should apply to:

- (a) Access to genetic resources;
- (b) Fair and equitable sharing of the benefits arising out of the utilization of genetic resources and their derivatives and products in the context of mutually agreed terms;
- (c) Protection of traditional knowledge, innovations and practices associated with genetic resources and their derivatives.

*Option 2:*

The legally binding and/or non-binding instrument(s) should apply to:

- (a) Facilitate access to genetic resources in a non-discriminatory fashion;
- (b) Fair and equitable sharing of the benefits arising out of the utilization of genetic resources in the context of mutually agreed terms;
- (c) Protection of traditional knowledge, innovations and practices associated with genetic resources.

*Option 3:*

The legally binding instrument should apply to:

- (a) Access to genetic resources;
- (b) Fair and equitable sharing of the benefits arising out of the utilization of genetic resources and their derivatives and products in the context of mutually agreed terms;
- (c) Protection of traditional knowledge, innovations and practices associated with genetic resources, their derivatives and products.

*Option 4:*

Facilitation of access to genetic resources in a non-discriminatory fashion and the promotion and safeguarding of fair and equitable sharing of the benefits arising out of the utilization of genetic resources and associated traditional knowledge in accordance with relevant provisions of the Convention on

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<sup>1/</sup> Italicized text, excluding side-headings, indicates text reproduced without change from the terms of reference of the Working Group in the annex to decision VII/19 D. The Roman numerals in parenthesis at the end of an entry refer to its numbering under the corresponding heading in those terms of reference.

Biological Diversity and in harmony with the International Treaty on Plant Genetic Resources and other relevant international instruments.

*Option 5:*

The international regime should apply to:

- (a) Access to genetic resources;
- (b) Fair and equitable sharing of the benefits arising out of the utilization of genetic resources in the context of mutually agreed terms;
- (c) Protection of traditional knowledge, innovations and practices associated with genetic resources.

*Option 6:*

Subject to further refinement, the international regime could be composed of one or more instruments at different levels of implementation (national, regional and international) and of a different nature (including intergovernmental agreements, codes of conduct, national legislation, contracts, ethics, commissions) within a set of principles, norms, rules and decision-making procedures within the framework of the Convention on Biological Diversity that apply to:

- (a) Access to genetic resources;
- (b) Fair and equitable sharing of the benefits arising out of the utilization of genetic resources in the context of mutually agreed terms;
- (c) Protection of traditional knowledge, innovations and practices associated with genetic resources.

### **3. Potential objectives**

*Option 1:*

- (i) To prevent the unauthorized access and use of genetic resources to ensure that fair and equitable sharing of benefits flow to the providers of the genetic resources and to reinforce national legislations.
- (ii) To provide effective protection for the traditional knowledge of indigenous and local communities associated with genetic resources, subject to the national legislation of the countries where these communities are located.
- (iii) Create conditions to facilitate access to genetic resources for environmentally sound uses.
- (iv) Ensure compliance with prior informed consent of providers and of indigenous and local communities, and mutually agreed terms and support the implementation of and compliance with national legislation.

*Option 2:*

- (i) To prevent the continued misappropriation and misuse of genetic resources and their derivatives to ensure that fair and equitable sharing of benefits flow to the countries of origin of the genetic resources and to reinforce national legislations.
- (ii) To provide effective protection for the rights of indigenous and/or local communities in relation to their traditional knowledge associated with genetic resources and derivatives, subject to the national legislation of the countries where these communities are located.
- (iii) To establish international measures to support the aforementioned objective.

*Option 3:*

(i) To prevent the continued misappropriation and misuse of genetic resources, their derivatives and products to ensure that fair and equitable sharing of benefits flow to the countries of origin of the genetic resources and to reinforce national legislations.

(ii) To provide effective protection for the traditional knowledge of indigenous and local communities associated with genetic resources, their derivatives and products, subject to the national legislation of the countries where these communities are located.

(iii) To create conditions to facilitate access to genetic resources for environmentally sound uses.

(iv) To ensure compliance with prior informed consent of countries of origin and of indigenous and local communities, and mutually agreed terms and support the implementation of and compliance with national legislation.

*Option 4:*

The objective of the international regime is:

(i) The conservation and sustainable use of biological diversity;

(ii) Facilitated access to genetic resources;

(iii) The fair and equitable sharing of the benefits arising out of the utilization of genetic resources and associated traditional knowledge.

*Option 5:*

(i) Contribute to the effective implementation of Articles 15 and 8(j) and the three objectives of the Convention.

(ii) Facilitate access to genetic resources.

(iii) Support the implementation of and compliance with national legislation and international law.

(iv) Promote compliance with prior informed consent of the providing countries and of indigenous and local communities and mutually agreed terms.

(v) Promote and safeguard the fair and equitable sharing of benefits.

(vi) Ensure and enforce the rights and obligations of users of genetic resources.

(vii) Protect the rights of indigenous and local communities to their traditional knowledge related to genetic resources consistent with international human rights obligations.

*Option 6:*

(i) Contribute to the effective implementation of Articles 15 and 8(j) and the three objectives of the Convention

(ii) Ensure compliance with the prior informed consent and mutually agreed terms of provider countries, including of indigenous and local communities

(iii) Ensure mutual supportiveness with relevant existing international instruments and processes

#### **4. Elements to be considered for inclusion in the international regime, clustered by subject matter**

*Access*

Measures to promote facilitated access to genetic resources for environmentally sound uses according to Article 15, paragraph 2, of the Convention on Biological Diversity; (iv)

*Ensuring benefit-sharing*

Measures to ensure the fair and equitable sharing of benefits from the results of research and development and the benefits arising from the commercial and other utilization of genetic resources in accordance with Articles 15, paragraph 7, 16, and 19 paragraphs 1 and 2 of the Convention. (ii)

Measures to ensure the sharing of benefits arising from the commercial and other utilization of genetic resources and their derivatives and products, in the context of mutually agreed terms. (vi)

Measures for benefit-sharing including, *inter alia*, monetary and non-monetary benefits, and effective technology transfer and cooperation so as to support the generation of social, economic and environmental benefits. (iii)

*Promoting benefit-sharing*

Measures to promote and encourage collaborative scientific research, as well as research for commercial purposes and commercialization, consistent with Articles 8(j), 10, 15, paragraph 6, paragraph 7 and Articles 16, 18 and 19 of the Convention. (i)

Measures to promote and safeguard the fair and equitable sharing of benefits arising out of the utilization of genetic resources. (v)

*Recognition and protection of rights of indigenous and local communities*

Recognition and protection of the rights of indigenous and local communities over their traditional knowledge associated to genetic resources subject to the national legislation of the countries where these communities are located. (xv)

Customary law and traditional cultural practices of indigenous and local communities. (xvi)

Code of ethics/Code of conduct/Models of prior informed consent or other instruments in order to ensure fair and equitable sharing of benefits with indigenous and local communities. (xviii)

Measures to ensure compliance with prior informed consent of indigenous and local communities holding traditional knowledge associated with genetic resources, in accordance with Article 8(j). (x)

*Derivatives*

Addressing the issue of derivatives. (xii)

*Promotion and enforcement mechanisms of the international regime and compliance with PIC and MAT*

Monitoring, compliance and enforcement. (xx)

Dispute settlement, and/or arbitration, if and when necessary. (xxi)

Measures to ensure compliance with the mutually agreed terms on which genetic resources were granted and to prevent the unauthorized access and use of genetic resources consistent with the Convention on Biological Diversity. (xi)

Measures to ensure compliance with national legislations on access and benefit-sharing, prior informed consent and mutually agreed terms, consistent with the Convention on Biological Diversity. (ix)

*Functioning of the international regime*

Measures to facilitate the functioning of the regime at the local, national, subregional, regional and international levels, bearing in mind the transboundary nature of the distribution of some in situ genetic resources and associated traditional knowledge. (viii)

Means to support the implementation of the international regime within the framework of the Convention. (xix)

Institutional issues to support the implementation of the international regime within the framework of the Convention. (xxii)

Internationally recognized certificate of origin/source/legal provenance of genetic resources and associated traditional knowledge. (xiii)

Disclosure of origin/source/legal provenance of genetic resources and associated traditional knowledge in applications for intellectual property rights. (xiv)

Capacity-building measures based on country needs. (xvii)

*Poverty eradication*

Measures to promote access and benefit-sharing arrangements that contribute to the achievement of the Millennium Development Goals, in particular on poverty eradication and environmental sustainability. (vii)

*Relevant elements of existing instruments and processes, including: (xxiii)*

- Convention on Biological Diversity;
- Bonn Guidelines on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization;
- The International Treaty on Plant Genetic Resources for Food and Agriculture of the Food and Agriculture Organization of the United Nations;
- The Commission on Genetic Resources for Food and Agriculture of the Food and Agriculture Organization of the United Nations;
- Current national legislative, administrative and policy measures implementing Article 15 of the Convention on Biological Diversity;
- The United Nations Permanent Forum on Indigenous Issues;
- Outcomes of the Working Group on Article 8(j);
- The Agreement on Trade-related Aspects of Intellectual Property Rights and other World Trade Organization agreements;
- World Intellectual Property Organization conventions and treaties;
- International Convention for the Protection of New Varieties of Plants;
- Regional agreements;
- Codes of conduct and other approaches developed by specific user groups or for specific genetic resources, including model contractual agreements;
- African Model Law on the Rights of Communities, Farmers, Breeders, and on Access to Biological Resources;
- Decision 391 of the Andean Community;
- Decision 486 of the Andean Community;
- United Nations Convention on the Law of the Sea;
- Agenda 21;
- Rio Declaration on Environment and Development;
- Convention on International Trade in Endangered Species of Wild Fauna and Flora;
- Antarctic Treaty;
- The Universal Declaration of Human Rights;
- The International Covenant on Civil and Political Rights;

- The International Covenant on Economic, Social and Cultural Rights.

## 5. Potential additional elements and options identified

Members of the Working Group also suggested a number of additional elements and options. These are reproduced hereunder as part of the process for elaborating and negotiating the international regime for the consideration of the Working Group within the framework of the Convention on Biological Diversity and the terms of reference adopted by the Conference of the Parties, at its next meeting:

### A. Option 1

Among the elements listed in the annex to decision VII/19 D of the Conference of the Parties, the legally-binding instrument should **primarily** focus on the following:

- I. Measures to ensure compliance by users with national legislations of the countries of origin or countries providing genetic resources where that country has satisfied conditions which qualify it to be considered as country of origin on access and benefit-sharing, prior informed consent and mutually agreed terms;
- II. Measures to ensure compliance with prior informed consent of, either:
  - a. Indigenous and / or local communities for the access to their traditional knowledge, innovations and practices associated with genetic resources and/or associated knowledge and their derivatives; and/or,
  - b. Country(s) of origin for the access to genetic resources associated to traditional knowledge.
- III. Measures to ensure compliance with mutually agreed terms on which genetic resources were granted.
- IV. Measures to prevent unauthorized access and use of genetic resources, their derivatives and associated traditional knowledge, innovations and practices.
- V. Measures to ensure and guarantee monitoring, compliance and enforcement of rights of countries of origin of genetic resources and their derivatives, whether established by national legislations or otherwise, by users and their countries through the international regime.
- VI. Disclosure of legal provenance of genetic resources and associated traditional knowledge in applications for intellectual property rights;
- VII. Internationally recognized certificate of legal provenance of genetic resources that should include evidence of compliance with access legislation (including prior informed consent and mutually agreed terms);
- VIII. The requirements to obtain the certificate will be nationally defined, considering the provisions in the Convention on Biological Diversity;
- IX. Vision of the certificate: a standardized code that accompanies the biological material and is passed to all extracts, derivatives or information, through the least expensive channels, in a way that it can be shown at specific and relevant checkpoints in the research and development process (including product approval and intellectual property). There should be high cost of non-disclosure in order to induce users to behave legally. The specific conditions for access should be included in a clearinghouse, so that users/authorities/interested parties can check the conditions;
- X. Criteria for international recognition of the certificate shall be established in the legally-binding instrument;
- XI. Measures to ensure the fair and equitable sharing of benefits from the results of research and development and the benefits arising from the commercial and other utilization of genetic resources in accordance with Articles 15 paragraph 7, 16 and 19 paragraph 1 and 2 of the Convention;

- XII. Recognition and protection of the rights of indigenous and/or local communities over their traditional knowledge associated to genetic resources, subject to the national legislation of the countries where these communities are located;
- XIII. Monitoring, compliance and enforcement;
- XIV. Rules for access to and transfer of technology on the basis of Article 16 of the Convention;
- XV. Measures for benefit sharing including *inter alia*, monetary and non-monetary benefits and effective technology transfer and cooperation so as to support the generation of social, economic and environmental benefits;
- XVI. Rules to strengthen the international cooperation in particular South – South cooperation;
- XVII. Building of human, institutional and scientific capacities including for putting in place the legal mechanism, taking into account Articles 18 and 19 of the Convention;
- XVIII. An institutional mechanism for implementation of the legally-binding instrument.

## **B. Option 2**

### *Benefit-sharing*

- (i) Measures to ensure the fair and equitable sharing of benefits arising from the use of traditional knowledge, innovations and practices of indigenous and local communities associated with genetic resources and their derivatives and ensure that those benefits flow to those communities.
- (ii) Measures to guarantee the transfer of technology to the countries of origin of the genetic resources and their derivatives under fair and most favourable terms, including on concessional and preferential terms.
- (iii) Relevant measures for communication, education and public awareness.

### *Compliance with the national legislation*

- (i) Measures to prevent the unauthorized use of genetic resources, their derivatives and associated traditional knowledge, innovations and practices at the international level.
- (ii) Measures to ensure the compliance of national legislation on access from countries of origin of genetic resources and their derivatives beyond their national jurisdiction.
- (iii) Legislative, administrative and policy measures in developed country users of genetic resources and their derivatives to guarantee the respect of the rights of developing countries of origin over those resources.

### *Implementation of the international regime*

- (i) Financial mechanisms and other ways and means to guarantee the effective implementation of the international regime.

### *Compliance and dispute settlement*

- (i) Measures related to repatriation and compensation.
- (ii) Measures to ensure access to justice.

## **C. Additional elements**

- Measures that support the development of national administrative, legislative and regulatory regimes.
- Establish international minimum standards for compliance with national legislations.

- Promote the establishment of appropriate measures by Parties with users under their jurisdiction.
- Measures to ensure recognition and protection of the rights of indigenous women as holders and protectors of traditional knowledge and genetic resources.
- Measures to protect the rights of indigenous peoples to the genetic resources originating in indigenous lands and territories.
- Measures to clarify national access laws.
- Measures to prevent misappropriation of genetic resources, their derivatives and products as well as traditional knowledge.
- Measures to ensure non-discriminatory access.
- Measures to ensure communication, information and awareness raising.
- Measures to ensure access to information in regulating access on access and benefit-sharing of genetic resources and associated traditional knowledge.
- Measures to ensure access to justice.
- Measures to ensure that intellectual property rights do not undermine the international regime.
- Measures to ensure mutual supportiveness between the Convention on Biological Diversity and intellectual property rights-related treaties.
- Measures to promote the carrying out of research and development and joint ventures in the country of origin as provided for in Article 15, paragraph 6, of the Convention.
- Measures to promote the carrying out of research and development and joint ventures in the providing countries as provided for in Article 15, paragraph 6, of the Convention.
- Relationship with other international legal instruments.
- Nationally recognised certificate of origin/source/legal provenance of genetic resources and their derivatives and associated traditional knowledge as well as rules of customary law.
- Measures to prevent the unauthorised access and use of genetic resources and traditional knowledge.
- Measures to ensure disclosure of origin/source/legal provenance of genetic resources and associated traditional knowledge as a precondition for the registration and commercialization of new products based on genetic resources and/or associated traditional knowledge.
- Measures to ensure the effective provision of technical assistance and technology transfer, especially to developing countries.

## **6. Analysis of gaps**

### *Process*

- (i) *To elaborate and negotiate the nature, scope and elements of an international regime on access and benefit-sharing within the framework of the Convention on Biological Diversity, as contained in paragraphs (b), (c) and (d) below drawing on, inter alia, an analysis of existing legal and other instruments at national, regional and international levels relating to access and benefit-sharing, including: access contracts; experiences with their implementation; compliance and enforcement mechanisms; and any other options.*
- (ii) *As part of the work, the Ad Hoc Open-ended Working Group on Access and Benefit-sharing will examine whether and to what extent possible elements as contained in paragraph (d) of the terms of reference are part of these instruments and determine how to address the gaps*

/...

The Working Group recognizes the utility of the matrix contained in annex II below to identify gaps and determine how to address them.

Further to the consideration of the potential additional elements and options identified contained in section 5, the Working Group decides to carry out the same analysis with respect to any of these elements and options without prejudice to the inclusion of these elements and options in the elaboration and negotiation of the international regime.

*Annex II*

**ANALYSIS OF GAPS**

<p><b>Elements <u>2/</u></b></p>	<p><b>Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD <u>3/</u></b></p>	<p><b>Relevant provisions of existing international instruments within the framework of the CBD <u>4/</u></b></p>	<p><b>Relevant provisions of existing regional and national instruments, and relevant processes</b></p>	<p><b>Identified gaps</b></p>	<p><b>At what level, national, regional or international, and how should the gaps be addressed?</b></p>
<p><i>Access</i> Measures to promote facilitated access to genetic resources for environmentally sound uses according to Article 15.2 of the Convention on Biological Diversity; (iv)</p>					
<p><i>Ensuring benefit-sharing</i> Measures to ensure the fair and equitable sharing of benefits from the results of research and development and the benefits arising from the commercial and other utilization of genetic resources in accordance with Articles 15.7, 16, 19.1, 19.2. of the Convention; (ii)</p>					

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2/ The Roman numerals in parenthesis following each element refer to the numbering of that element under heading (d) of the annex to decision VII/19 D.

3/ Please take into account the list of instruments and processes in paragraph (d) (xxiii) of the annex to decision VII/19 D of the Conference of the Parties to the Convention.

4/ Please refer to the list of instruments and processes in paragraph (d) (xxiii) of the annex to decision VII/19 D of the Conference of the Parties to the Convention.

<p><b>Elements <u>2</u>/</b></p>	<p><b>Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD <u>3</u>/</b></p>	<p><b>Relevant provisions of existing international instruments within the framework of the CBD <u>4</u>/</b></p>	<p><b>Relevant provisions of existing regional and national instruments, and relevant processes</b></p>	<p><b>Identified gaps</b></p>	<p><b>At what level, national, regional or international, and how should the gaps be addressed?</b></p>
<p>Measures to ensure the sharing of benefits arising from the commercial and other utilization of genetic resources and their derivatives and products, in the context of mutually agreed terms; (vi)</p> <p>Measures for benefit-sharing including, <i>inter alia</i>, monetary and non-monetary benefits, and effective technology transfer and cooperation so as to support the generation of social, economic and environmental benefits; (iii)</p>					
<p><i>Promoting benefit-sharing</i></p> <p>Measures to promote and encourage collaborative scientific research, as well as research for commercial purposes and commercialization, consistent with Articles 8(j), 10, 15, paragraph 6, paragraph 7 and Articles 16, 18 and 19 of the Convention; (i)</p>					

Elements <u>2/</u>	Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD <u>3/</u>	Relevant provisions of existing international instruments within the framework of the CBD <u>4/</u>	Relevant provisions of existing regional and national instruments, and relevant processes	Identified gaps	At what level, national, regional or international, and how should the gaps be addressed?
Measures to promote and safeguard the fair and equitable sharing of benefits arising out of the utilization of genetic resources; (v)					
<p><i>Recognition and protection of rights of indigenous and local communities</i></p> <p>Recognition and protection of the rights of indigenous and local communities over their traditional knowledge associated to genetic resources subject to the national legislation of the countries where these communities are located; (xv)</p> <p>Customary law and traditional cultural practices of indigenous and local communities; (xvi)</p> <p>Code of ethics/Code of conduct/Models of prior informed consent or other instruments in order to ensure fair and equitable sharing of benefits with indigenous and local communities; (xviii)</p>					

Elements <u>2</u> /	Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD <u>3</u> /	Relevant provisions of existing international instruments within the framework of the CBD <u>4</u> /	Relevant provisions of existing regional and national instruments, and relevant processes	Identified gaps	At what level, national, regional or international, and how should the gaps be addressed?
Measures to ensure compliance with prior informed consent of indigenous and local communities holding traditional knowledge associated with genetic resources, in accordance with Article 8(j); (x)					
<i>Derivatives</i> Addressing the issue of derivatives; (xii)					
<i>Promotion and enforcement mechanisms of the international regime and compliance with PIC and MAT</i> Monitoring, compliance and enforcement; (xx) Dispute settlement, and/or arbitration, if and when necessary; (xxi)					

Elements <u>2</u> /	Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD <u>3</u> /	Relevant provisions of existing international instruments within the framework of the CBD <u>4</u> /	Relevant provisions of existing regional and national instruments, and relevant processes	Identified gaps	At what level, national, regional or international, and how should the gaps be addressed?
<p>Measures to ensure compliance with the mutually agreed terms on which genetic resources were granted and to prevent the unauthorized access and use of genetic resources consistent with the Convention on Biological Diversity; (xi)</p> <p>Measures to ensure compliance with national legislations on access and benefit-sharing, prior informed consent and mutually agreed terms, consistent with the Convention on Biological Diversity; (ix)</p>					
<p><i>Functioning of the international regime</i></p> <p>Measures to facilitate the functioning of the regime at the local, national, subregional, regional and international levels, bearing in mind the transboundary nature of the distribution of some <i>in situ</i> genetic resources and associated traditional knowledge; (viii)</p>					

<p><b>Elements <u>2/</u></b></p>	<p><b>Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD <u>3/</u></b></p>	<p><b>Relevant provisions of existing international instruments within the framework of the CBD <u>4/</u></b></p>	<p><b>Relevant provisions of existing regional and national instruments, and relevant processes</b></p>	<p><b>Identified gaps</b></p>	<p><b>At what level, national, regional or international, and how should the gaps be addressed?</b></p>
<p>Means to support the implementation of the international regime within the framework of the Convention; (xix)</p> <p>Institutional issues to support the implementation of the international regime within the framework of the Convention; (xxii)</p> <p>Internationally recognized certificate of origin/source/legal provenance of genetic resources and associated traditional knowledge; (xiii)</p> <p>Disclosure of origin/source/legal provenance of genetic resources and associated traditional knowledge in applications for intellectual property rights; (xiv)</p> <p>Capacity-building measures based on country needs (xvii)</p>					

<p><b>Elements <u>2</u>/</b></p>	<p><b>Relevant provisions of existing international instruments, and relevant processes outside the framework of the CBD <u>3</u>/</b></p>	<p><b>Relevant provisions of existing international instruments within the framework of the CBD <u>4</u>/</b></p>	<p><b>Relevant provisions of existing regional and national instruments, and relevant processes</b></p>	<p><b>Identified gaps</b></p>	<p><b>At what level, national, regional or international, and how should the gaps be addressed?</b></p>
<p><i>Poverty eradication</i> Measures to promote access and benefit-sharing arrangements that contribute to the achievement of the Millennium Development Goals, in particular on poverty eradication and environmental sustainability; (vii)</p>					

**3/2. Further consideration of outstanding issues related to access and benefit-sharing: use of terms, definitions and/or glossary, as appropriate**

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

*Reaffirming* Articles 2 and 15, paragraph 1, of the Convention,

*Recalling* decision VII/19 B of the Conference of the Parties on use of terms, definitions and/or glossary, as appropriate,

*Having considered* the compilation of information on outstanding issues related to access and benefit-sharing prepared by the Executive Secretary as (UNEP/CBD/WG-ABS/3/4),

*Noting* that only a few Parties have submitted the requested information and that the further gathering of information is necessary,

*Recalling* the previous work undertaken on the use of terms (UNEP/CBD/COP/6/INF/40, annex I, and UNEP/CBD/WG-ABS/2/INF/1),

1. *Reiterates* the invitation of the Conference of the Parties at its seventh meeting to Parties, Governments, relevant organizations, indigenous and local communities, and relevant stakeholders, to submit to the Executive Secretary:

(a) Information on existing national definitions or other relevant definitions of the following terms: access to genetic resources, benefit sharing, commercialization, derivatives, provider, user, stakeholder, *ex situ* collection, and voluntary nature (as contained in annex II to document UNEP/CBD/COP/6/INF/4 and in UNEP/CBD/WG-ABS/3/4);

(b) Views on whether additional terms need to be considered;

2. *Urges* Parties that have not already done so to submit to the Executive Secretary the information and views requested by the Conference of the Parties;

3. *Requests* the Executive Secretary to prepare a consolidated glossary of existing and any additional definitions, based on the earlier work as well as the submissions referred to in paragraph 1 of the present recommendation, and also taking into consideration relevant definitions in use, for consideration by the Ad Hoc Open-ended Working Group on Access and Benefit-sharing at its fourth meeting.

**3/3. 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,*

*Recalling* the recognition of the Conference of the Parties in decision VII/19 C that existing other approaches could be considered to complement the Bonn Guidelines on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising Out of Their Utilization and are useful tools in assisting implementation of access and benefit-sharing approaches,

*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,

1. *Invites* Parties, Governments, relevant international organizations, indigenous and local communities and all relevant stakeholders in particular the private sector, to prepare further studies and pilot projects and to report thereon to the Executive Secretary, and to submit their views to the Executive Secretary on the design of an international certificate of origin/source/legal provenance, including *inter alia*:

- (a) Its rationale, need and objectives;
- (b) The desirable characteristics/features;
- (c) The practicality, feasibility and costs at national and international levels;

2. *Requests* the Executive Secretary to prepare a compilation thereon for the consideration of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing at its fourth meeting.

**3/4. 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**

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

*Noting* that the present recommendation is without prejudice to the outcome of the negotiations of an international regime,

*Noting* that the development of 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 under their jurisdiction, is at different stages in different countries,

1. *Invites* Parties and Governments in preparation for the fourth meeting of the Working Group on Access and Benefit-sharing to start or continue activities as spelled out in decision VII/19 E;

2. *Invites* Parties, Governments, indigenous and local communities and all relevant stakeholders to start or continue as appropriate the implementation of the Bonn Guidelines, with a view to providing clarity in the development of national administrative, legislative and regulatory measures on access and benefit-sharing and in the elaboration of mutually agreed terms;

3. *Invites* Parties to submit information, analyses and views on the activities referred to in paragraph 1 above, and in particular the measures outlined in paragraphs 2 (a) to (g) of decision VII/19 E, and on the implementation of the Bonn Guidelines, to the Executive Secretary, and *requests* the Executive Secretary to compile this information and make it available through the clearing-house mechanism and other means and to the fourth meeting of the Working Group on Access and Benefit-sharing;

4. *Invites* Parties and Governments to consider the introduction of disclosure of origin/source/legal provenance of genetic resources and associated traditional knowledge in applications for intellectual property rights in their national intellectual-property-rights legislation as one of the measures to support compliance with prior informed consent and mutually agreed terms;

5. *Invites* Parties to identify issues related to disclosure of origin/source/legal provenance of genetic resources and associated traditional knowledge in applications for intellectual property rights and submit this information to the Executive Secretary, and *requests* the Executive Secretary to prepare a compilation thereon for examination by the Ad Hoc Working Group on Access and Benefit-Sharing at its fourth meeting with a view to transmitting the results of this examination to the World Intellectual Property Organization (WIPO) and other relevant forums, such as the Food and Agriculture Organization of the United Nations (FAO), the United Nations Conference on Trade and Development (UNCTAD), the United Nations Environment Programme (UNEP), the International Union for the Protection of New Varieties of Plants (UPOV), and the World Trade Organization;

6. *Invites* Parties, Governments, relevant international organizations, including funding organizations, and other interested stakeholders to provide funding or source funding, as appropriate for the organization of regional workshops as a means to exchange national experiences with the implementation of measures to ensure compliance with prior informed consent and mutually agreed terms;

7. *Requests* the Executive Secretary to compile pertinent documentation circulated in other relevant forums, in particular recent proposals submitted by Parties to the Convention on Biological Diversity in the following international organizations, listed in alphabetical order: 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 Council for Trade-Related Aspects of Intellectual Property Rights, and make it available through the

clearing-house mechanism and other means, including for the fourth meeting of the Working Group on Access and Benefit-sharing;

8. *Invites* Parties, Governments, relevant international organizations, indigenous and local communities, and all relevant stakeholders to undertake analytical work on:

(a) The occurrence, nature, extent and cost of misappropriation of genetic resources, [derivatives] and associated traditional knowledge including, for countries with relevant legislation, the extent of non-compliance with their national legislation on prior informed consent and mutually agreed terms;

(b) The effectiveness, practicality and cost of measures to ensure compliance with prior informed consent and mutually agreed terms;

(c) Enforcement problems experienced under national access legislation, including capacity constraints and related need for capacity-building, including the capacity-building of indigenous and local communities;

and forward the outcome of this work to the Executive Secretary for compilation and dissemination through the clearing-house mechanism and other means;

9. *Requests* the Executive Secretary to submit the compilation referred to in paragraph 8 above to the Working Group on Access and Benefit-sharing for its consideration at its fourth meeting.

**3/5. 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,*

*Recalling* paragraph 7 of decision VII/30 of the Conference of the Parties,

*Recalling* paragraph 1 of decision VII/30 and, in particular, that ensuring the fair and equitable sharing of benefits arising out of the utilization of genetic resources is one of the focal areas of the framework to enhance the evaluation of achievements and progress in the implementation of the Strategic Plan as identified in that paragraph,

*Recognizing* the need 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, and associated innovations, knowledge and practices of indigenous and local communities,

*Underlining* that both process- and outcome-oriented indicators are needed for assessing progress in the implementation of the three objectives of the Convention and towards the 2010 biodiversity target,

*Also recognizing* the need for further development of targets and indicators for access to genetic resources and in particular for the fair and equitable sharing of benefits arising from the utilization of genetic resources,

*Noting* the limited number of views provided to the Executive Secretary on 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, and associated knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles, as reflected in the note prepared by the Executive Secretary on the subject for the third meeting of the Working Group (UNEP/CBD/WG-ABS/3/6),

1. *Invites* Parties, Governments, relevant international organizations, indigenous and local communities and all relevant stakeholders to submit their views and information on 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, and associated knowledge, innovations, and practices of indigenous and local communities embodying traditional lifestyles;

2. *Also invites* Parties, Governments, relevant international organizations, indigenous and local communities and all relevant stakeholders to submit their views and information on the further consideration and review of targets under goal 10 of the provisional framework for goals and targets annexed to decision VII/30;

3. *Requests* the Executive Secretary to prepare a compilation of the submissions referred to in paragraphs 1 and 2 of the present recommendation for the consideration of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing at its fourth meeting.

**3/6. Tribute to the Government and people of the Kingdom of Thailand**

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

*Having met* in Bangkok from 14 to 18 February 2005 at the gracious invitation of the Government of the Kingdom of Thailand,

*Deeply appreciative of* the especial courtesy and warm hospitality extended by the Government and people of Thailand to the members of delegations, observers and members of the Secretariat who attended the meeting of the Ad Hoc Open-ended Working Group,

*Aware of* the similar courtesy and warm hospitality extended to participants in the tenth meeting of the Subsidiary Body on Scientific, Technical and Technological Advice, held in Bangkok from 7 to 11 February 2005,

*Aware also of* the difficult circumstances facing the country following the catastrophic tsunami that struck Thailand and other countries of the Indian Ocean region on 26 December 2004,

*Expresses its sincere gratitude* to the Government of the Kingdom of Thailand and to its people for the cordial welcome that they accorded to both meetings and to those associated with their work, and for their contribution to the success of both meetings.

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