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AD HOC OPEN-ENDED WORKING GROUP  
ON ACCESS AND BENEFIT-SHARING  
Ninth meeting  
Cali, Colombia, 22-28 March 2010

## REPORT OF THE FIRST PART OF THE NINTH MEETING OF THE AD HOC OPEN-ENDED WORKING GROUP ON ACCESS AND BENEFIT-SHARING

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## INTRODUCTION

### A. *Background*

1. The first part of the ninth meeting of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing was held in Cali, Colombia, from 22 to 28 March 2010. The meeting was preceded by a Co-Chairs' Informal Interregional Consultation from 16 to 18 March 2010 also in Cali, as well as regional and interregional consultations on 20 and 21 March 2010.

### B. *Attendance*

2. The meeting was attended by representatives of the following Parties and other Governments: Angola, Argentina, Australia, Austria, Belarus, Belgium, Benin, Bhutan, Brazil, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Central African Republic, Chad, China, Colombia, Comoros, Congo, Cook Islands, Costa Rica, Cuba, Czech Republic, Denmark, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, European Union, Finland, France, Gabon, Germany, Grenada, Guinea, Guyana, Haiti, Honduras, India, Indonesia, Islamic Republic of Iran, Japan, Kiribati, Liberia, Madagascar, Malawi, Malaysia, Mali, Mexico, Micronesia (Federated States of), Mongolia, Morocco, Mozambique, Myanmar, Namibia, Nauru, Nepal, Netherlands, New Zealand, Niger, Norway, Palau, Peru, Philippines, Portugal, Republic of Korea, Saint Lucia, Sao Tome and Principe, Saudi Arabia, Senegal, Serbia, Seychelles, South Africa, Spain, Sudan, Sweden, Switzerland, Tajikistan, Thailand, Togo, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, Viet Nam, Yemen, Zambia.

3. Observers from the following United Nations bodies, specialized agencies and other bodies also attended: Food and Agriculture Organization of the United Nations (FAO), Secretariat of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), United Nations Environment Programme (UNEP), United Nations University Institute of Advanced Studies (UNU/IAS), World Health Organization (WHO), World Intellectual Property Organization (WIPO).

4. The following organizations were also represented by observers:

A SEED Japan (Youth NGO)	Centro de Estudios Multidisciplinarios
ALMACIGA-Grupo de Trabajo Intercultural	Aymara
Amazonian Cooperation Network (AMACON)	Chibememe Earth Healing Association
Andes Chinchasuyo	Church Development Service
Asia Indigenous Peoples Pact Foundation	(Evangelischer Entwicklungsdienst)
Asociación Ixacavaa De Desarrollo e Información Indígena	Commission des Forêts d'Afrique Centrale (COMIFAC)
Association ANDES	Confederación Indígena Tayrona
Berne Declaration	Consejo Autonomo Aymara
Biotechnology Industry Organization	Conservation International
Biodiversity International	Coordinadora de las Organizaciones Indígenas de la Cuenca Amazonica (COICA)
Biodiversity International - Regional Office for the Americas	CropLife International
Call of the Earth—Llamado de la Tierra	Deutsche Forschungsgemeinschaft (DFG)
CBD Alliance	Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ)
Censat Agua Viva-FOE	Duke University
Center for International Sustainable Development Law	ECOROPA
Centro de Cooperacion al Indigena	ESRC Centre for Social and Economic Aspects of Genomics (Cesagen)

Femmes Autochtones du Québec Inc. (FAQ)	Legal Rights and Natural Resources Center
First Nations Summit	L'Unissons-nous pour la Promotion des Batwa
Fondo Biocomercio	Malaysian Biotechnology Corporation
Foundation for Aboriginal and Islander Research Action	Municipality of Yumbo
Fridtjof Nansen Institute	Nagoya University
Fuerza de Mujeres Wayuu (FMW) - Sutsuin Jiyeyu Wayuu	National Aboriginal Health Organization
Fundacion Dobbo Yala y Congreso de la Cultura Kuna	National Institute of Genetics
Fundacion Ecologica para el Desarrollo Sostenible y la Recreacion (ECOTUPAY)	National University of Colombia
Fundación para la Promoción del Conocimiento Indígena	Natural Justice (Lawyers for Communities and the Environment)
Fundacion Prosperidad Colectiva	Nepal Indigenous Nationalities Preservation Association (NINPA)
Fundacion RHPositivo	Red de Cooperacion Amazonica
GEBiX - Colombian Center for Genomics and Bioinformatics	Red de Mujeres Indigenas sobre Biodiversidad
Global Biodiversity Information Facility	Red de Mujeres Indígenas y Biodiversidad de Guatemala
Grand Council of the Crees (Eeyou Istchee)	Russian Association of Indigenous Peoples of the North (RAIPON)
Iberoamerican Science Technology and Education Consortium	Saami Council
Indigenous Information Network	Sociedad Peruana de Derecho Ambiental
Indigenous Peoples Council on Biocolonialism	Swiss Academy of Sciences
Institute for European Studies	Tebtebba Indigenous Peoples' International Centre for Policy Research & Education
Instituto Indígena Brasileño para Propiedad Intelectual	Tewa Women United
Intellectual Property Owners Association	The Union for Ethical BioTrade
International Chamber of Commerce	Third World Network
International Center for Tropical Agriculture (CIAT)	Tulalip Tribes
International Indigenous Forum on Biodiversity (IIFB)	Uniersité Catholique de Louvain
International Institute of Tropical Agriculture (IITA)	Universidad Externado de Colombia
International Organization for Biological Control	University of Lund
International Seed Federation	University of Puerto Rico
IUCN - International Union for Conservation of Nature	University of Rome, Sapienza
	Universidad Nacional de Colombia
	Waikiki Hawaiian Civic Club (WHCC)
	World Trade Organization (WTO)
	World Wildlife Fund (WWF) Japan
	WWF Colombia

## ITEM 1. OPENING OF THE MEETING

5. The ninth meeting of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing was opened at 10 a.m. on Monday, 22 March 2010 by Mr. Timothy Hodges, Co-Chair of the Group. On behalf of his fellow Co-Chair, Mr. Fernando Casas, and on his own behalf, he welcomed participants and expressed his gratitude to the Government of Colombia for hosting the meeting in Cali and the Cauca Valley Department, which offered an ideal venue for the meeting, and in which to finalize the

negotiations of the international regime on access and benefit sharing, with a view to its adoption by the tenth meeting of the Conference of the Parties, in October 2010.

6. The representative of the Government of Colombia, Ms. Yadir Salazar Mejia, Director of Multilateral Economic, Social and Environmental Affairs, welcomed participants and urged them to conclude their negotiations on access and benefit-sharing, stressing the need for the fair and equitable sharing of benefits and the sustainable use of biological diversity in order to help reduce poverty. Of particular importance was to ensure the monitoring of compliance with national legislation on access and benefit-sharing. Colombia was fully committed to the process and hoped to provide a pleasant working environment for the completion of the negotiations, in a context of mutual support and cooperation among all participants

7. Reviewing the activities during the intersessional period and the work before the current meeting, Co-Chair Hodges said that, thanks to the United Nations Environment Programme (UNEP) and other partners, all the regions had been able to hold consultations. He presented the results of the meetings of the Friends of the Co-Chairs and the Co-Chairs' Informal Interregional Consultation, which had helped to develop the revised guidance of the Co-Chairs for the work of the current meeting. These activities had led to the preparation of a draft protocol and draft decision for the Conference of the Parties, which were now before the Working Group. The current meeting was the last opportunity for the Working Group to complete the mandate given to it by the Conference of the Parties. A spirit of compromise and collaboration of all Parties and stakeholders was therefore essential. The outcome of the meeting should be a final draft text of the international regime, as well as a draft decision to be submitted to the Conference of the Parties. That would be the Working Group's contribution to the celebration of the International Year of Biodiversity.

8. The representative of the President of the ninth meeting of the Conference of the Parties, Mr. Jochen Flasbarth of Germany, said that the Working Group had reached the final step on a long journey and must fulfil its mandate by the end of the week. The Working Group should be proud of the progress it had made, having reconciled a wide range of different views and reached a large area of common ground. He announced that the Bureau unanimously supported the draft protocol and draft decision prepared by the Co-Chairs, and he called upon delegations to focus during the week on resolving the key pending issues on the basis of a flexible approach.

9. Mr. Ahmed Djoghlaif, Executive Secretary of the Convention on Biological Diversity expressed his gratitude to Colombia, its people and its Government, as well as to the local authorities of the City of Cali and the Valle del Cauca, for hosting the current meeting. It was most fitting that the meeting was taking place in Colombia, one of the world's most biodiverse countries and the first country in Latin America to establish, in 1974, a Code on Renewable Natural Resources and Environmental Protection. The protocol on access and benefit-sharing held a huge potential for creating a new relationship with the planet's most precious resource: its genetic diversity. Eight years after the Johannesburg commitment, and four years after the Curitiba target, the current meeting in Cali would finalize the draft protocol on access and benefit-sharing. The participants in the Co-Chairs' Informal Interregional Consultation, held in Cali the previous week, had indeed done a beautiful job in fulfilling their mandate. He also paid tribute to the two Co-Chairs, who, after 37 bilateral meetings and visits to all major capitals of the world, had prepared the draft protocol on access and benefit-sharing and the draft decision for the consideration of the Conference of the Parties at its tenth meeting. In conclusion, he urged participants to work together in the coming days to rise to the challenge before them and to finalize the draft protocol. Their success would be the best gift for the celebration of the International Year of Biodiversity and a historic achievement for the international community as a whole.

10. Mr. Djoghlaif then introduced a video of the message of Mr. Ban Ki-moon, Secretary-General of the United Nations, concerning the International Year of Biodiversity.

11. The representative of the Executive Director of UNEP, Mr. Carlos Martin-Novella, congratulated Colombia on the organization of the ninth meeting of the Ad Hoc Open-ended Working Group. He expressed satisfaction to see that the support of UNEP in organizing a series of regional and interregional consultation meetings during the intersessional period has been instrumental in helping Parties to find common grounds to move forward the negotiations. He also congratulated the Co-Chairs and the dedicated staff at the Secretariat for the hard and productive work during this intersessional period. Stressing that the current meeting must deliver on the mandate received from the Conference of the Parties at its ninth meeting, he encouraged delegations to deliver a draft protocol that would enable the tenth meeting of the Conference of the Parties, in Nagoya, to be a success. Mr. Martin-Novella offered the continued support from UNEP in that endeavour.

12. In response, Co-Chair Hodges noted that the regional consultations held with the support of UNEP in the preceding months exceeded expectations and he requested Mr. Martin-Novella to directly convey the thanks the Working Group and its Co-Chairs to Mr. Achim Steiner, Executive Director of UNEP.

## **ITEM 2. ORGANIZATIONAL MATTERS**

### ***2.1. Officers***

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

14. On the proposal of the Bureau, Ms. Somaly Chan of Cambodia continued to serve as Rapporteur.

### ***2.2. Adoption of the agenda***

15. At the 1st session of the meeting, on 22 March 2010, the Working Group adopted the following agenda, on the basis of the provisional agenda (UNEP/CBD/WG-ABS/9/1).

1. Opening of the meeting.
2. Organizational matters.
3. International Regime on Access and Benefit-sharing: consolidation of operational texts developed at the seventh and eighth meetings of the Working Group on Access and Benefit-sharing.
4. Other matters.
5. Adoption of the report.
6. Closure of the meeting.

### ***2.3. Organization of work***

16. At the 1st session of the meeting, on 22 March 2010, the Working Group agreed, on the proposal of the Co-Chairs, that all participants should be given the opportunity to identify in plenary the specific areas of difficulties which may require improvements. From that initial “issues identification process”, the issues would be sent to contact groups for further discussion and identification of solutions, which would be reported back to plenary. Once agreed in plenary, those solutions would be integrated into the current text of the draft protocol in the hopes of arriving by the end of the meeting at a final text that

enjoyed broad acceptance. The Co-Chairs' non-paper containing a draft protocol would form the basis for further negotiation.

**ITEM 3. INTERNATIONAL REGIME ON ACCESS AND BENEFIT-SHARING:  
CONSOLIDATION OF OPERATIONAL TEXTS DEVELOPED AT THE  
SEVENTH AND EIGHTH MEETINGS OF THE AD HOC OPEN-ENDED  
WORKING GROUP ON ACCESS AND BENEFIT-SHARING**

17. The Working Group took up agenda item 3 at the 1st plenary session of the meeting, on 22 March 2010.

18. In considering the item, the Working Group had before it the following non-papers circulated by the Co-Chairs:

- (a) Draft protocol on access to genetic resources and the fair and equitable sharing of benefits arising from their utilization to the Convention on Biological Diversity;
- (b) Draft decision for the consideration of the Conference of the Parties;
- (c) Scenario note from the Co-Chairs;
- (d) Revised Co-Chairs' guidance note.

19. Also circulated under the item were the report of the eighth meeting of the Working Group (UNEP/CBD/WG-ABS/8/8), which in its annexes included the outcomes of the seventh and eighth meetings of the Working Group on the international regime on access and benefit-sharing and the proposals for operational texts left in abeyance for consideration at the ninth meeting of the Working Group; a collation of contributions (UNEP/CBD/WG-ABS/9/2); the text of annex I to decision IX/12 (UNEP/CBD/WG-ABS/7/7); the reports of the three expert group meetings addressing respectively "concepts, terms, working definitions and sectoral approaches", "compliance" and "traditional knowledge associated with genetic resources" were respectively available as documents UNEP/CBD/WG-ABS/7/2, UNEP/CBD/WG-ABS/7/3 and UNEP/CBD/WG-ABS/8/2.

20. The Working Group also had before it, as information documents, a review paper on the history of the concept of "genetic resources" (UNEP/CBD/WG-ABS/9/INF/1); the report of the regional consultations for Asia (UNEP/CBD/WG-ABS/9/INF/2); the report of the regional consultations for Latin America and Caribbean Countries (UNEP/CBD/WG-ABS/9/INF/3); the report of the regional consultations for Central and Eastern European countries (UNEP/CBD/WG-ABS/9/INF/4); the report of the regional consultations for Pacific countries (UNEP/CBD/WG-ABS/9/INF/5); and the report of the regional consultations for Africa (UNEP/CBD/WG-ABS/9/INF/6); Report of the "Informal Experts Consultation on ABS and the Strategic Plan"(UNEP/CBD/WG-ABS/9/INF/7); Resolution 18/2009 on "policies and arrangements for access and benefit-sharing for genetic resources for food and agriculture" adopted by the Conference of the Food and Agriculture Organization of the United Nations Conference at its Thirty-Sixth Session, on 23 November 2009 (UNEP/CBD/WG-ABS/9/INF/8); submissions by the Food and Agriculture Organization of the United Nations (FAO) on: a framework study on food security and access and benefit-sharing for genetic resources for food and agriculture (UNEP/CBD/WG-ABS/9/INF/9); the use and exchange of animal genetic resources for food and agriculture (UNEP/CBD/WG-ABS/9/INF/10); the use and exchange of forest genetic resources for food and agriculture (UNEP/CBD/WG-ABS/9/INF/11); the use and exchange of aquatic genetic resources for food and agriculture (UNEP/CBD/WG-ABS/9/INF/12); the use and exchange of microbial genetic resources for food and agriculture (UNEP/CBD/WG-ABS/9/INF/13); the use and exchange of biological control agents for food and agriculture (UNEP/CBD/WG-ABS/9/INF/14); and the proceedings of the seminar "Barcoding of Life: Society and Technology Dynamics - Global and National Perspectives",

Submitted by the International Development Research Centre of Canada (UNEP/CBD/WG-ABS/9/INF/15).

21. It also had before it the following information documents originally circulated for the seventh meeting of the Working Group: a study on the identification, tracking and monitoring of genetic resources (UNEP/CBD/WG-ABS/7/INF/2); study papers on the relationship between the international regime and other international instruments that govern the use of genetic resources (UNEP/CBD/WG-ABS/7/INF/3/Parts 1-3); a comparative study of the real and transactional costs involved in the process of access to justice across jurisdictions (UNEP/CBD/WG-ABS/7/INF/4) and a study on compliance in relation to the customary law of indigenous peoples and local communities, national law, across jurisdictions, and international law (UNEP/CBD/WG-ABS/7/INF/5).

22. As agreed under agenda item 2, the Co-Chairs' non-paper containing a draft protocol on access to genetic resources and the fair and equitable sharing of benefits arising from their utilization served as the basis for the initial discussions.

23. Introducing the item, Co-Chair Hodges first invited comments on the Co-Chairs' non-paper. He said that the Co-Chairs would particularly welcome the views of the regional groups through their spokespersons.

24. The representative of Canada supported the Co-Chairs' proposal for identifying key issues and finding solutions. Recalling paragraph 3 of decision IX/12 of the Conference of the Parties, she said that, to date, the Working Group had focused on the negotiation of a new instrument, referred to in the Co-Chairs proposal as the draft protocol and that the time had come to start preparing a draft decision including a range of options with respect to the instruments that would constitute the international regime. Canada believed that the draft decision should be more than a vehicle for the delivery of a proposal but was important in its own right. Canada also noted that consistent with the mandate of the Conference of the Parties, both draft documents were to be developed in parallel and jointly.

25. The representative of Malaysia, speaking on behalf of developing country Parties, comprising the Latin American and Caribbean Group, the Asian and Pacific Group and the African Group as well as the Like-minded Megadiverse Countries (LMMC), said that as holders of the vast majority of biodiversity, those countries had a sacred responsibility to realize the use of resources and knowledge for the future of mankind, the eradication of poverty and the improvement of their peoples' livelihoods. It was regrettable that misappropriation and non-sharing of benefits continued and that the third objective of the Convention remained largely unfulfilled. He commended the Co-Chairs' text as a laudable effort to move forward. The developing countries were committed to basing the negotiations at the current meeting on that text, while using the Montreal Annex as a reference. The developing countries were ready to contribute to perfecting the draft and to follow the rules of engagement suggested by the Co-Chairs. Noting the progress achieved in the past year and the common understanding reached on key issues such as ensuring the sharing of benefits from derivatives of genetic resources and compliance, the core of the protocol, he expressed confidence that that understanding could be built upon. It did not take much: share the benefits fairly; accept obligations to respect the laws of developing countries; and work together to ensure compliance. Finally, he reiterated that the protocol should be a "CBD plus" to add, enhance and implement Articles 15, 16, 19 and 8(j) of the Convention.

26. The representative of Brazil, speaking on behalf of the Group of Like-minded Megadiverse Countries expressed his Group's strong belief that the draft proposed by the Co-Chairs should be the basis for the negotiations at the current meeting. The Group intended to work as far as possible in plenary and share its key concerns on the draft, while maintaining a holistic view of the document. The Group understood that it was for the Co-Chairs to try to offer a revised version of the draft protocol that incorporated all the issues raised by all delegations in a balanced manner in order to have streamlined yet substantive and comprehensive draft at the current meeting. The key issues were: (i) how to deal with

derivatives; (ii) an adequate treatment of issues related to traditional knowledge; (iii) the recognition of the country-of-origin concept; (iv) indication of the relationship with other treaties and provisions on non-Parties; (v) clear obligations ensuring access to a transfer of technology and better provisions regarding financial resources and mechanisms and capacity; and (vi) a more accurate treatment of mechanisms to monitor compliance and the international certificate, which were at the heart of the protocol. The success of the protocol depended on developing effective tools and mechanisms and international norms within it that recognized the value of genetic resources, their derivatives and the traditional knowledge associated with those resources and that ensured fair and equitable sharing of the benefits arising from the utilization of genetic resources.

27. The representative of Malawi, speaking on behalf of the African Group, said that the negotiations to take place during the coming week were important to all Parties regarding the effective operationalization and implementation of the third objective of the Convention and that monetary or non-monetary benefits were great incentives for maintaining the health of biological diversity on Earth through the other two objectives of the Convention. The African Group called on the Working Group to interpret Articles 15 and Article 8(j) in a holistic manner that would ensure that ownership of and benefits derived from use of biological resources and associated traditional knowledge respected sovereign rights, national legislation, customary laws, community protocols and traditional knowledge, in addition to prior informed consent and mutually agreed terms and compliance and disclosure. As emphasized during the eighth meeting of the Working Group, Africa wanted strong checkpoints for the international regime to ensure that biological resources effectively carried passports when they left Africa's national borders. He also said that Africa believed that fair and equitable sharing of all the benefits of biodiversity was required to provide an effective incentive for sustainable use and conservation that was to be a major political point for discussion at the tenth meeting of the Conference of the Parties in Nagoya. Africa also called upon the meeting to address the issue of benefits from a holistic approach, rooted in the principles of "use and utilization" and value-adding, as well as transfer of appropriate technologies and funding. Key recommendations of the Working Group on Article 8(j) should be supportive of the international regime and be reflected in the Co-Chairs' text. Africa was also ready to work with the industry within the provisions of the international regime and in accordance with national legislation, policies and requirements. He said that Africa also urged Parties and Governments to facilitate technology transfer. Regarding the issue of related processes, Africa was of the opinion that their objectives did not fully address the requirements of Article 15 and that such forums could only be mutually supportive but not substitute or duplicate the work in the negotiations of the international regime. Africa expressed its support for the non-paper drafted by the Co-Chairs and listed missing elements that created unnecessary ambiguities, such as the issues of scope and derivatives, traditional knowledge and indigenous and local communities in the safeguarding and monitoring of genetic resources, disclosure, tracking and monitoring; legal certainty for Parties; dispute-settlement procedures and access to justice; *ex situ* collections, countries of origin, providers and users; mechanisms of compliance and encouragement of biodiversity research for purely scientific purposes; and non-discrimination clauses.

28. The representative of Japan said that the draft protocol would be a good basis for further deliberation and that Japan was supportive of the Co-Chairs and their suggestion of a way forward.

29. The representative of Cook Islands, speaking on behalf of the Asian and Pacific Group, said that her group had agreed to use the non-paper as the basis of its discussions and highlighted a few issues that the Group had identified as critical, including: explicitly including derivatives within the scope of the protocol; in recognition to the importance of capacity-building, a financial mechanism should be clearly articulated within the protocol and resources for it be clearly identified; access to and the transfer of technology were to be adequately addressed within the protocol as well as the issue of non-Parties. Finally, the Group was of the opinion that the article on access to genetic resources in the current draft protocol was too prescriptive and would need to stress that the rights of the Parties prevailed.

30. The representative of Spain, speaking on behalf of the European Union, said that the Council of Environment Ministers had sent their good wishes for the success of the meeting and were committed to the process of drafting the ABS protocol, especially in the crucial International Year of Biodiversity.

31. The representative of Mexico, speaking on behalf of the Latin American and Caribbean Group, said that the Group considered that the interregional consultations during the past week had been very useful in reaching a common understanding of the principal elements of the protocol. The draft protocol proposed by the Co-Chairs was an adequate basis for undertaking immediate negotiations; however, the topics of priority interest to the Parties should first be identified. The Group would prefer to work in plenary meetings in order to ensure the transparency of the process. Any bracketed words or phrases should be used, during the last phase of the negotiations, to underline issues that would have to be worked on before the Nagoya meeting. The priority issues to be dealt with at the current meeting should be compliance, derivatives, country of origin, prior informed consent, implementation measures and the obligations of non-Parties.

32. The representative of the Republic of Korea said that the time had come for a streamlined, manageable text that could serve as a basis for further negotiation. Such a text had been provided by the Co-Chairs. The Republic of Korea envisaged an international regime which reflected the mandate contained in decision VII/19 D of the Conference of the Parties and was workable on the basis of legal certainty and transparency.

33. The representative of Serbia, speaking on behalf of the Central and Eastern European Group, said that the Group strongly supported the increasing regional and interregional cooperation on access and benefit-sharing. The region had made significant efforts on the negotiation of the regime at the meetings in Paris and Montreal the previous year and would continue to make a contribution towards finalizing a protocol as a legally binding instrument. Of particular importance were the issues of utilization of genetic resources, compliance, capacity-building and fair and equitable benefit-sharing, as well as regulating and facilitating access and equitable sharing of benefits arising out of the utilization of genetic resources, their derivatives and products containing genetic material.

34. The representative of New Zealand announced that the Government of New Zealand could support the international regime as being a legally binding protocol to the Convention, provided that it made legal sense and was able to be implemented.

35. The representative of the International Indigenous Forum on Biodiversity (IIFB) welcomed participants on behalf of the indigenous peoples of Colombia. He said that the indigenous peoples had come away from the eighth meeting of the Working Group with positive feelings about the international regime, knowing that their concerns had been taken into account in the Montreal Annex and that many Parties supported their rights and interests. They were, however, deeply disappointed that the draft protocol did not include those rights and interests. If progress was to be made in obtaining an agreed protocol, a number of key issues had to be included in the draft: (i) the preamble should state that the rights of indigenous peoples and local communities must be respected; (ii) where traditional knowledge was being accessed, the prior informed consent of indigenous peoples and local communities must be obtained and that should not be subject to national legislation; (iii) the protocol should recognize the rights of indigenous peoples and local communities to genetic resources; (iv) the importance and relevance of traditional knowledge should be fully integrated throughout the protocol, especially in the compliance section; and (v) the protocol should recognize the existence and role of customary laws of indigenous peoples and local communities.

36. Statements were also made by the representatives of Australia, Norway and Switzerland in support of the initiative proposed by the Co-Chairs. The representatives stated that their comments on key issues would be provided at the appropriate times.

37. The representative of the International Agricultural Research Centres of the Consultative Group on International Agricultural Research said that an international agreement on access and benefit-sharing issues, and the successful conclusion of negotiations to reach such an agreement, were crucial to developing the certainty, trust and good will among countries that were prerequisites for international cooperation in agricultural research and development. He remained concerned, however, that so little time had been devoted during the negotiations to developing a commonly shared appreciation of the nature and uses of genetic resources for food and agriculture and the threats to their conservation. He was pleased to see that background studies on uses and exchanges of microbial, aquatic, crop and forage, tree and animal genetic resources for food and agriculture had been included in the documentation provided for delegates to the current meeting. Such inputs were critical to facilitating meaningful consideration of the issue in intergovernmental forums. It was essential for the international regime to address the special nature of genetic resources for food and agriculture by explicitly creating space for the development of more specialized access and benefit-sharing norms in the future, as part of the larger implementation and development of the regime. He hoped that delegates would pursue opportunities during the meeting to strengthen the proposed text through the introduction of short, clear phrases in the sections on scope, codes of conduct and best practices and in the preamble.

38. The representative of New Zealand, speaking on behalf of the recently-formed Like-minded-in-Spirit Group of Women said that the group would be aiming to provide a gender perspective on the issues under discussion and to ensure that women's voices were heard. The group considered it important that the vital role of women in the conservation and sustainable use of biodiversity was reflected in relevant parts of the international regime. The group also affirmed the need for full and effective participation of women at all levels of policy making, including the processes of the Working Group on Access and Benefit-sharing.

39. The representative of the International Treaty on Plant Genetic Resources for Food and Agriculture said that the fully functional access and benefit-sharing system of the Treaty, which was in harmony with the Convention on Biological Diversity, was proof of the feasibility of such a regime. He hoped that complementarity of roles, mutual supportiveness and coherence among legal obligations under the respective legal instruments would be at the centre of the decisions to be taken during the week of negotiations.

40. The representative of the United Nations University stressed the need for building national capacity for implementation and drew attention to its Bioprospecting Information Resource and to the Traditional Knowledge Initiative, which sought to build greater understanding and facilitate awareness of traditional knowledge in order to inform action by indigenous peoples, local communities and domestic and international policymakers.

### *Second session of the meeting*

41. At the 2nd session of the meeting, on 22 March 2010, Co-Chair Hodges invited participants to improve the text of the draft protocol and to provide their views on specific areas of concern. The Co-Chair said that components of the international regime were not to be raised, but rather, precise and concise key issues that required improvement in the draft protocol should be identified. Contact groups would be established to find solutions to those specific issues.

42. The representative of Namibia, speaking on behalf of the African Group, said the Group was ready to work on the basis of the proposed non-paper; however, some of the group's questions needed to be better reflected in the text of the draft protocol. Such questions included the issues of scope and derivatives; the key role played by traditional knowledge and indigenous and local communities in the safeguarding and nurturing of genetic resources; a list of what constituted utilization of genetic resources; compliance with national legislation concerning prior informed consent and mutually agreed terms; disclosure, tracking and monitoring; the mechanisms of compliance for misappropriation of traditional

knowledge; the encouragement of biodiversity research for purely scientific purposes; non-discrimination clauses; minimum standards for benefit-sharing; what to do in the absence of national legislation, policy and administrative measures; the issue of non-Parties. The representative also raised the need to address the issues of human genetic resources; of genetic resources beyond national jurisdiction; technology transfer in the context of the international regime; and the need to define the term “user”.

43. The representative of Indonesia said that, as one of the megadiverse countries, Indonesia considered that the international regime should be a single legally binding instrument and should contain a set of principles and norms related to compliance and enforcement measures. His delegation favoured the establishment of a protocol containing binding provisions and mechanisms to prevent bio-piracy, especially when genetic resources and associated traditional knowledge left the boundaries of the country of origin. Another important element of the regime was the building of national capacities and reporting systems. Provisions pertaining to traditional knowledge associated with genetic resources—a cross-cutting issue that was relevant to access, fair and equitable benefit-sharing, compliance and capacity-building—should be subject to national legislation, taking into account the respective national circumstances.

44. The representative of Mexico, speaking on behalf of the Latin American and Caribbean Group, said that the Group considered the key issues to be the treatment of derivatives, recognition of the category of country of origin, prior informed consent, means of implementation and the obligations of non-Parties.

45. The representative of Switzerland identified three key issues. First, the utilization of genetic resources, which could help achieve a better understanding of the term “genetic resource” and possibly help to address the question of derivatives, and clarify how that concept related to access and to benefit-sharing obligations under the protocol. The second issue was about monitoring, tracking and reporting the utilization of genetic resources as a tool to enhance transparency and as a tool to ensure compliance with national access and benefit-sharing legislation. The third issue was on the relationship between the protocol on access and benefit-sharing and other international instruments on access and benefit-sharing processes, in particular on how the protocol on access and benefit-sharing related to the Multilateral System of the International Treaty on Plant Genetic Resources for Food and Agriculture and the work of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore of the World Intellectual Property Organization.

46. The representative of Cook Islands, speaking on behalf of the Asian and Pacific Group, said that the Group would like to see the issues of derivatives included in the scope of the protocol and that Parties’ sovereign rights in relation to access should be safeguarded. Issues to address in the draft protocol also included the financial mechanism, technology transfer and the issue of non-Parties.

47. The representative of Yemen noted that many genetic resources covered by instruments prior to the protocol under consideration had been transferred either legally or illegally, and therefore binding instruments were necessary in order to deal with that issue in the future. Moreover, the financial mechanism and resources provided for in the protocol should take into account the need to pursue further research on genetic resources.

48. The representative of Serbia, speaking on behalf of the Central and Eastern European Group, emphasized the issues of reaching a common understanding regarding regulating and facilitating access and equitable sharing of benefits arising out of the utilization of genetic resources, their derivatives and products containing genetic material and to preventing their misappropriation and misuse within the international regime.

49. The representative of Saudi Arabia said that the key issues his delegation wished to discuss were the derivatives of genetic resources, transfer of technology, capacity-building and the relationship of the protocol to non-Parties.

50. The representative of Australia said that her delegation would be working to make minimal changes to the draft protocol. She was pleased to see recognition that international instruments related to access and benefit-sharing should be mutually supportive in the preamble but was of the opinion that greater recognition and clarity regarding the relationship between the international regime and other relevant instruments was needed. A common understanding of the term “associated traditional knowledge” was needed. The representative said her country had difficulties with the checkpoints and disclosure of origin proposed in the international regime and indicated that Australia considered the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore of the World Intellectual Property Organization to be the appropriate forum for the consideration of the issue.

51. The representative of the Republic of Korea said that the articles on, in particular, objective, scope, compliance with national legislation on access and benefit-sharing and monitoring, tracking and reporting the utilization of genetic resources needed to be considered for major revision.

52. The representative of Norway said that the three key issues, in their view, were: (i) the need for the international regime to be clear and explicit on the relationship between the protocol and the International Treaty on Plant Genetic Resources for Food and Agriculture, in order to achieve mutual supportiveness and to ensure that they were implemented in harmony with each other; (ii) the proper assessment of the importance of traditional knowledge associated with genetic resources; and (iii) the crucial need for effective compliance measures.

53. The representative of Malaysia said that what was missing in the articles on fair and equitable benefit-sharing, access to genetic resources and compliance with national legislation on access and benefit-sharing was a clear statement of the obligation of Parties to provide for benefit-sharing, to require the prior informed consent of States for every access and to ensure that users within their jurisdiction of user countries respect the sovereign rights of countries of origin of the genetic resources. He called for a strengthening of the provisions on technology transfer and the ability of Parties to ensure food security without undermining the protocol’s objectives.

54. The representative of Canada identified the country’s areas of concerns, including the scope which encompassed derivatives; non-discrimination; the relationship to other instruments and temporal and spatial scope; compliance mechanisms regarding references to disclosure at patent offices as a check-point, with mandatory certificates and with the proposed enforcement of other countries national access and benefit-sharing laws, gaps in the proposed text, including the need for provisions on the relationship with existing and future intergovernmental agreements on genetic resources and the potential need for additional definitions such as misappropriation; and on associated traditional knowledge, related provisions needed to provide Parties with sufficient flexibility with respect to domestic legal frameworks.

55. The representative of the Philippines said that the article on benefit-sharing should state that users of genetic resources were mandated to share the benefits arising from them. In addition, the provision on genetic resources should contain a statement of principle that access to genetic resources was subject to the prior informed consent of the contracting parties and, where appropriate, indigenous and local communities.

56. The representative of Ukraine said that, in the article on use of terms, the definitions needed to be clearer in order for the protocol to be a legally binding and practicable instrument.

57. The representative of New Zealand identified as key issues the appropriate linkages between access and benefit-sharing activities and traditional knowledge associated with genetic resources; flexibility to deal with diversity of national circumstances and ensuring an appropriate role of the State *vis-à-vis* traditional knowledge associated with genetic resources; a balance between the interests of users and providers of genetic resources, access and benefit-sharing; the need for a practical and effective regime, including effective compliance measures; the relationship between the international regime and work related to access and benefit-sharing in other forums, such as the World Health Organization, the World Intellectual Property Organization; and the relationship between the international regime and other relevant international regimes on access and benefit-sharing, such the International Treaty on Plant Genetic Resources for Food and Agriculture and the Antarctic Treaty regime.

58. The representative of Thailand said that the international regime should be able to cover the advancements in science and biotechnology, hence the need to include derivatives in the scope of the international regime to capture technological advancements. Technology transfer should also be emphasized both in terms of access to and transfer of technology as benefit-sharing from utilization of genetic resources.

59. The representative of the European Union said that the issues identified in relation to the Co-Chairs' text as it stood included: the question of scope and, in particular, the relationship with other international agreements, arrangements and institutions, on which there might be a need to develop a self-standing provision; access to genetic resources, where there was a need to ensure a conducive environment for biodiversity-related research, as well as to work on the list of access requirements; the consequences of a Party deciding not to require prior informed consent, which should be reflected in the protocol, the system of checkpoints and disclosure requirement addressed in the text; and the need for and utility of some of the suggested measures to support the implementation of contractual arrangements, and the issue of the financial mechanism of the protocol.

60. The representative of Japan called for legal consistency between the protocol and Article 15 of the Convention.

61. The representative of Argentina said that the protocol should be in harmony with other related international forums and instruments, such as the International Treaty on Plant Genetic Resources for Food and Agriculture and the Antarctic Treaty. Substantive, temporal and spatial exemptions to the regime should be taken into account by means of a short, general formula that would cover such concerns, in order to provide greater legal certainty.

62. The representative of Colombia, speaking in support of Argentina, stressed the need for an explicit mention of the relationship of mutual support and harmony between the protocol and other international treaties relating to biodiversity, genetic resources and traditional knowledge in order to avoid any conflict with the objectives of the protocol.

63. The representative of the International Indigenous Forum on Biodiversity suggested including the respect and recognition of the rights of indigenous people and local communities in the preamble; free prior informed consent before access to traditional knowledge and not subject to national legislation; the recognition of indigenous and local communities rights to genetic resources and traditional knowledge; and the rights of indigenous and local communities fully integrated throughout the protocol, in particular within the section on compliance.

64. The representative of civil-society organizations said that, in their view, the protocol should focus on the following issues: recognition of the rights of indigenous peoples and local communities in the context of international human rights agreements; inclusion of cases regarded as typical utilization of genetic resources; traditional knowledge associated with genetic resources as a cross-cutting issue; ensuring that only legally acquired genetic resources and associated traditional knowledge could be used

in the territory of a Party; basing the benefit-sharing requirement on a reality check aimed at including all benefits arising from the utilization of genetic resources, derivatives and products; clear and binding rules for a compliance regime; and provisions on non-Parties.

65. The representative of Bioversity International said that explicit recognition of access and benefit-sharing norms and of other international agreements should form part of the future protocol.

66. At the end of the 2nd plenary session, on Monday 22 March 2010, Co-Chair Casas informed participants that their suggestions would be compiled and, together with a strategy for the next step forward, would be presented in plenary the next day.

### *Third plenary session*

67. At the 3rd plenary session of the meeting, on 23 March 2010, Co-Chair Hodges said that all the interventions regarding key issues to be addressed had been reviewed and compiled and that four contact groups would be addressing those issues. The mandate of the contact groups would be to provide plenary with solutions to those specific issues, by keeping the original draft text, amending it or inserting new text. The key issues were allocated to the contact groups as follows:

(a) *Group 1*: the relationship with other instruments and processes; issues of temporal/geographical application; flexibility for sectoral approaches; non-Parties; and financial mechanism/financial resources;

(b) *Group 2*: monitoring, reporting and tracking, including disclosure requirements and checkpoints; dispute settlement and access to justice; country of origin; and instances where there was no requirement concerning prior informed consent or mutually agreed terms;

(c) *Group 3*: utilization of genetic resources/derivatives/benefit-sharing; benefit-sharing obligations, including access to and transfer of technology; access-related issues, including biodiversity-related research, access requirements and Parties who determined that access was not subject to prior informed consent;

(d) *Group 4*: traditional knowledge-related issues, including appropriate recognition of the relationship between access and benefit-sharing activities and traditional knowledge associated with genetic resources, diversity of national circumstances and recognition by Parties of the existence and role of customary law.

68. The Working Group agreed that the co-chairs of the contact groups would be as follows: Group 1: Mr. José Luis Suter (Argentina) and Mr. Johan Bodegård (Sweden); Group 2: Mr. René Lefeber (Netherlands) and Mr. Ricardo Torres (Colombia); Group 3: Ms. Cosima Hufner (Austria) and Mr. Pierre du Plessis (Namibia); Group 4: Ms. Tone Solhaug (Norway) and Mr. Damaso Luna (Mexico).

69. In response to a number of questions from delegations about the proposed way forward, Co-Chair Hodges said that the mandate was to focus on providing solutions that could be presented to the plenary meeting, without the inclusion of any brackets. He clarified that no more than two groups would be meeting in tandem.

70. The representative of the European Union asked how the process of integrating solutions into the text would work, and whether the sequence of work of the contact groups would be at the discretion of the co-chairs of the contact groups.

71. Co-Chair Hodges said that proposed solutions would be collected and made available in hard copy and on line. At some juncture, a revised, streamlined text would be issued.

72. The representative of Norway asked if it would be possible to avoid having group 4 work in parallel with groups 2 or 3.

73. The representative of Peru wondered whether priority could be given to working in plenary session rather than in contact groups, in view of the difficulties faced by small delegations in attending the contact groups and expressing their views. He also asked for confirmation that, in order to avoid including brackets, the participants would not be expressing objections but rather proposing positive solutions.

74. Co-Chair Hodges said that the contact groups would be held first, and then, if plenary meetings proved to be more efficient, the timing would be adjusted. He confirmed that the focus would be on positive solutions to the issues.

#### ***Fourth plenary session***

75. At the 4th plenary session of the meeting, on 24 March 2010, the Working Group heard progress reports from the co-chairs of the contact groups.

76. Mr. Pierre du Plessis, co-chair of contact group 3, said that the group had met twice and dealt with the issues of utilization of genetic resources and derivatives, as well as benefit-sharing obligation including access to and transfer of technology.

77. Ms. Tone Solhaug, co-chair of contact group 4, said that her group had met twice and raised the important role played by informal consultations.

78. Mr. Johan Bodegård, co-chair of contact group 1, reported on progress made after two sessions held by the group and underlined the fact that some issues were interlinked and could be dealt with in one integral point.

79. Mr. René Lefeber, co-chair of contact group 2 said his group had met twice and only addressed item 1 of the list of issues.

80. On the proposal of Co-Chair Hodges, the Working Group agreed to set up a fifth contact group, under the chairmanship of Mr. François Pythoud (Switzerland) and Ms. Vanida Khumnirdetch (Thailand), mandated to review the Co-Chairs' non-paper of 19 March containing a draft decision for the consideration of the Conference of the Parties, with a view to highlighting the areas that needed improvement and gaps to be filled.

81. The representative of the Islamic Republic of Iran said that one issue had not yet been raised, namely, the recognition of the enormous contribution of farmers and indigenous and local communities in developing, conserving and using of genetic resources and the importance of realizing their rights in any benefit-sharing arrangements to be adopted and the affirmation of their rights in the future protocol on access and benefit-sharing, especially their right to participate in decision-making.

#### ***Fifth plenary session***

82. At the 5th plenary session of the meeting, on 25 March 2010, Mr. Sutera, co-chair of contact group 1, reported on the group's progress. It had reached a considerable amount of common understanding on the protocol's relationship with other instruments and processes and the need for provisions on non-Parties. More discussion was needed, however, on the issues of temporal application, sectoral approaches, and financial mechanism and resources.

83. Mr. Ricardo Torres, co-chair of group 2, said that the group had reached a better understanding on the article dealing with compliance with national legislation. There was increasing agreement on the need for a certificate of compliance with national law, but greater flexibility should be provided in the

case of special circumstances. Further discussion was needed to explore potential solutions and to clarify the articles on monitoring, tracking and reporting the utilization of genetic resources and compliance with mutually agreed terms.

84. Ms. Cosima Hufler, co-chair of contact group 3, reported that the group had agreed on the need for special treatment, more positive language and national flexibility on the issue of biodiversity-related research. It had been agreed that it was within the sovereign rights of each State not to require prior informed consent and to determine access to an identified set of genetic resources. A careful review was required of the article on access to genetic resources and, of the subparagraph on serious threats to public health, food security or biological diversity, contained in the article on research and emergency situations, in order to improve the language and deal with missing elements.

85. Ms. Tone Solhaug, co-chair of group 4, said that the group had requested that the agreed language of the relevant preambular text should be consistently applied throughout the traditional knowledge-related articles. The group had agreed on three additional preambular paragraphs and some revisions or additions to the articles on fair and equitable benefit-sharing, access to genetic resources, transboundary cooperation, traditional knowledge associated with genetic resources and capacity.

86. Ms. Khumnirdetch, co-chair of group 5, said that the group had made a good start on reviewing the draft decision of the Conference of the Parties. More time would be needed in order to reflect the progress and changes made by the other contact groups to the annex to the draft decision.

87. Co-Chair Hodges said that a revised draft protocol would be issued as a conference room paper that evening. Given that several delegations had expressed concerns with regard to the inclusiveness and transparency of the negotiation process and the delegates' ability to convey their positions and protect their national interests, he proposed that the next step should be to form an interregional group. The mandate of that group would be to review the revised draft protocol: it would first consider all the new text introduced by the contact groups, then address the remainder of the text to ensure the correct balance and protect the overall integrity of the protocol and, lastly, identify any outstanding issues and resolve them, if possible. The Working Group agreed that Mr. José Luis Suter (Argentina) and Mr. Johan Bodegård (Sweden) would serve as co-chairs of the group.

88. The interregional group would be composed of no more than five representatives of each United Nations regional group and two representatives each from indigenous and local communities, civil society, industry and public research groups. All interested members of the Working Group were invited to attend the meetings of the interregional group.

89. In response to questions from some delegations about the setting of the meeting, he explained that the spokespersons at the table could be replaced by other persons, such as technical experts, where necessary, and that seats would be provided nearby for other members of delegations.

90. Statements in support of the Co-Chairs' proposal were made by representatives of the Cook Islands (on behalf of the Asian and Pacific Group), the European Union, Haiti (on behalf of the Latin American and Caribbean Group), Japan and the United Nations University.

91. The representative of Canada said that, while recognizing the need for a streamlined process and fully supporting the Co-Chairs' proposal, Canada was mindful of the fact that the next phase of the meeting would be the first opportunity that participants would have to carry out text-based negotiations. She also drew attention to the particular difficulties of representation faced by members of the Western European and Other States Group, which included the JUSCANZ countries, a residual collection of Parties with widely divergent interests.

92. The representative of New Zealand welcomed the Co-Chairs' proposal for an effective, open and inclusive method of work. She noted, however, that it was the Working Group, not the interregional group, that had been mandated by the Conference of the Parties to negotiate an international regime and asked for clarification regarding the status of the document that would emerge from the current process.

93. Co-Chair Hodges confirmed that it was the Working Group's mandate to negotiate the protocol and noted that the report of the meeting was a valuable tool for recording the concerns of delegations in that regard.

94. The representative of Malawi, speaking on behalf of the African Group, said that the Group endorsed the Co-Chairs' proposal for the next step in the process. He wished, however, to urge the co-chairs of the group to avoid expressing their own views rather than those of the interregional group.

### *Sixth plenary session*

95. At the 6th plenary session of the meeting, on 28 March 2010, Co-Chair Casas congratulated all delegates for their dedication and thanked the co-chairs of the five contact groups. He then presented the Working Group with a revised draft protocol (UNEP/CBD/WG-ABS/9/L.2) for approval, reminding participants that they had agreed on the first day of the meeting to work on the basis of the non-paper and to improve it during the week, thanks to the inputs of the contact groups. Some articles of the draft protocol had been improved by the Interregional Group; however, a number of issues remained pending and further work was needed to finalize the document, which was therefore presented as a work in progress.

96. The Working Group agreed to attach the Co-Chairs' revised draft protocol to the report of the meeting as annex I, with a footnote that clarified that the text, which had not been negotiated, reflected the efforts by the Co-Chairs to elaborate the elements of a draft protocol and was without prejudice to the right of the Parties to make further amendments and additions to the text.

97. The representative of the European Union said that the text in the footnote to the revised draft protocol usefully clarified the status of the text. However, a full assessment of the status could be undertaken only in light of the final parts of the report, which were still not available, and he encouraged the Co-Chairs to provide them before proceeding to the adoption of the report. There were a number of issues that would need to be resolved in the final negotiations. A number of proposals of operational text reflecting the views of the European Union on those outstanding issues were to be reflected in the report, as follows:

#### *“Main issues of the European Union with the draft Protocol:*

- It is important that the ABS Protocol includes a self-standing article on its relationship with other international agreements and processes.
- We would like to include a preambular paragraph that recognises the specific relevance of genetic resources for food and agriculture and the interdependence of all countries with regard to these genetic resources.
- In the 15-17<sup>th</sup> preambular paragraphs the European Union has reservations about the reference to the existing rights and ownership of indigenous and local communities over genetic resources. This comment also applies to article 5.2 (e).
- Access to genetic resources is also an important objective of the ABS Protocol and needs to be reflected.

- The temporal and geographical scope of the instrument must be clarified. As regards temporal scope, this is a horizontal issue that must be articulated in different articles.
- Article 4 on benefit-sharing must be clarified as regards temporal scope. It must clearly reflect that benefit-sharing is to be mutually agreed between providers and users. In our view, mutually agreed terms is the appropriate place to address “derivatives”. In this light the proposed Annex II needs further consideration, in particular with regard to its usefulness. The same applies to the suggested review mechanism that we consider burdensome and impractical.
- The ABS Protocol must give clarity on what rules apply as regards access to genetic resources. The current article 5 is insufficient to this end. Reference to Article 15.1 CBD should also be inserted in the text.
- Article 6 needs to be redrafted considerably to reflect the particular role of biodiversity-related research and to articulate the important issues of food security and how the ABS Protocol applies to pathogens of particular public concern for the health of humans, animals or plants.
- Transboundary cooperation can play an important role in implementing this Protocol. However, as regards instances where the same genetic resources are found in the territories of neighbouring Parties, such cooperation can not be obligatory on Parties as this conflicts with the sovereign rights of Parties over their genetic resources.
- Regarding terminology we support the use of the expression “traditional knowledge” associated with genetic resources throughout the text. Another terminology issue is the reference to “customary laws, community protocols and procedures” of indigenous and local communities we would prefer a simpler reference that would encompass all these terms such as “community level procedures”.
- The European Union does not consider appropriate at this stage and therefore does not support any reference to publicly available traditional knowledge associated with genetic resources, as reflected in article 9.5, as this issue is being discussed in the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) of the World Intellectual Property Organization (WIPO).
- Article 12.1 sets out the key compliance obligation of Parties as regards measures taken *vis* a *vis* users under their jurisdiction to ensure respect for domestic access and benefit-sharing frameworks of other Parties. For legal certainty, the scope of this obligation must focus on whether prior informed consent has been obtained and whether mutually agreed terms have been established. It can not include in its scope whether genetic resources are used in accordance with eventual conditions set out in the prior informed consent decision. This aspect is already addressed in article 14.
- Parties need some flexibility at domestic level to effectively implement their obligations under articles 13 and 14. A rigid and inflexible approach regarding the approach Parties must take to monitoring, tracking and reporting on the utilisation of genetic resources would result in a heavy and potentially costly system that is nonetheless ineffective in identifying instances where no prior informed consent has been obtained or where mutually agreed terms have not been established.
- The European Union supports the general gist of operational text on the internationally recognised certificate. However, Parties must take up the issue of proper placement of the

operational text on this matter at some point and how it relates to other provisions on the registering of information in the ABS Clearing-House. In addition, a certificate of compliance issued at the time of access can logically not reflect information on later uses of the genetic resources covered by a certificate. The European Union strongly believes that the precise content of the certificate should not be indicated in the text of the Protocol. Any future changes to the format could then only be achieved by means of an amendment to the treaty. We could envisage criteria being set up in a decision of the Conference of the Parties.

- The European Union supports the ideas contained in articles 15 and 16. However, the provisions need some redrafting to avoid moving into the content of mutually agreed terms.
- We need to look further into article 18.3bis in terms of redrafting.
- The European Union finds that the “listing approach” in article 18.5 is not compatible with the basic principle of demand-drivenness in capacity-building.
- Article 18bis needs further consideration. It opens many new issues that still have to be addressed in the negotiation.
- Articles 20 to 31 have yet to be considered by the Parties.

Some proposals from the European Union on how the above listed main issues could be resolved:

*The below proposals have been developed in relation to the Co-Chairs' draft protocol as it stood on 27 March. They do not reflect on further changes made by the Co-Chairs to the draft protocol text after that time. The European Union reserves its right to withdraw these proposals, modify or amend them or make new proposals over the course of the final negotiations. Text or articles not referred here do not imply their acceptance by the EU as such or in the specific form in which they appear and does not identify any deletions that the European Union may wish to see.*

#### Article 1

#### OBJECTIVE

The objective of this Protocol is the facilitation of access to genetic resources and the fair and equitable sharing of the benefits arising from the utilization of genetic resources that were obtained after the entry into force of this Protocol, also contributing to the conservation of biological diversity and the sustainable use of its components.

#### Article 3

#### SCOPE

1. This Protocol shall apply to genetic resources within the scope of the Convention on Biological Diversity and to the benefits arising from the utilization of genetic resources that were acquired after the entry into force of this Protocol for a Party with Parties providing such resources. This Protocol shall also apply to traditional knowledge associated with genetic resources within the scope of the Convention on Biological Diversity and to the benefits arising from the utilization of such knowledge.

2. This Protocol does not apply to human genetic resources, to genetic resources in areas beyond the limits of national jurisdiction or those located in the Antarctic Treaty Area, which is the area south of latitude 60oS.

#### Article 4

### FAIR AND EQUITABLE BENEFIT-SHARING

2. Parties shall take legislative, administrative or policy measures, as appropriate, with the aim of ensuring the fair and equitable sharing of the benefits arising from the utilization of genetic resources. This obligation applies to genetic resources that were acquired after the entry into force of this Protocol for a Party with Parties providing those resources.

#### Article 5

### ACCESS TO GENETIC RESOURCES

1. In the exercise of their sovereign rights over their natural resources, in accordance with Article 15 (1) of the Convention, Parties shall take the necessary legislative, administrative or policy measures, as appropriate, to provide for legal certainty, clarity and transparency of their domestic access and benefit-sharing requirements. Such measures shall *inter alia*:

- (a) Set-out clear, fair and non-arbitrary rules and procedures on accessing genetic resources;

- (b) Provide for accessible information on domestic access and benefit-sharing requirements, in particular, on how to apply for prior informed consent;

- (c) Establish clear criteria against which applications for prior informed consent are judged and for a written decision by a competent domestic authority to be notified to the applicant within a reasonable period of time;

- (d) Provide for the issuance of a permit or certificate as evidence of the decision to grant prior informed consent;

- (f) Establish clear rules and procedures for requiring and establishing mutually agreed terms at the time of access. Such terms shall be set out in writing and could/ should include: (i) a dispute settlement clause; (ii) terms on benefit-sharing; (iii) terms on subsequent third-party use, if any; and (iv) terms on changes of intent, where applicable.

- (g) Appropriate administrative or judicial appeals procedures;

- (h) Ensuring that the costs for obtaining decisions on prior informed consent do not exceed the actual costs of processing the application.

3. In implementing this Protocol and in accordance with Article 15 (1) of the Convention, each Party shall determine which of its genetic resources will be subject to prior informed consent. It shall inform the Access and Benefit-sharing Clearing-House accordingly. If a Party determines that access to its genetic resources is not subject to prior informed consent, it shall inform the Access and Benefit-sharing Clearing-House thereof.

## Article 6

### SPECIAL CONSIDERATIONS

In the development and implementation of their domestic legislation on access and benefit-sharing, Parties shall:

(a) Create conditions to facilitate, promote and encourage biodiversity-related research, considering its importance for the conservation of biological diversity and the sustainable use of its components; and

(b) In developing and implementing domestic ABS laws, policies or measures, provide immediate access to pathogens falling also under the scope of relevant international organizations and conventions, such as the World Health Organization (WHO), International Plant Protection Convention (IPPC), or the World Organization for Animal Health (OIE), and which are of particular public concern for the health of humans, animals or plants, in ways and for uses provided for in existing and future rules, procedures or practices on the sharing of pathogens and related benefits established under those international organizations and conventions.

(c) Consider in developing and implementing domestic ABS laws, policies or measures, the importance of genetic resources for food and agriculture and their special role for food security and climate change adaptation and mitigation.

(d) Consider sectoral approaches in the implementation and further development of this Protocol.

## Article 8

### TRANSBOUNDARY COOPERATION

1. In instances where the same genetic resources are found in-situ within the territory of neighbouring Parties, those Parties are encouraged to cooperate, as appropriate, with a view to implementing this Protocol.

## Article 12

### COMPLIANCE WITH DOMESTIC LEGISLATION ON ACCESS AND BENEFIT-SHARING

1. Parties shall take appropriate, effective and proportionate measures to ensure that genetic resources utilized within their jurisdiction have been obtained in accordance with prior informed consent and subject to mutually agreed terms having been established, as specified in the domestic legislation on access and benefit-sharing of the Party providing the genetic resources.

## Article 13

MEASURES, MECHANISMS AND TOOLS TO SUPPORT COMPLIANCE WITH  
DOMESTIC LEGISLATION ON ACCESS AND BENEFIT-SHARING

1. Measures, mechanisms and tools to support compliance with domestic legislation on access and benefit-sharing could include:

- (a) Check points and disclosure requirements;
- (b) Encouraging the inclusion in mutually agreed terms of provisions on reporting and information sharing between users and providers of genetic resources;
- (c) Encouraging the development and application of cost-effective communication tools and Internet-based systems for monitoring and tracking of genetic resources;
- (d) Databases.

2. The permit or certificate issued at the time of access in accordance with Article 5, paragraph 1 (d) and registered with the Access and Benefit-sharing Clearing-House, in accordance with Article 5 paragraph 2 shall constitute an internationally recognised certificate of compliance. [*placement needs to be discussed*]

3. The internationally recognised certificate of compliance shall serve as evidence that the genetic resource in question has been obtained in accordance with prior informed consent and that mutually agreed terms have been established, as specified in the domestic legislation on access and benefit-sharing of the country providing the genetic resource. [*placement needs to be discussed*].

## Article 14

## COMPLIANCE WITH MUTUALLY AGREED TERMS

1. In the implementation of Article 5, paragraph 1 (e) (i), Parties shall encourage providers and users of genetic resources and/or associated traditional knowledge to include provisions in mutually agreed terms to cover, where appropriate, dispute resolution including:

- (a) The jurisdiction of the domestic court to which they will subject any dispute resolution processes and the law applying to such processes;
- (b) Options for alternative dispute resolution, such as mediation or arbitration.

## Article XX

## RELATIONSHIP WITH OTHER INSTRUMENTS AND PROCESSES

1. The provisions of this Protocol shall not affect the rights and obligations of any Contracting Party deriving from any existing international agreement, except where the exercise of those rights and obligations would cause a serious damage or threat to biological diversity.

2. Whenever the provisions of a specialized international access and benefit sharing regime apply, this Protocol shall not apply provided the other regime is in force for the Party or Parties concerned, except where the exercise of those rights and obligations would cause a serious damage or threat to biological diversity.

3. The provisions of this Protocol are without prejudice to ongoing work or practices under relevant international organisations and conventions.

*Proposal for preambular paragraph on GR food & agriculture*

Recognizing the interdependence of all countries with regard to GRFA, as well as their special nature and importance for achieving food security worldwide and for sustainable development of agriculture in the context of poverty alleviation and climate change, and acknowledging the fundamental role of the ITPGRFA, the FAO CGRFA in this regard.”

98. The representative of Malaysia submitted the following text on behalf of the Like-minded Asian and Pacific Group and the Group of Like-minded Megadiverse Countries:

*“New article 4.1*

“Users of genetic resources, their derivatives and associated traditional knowledge, as appropriate, must share benefits arising from every utilization of such resources, their derivatives and associated traditional knowledge in a fair and equitable way with the Contracting Party providing the genetic resource, their derivatives and associated traditional knowledge, that is the country of origin of such resources or by Parties that have acquired the said resources in accordance with the Convention on Biological Diversity.

*“New Article 5.1*

“Every access shall be with the prior informed consent of the Contracting Party providing the genetic resources, and their derivatives that is the country of origin of such resources, or by a Party that has acquired the genetic resource and their derivatives, unless a Party otherwise determines under Article 15(5) of the Convention on Biological Diversity and taking into account Article 5(3) of this Protocol.

*“New Article 12.1*

“Contracting Parties shall ensure that users within their jurisdiction respect the sovereign rights of Contracting Parties providing the genetic resources and their derivatives that are countries of origin of such resources or have acquired the said resources in accordance with the Convention on Biological Diversity, and, as appropriate, the rights of indigenous and local communities to their traditional knowledge associated to genetic resources.”

99. The representative of Mexico, speaking on behalf of the Latin American and Caribbean Group, reiterated the view of his Group that compliance, particularly the use of tools and procedures for monitoring and tracking the use of genetic resources to ensure benefit-sharing, lay at the heart of the protocol. The following comments were also to be included in the report:

- With regard to derivatives, the current draft needed to be revised to include the proposals that the GRULAC had made in the interregional group. In both article 4 and article 13, the term “derivatives” should be used without qualification nor

reference to annex II. The Group strongly believed that annex II should be deleted and the term “derivatives” included in the relevant provisions of the protocol.

- Each time the term “genetic resources” was used, it should be followed by the words “and their derivatives and associated traditional knowledge”.
- He also noted that the statements of GRULAC regarding the replacement of “provider country” by “country of origin” were not reflected in the draft.
- As repeatedly stated, the Internationally Recognized Certificate of Origin should be an instrument issued by the competent national authority as evidence of compliance with national legislation on access and benefit-sharing, not only with prior informed consent.
- Trade restrictions on goods made with misappropriated resources should be included in the protocol.

100. Regarding relationships with other instruments and the establishment of an ombudsman, the following text proposals were made by GRULAC:

“(a) Relationship with other instruments:

“Proposal of new Article XX (after article 18 *ter*)

“This Protocol shall be interpreted and applied in a mutually supportive way and in harmony with other relevant international treaties on access and benefit-sharing, and in a manner that will not run counter to the objectives of the Convention on Biological Diversity and to this Protocol.

“Nothing in this Protocol shall be interpreted as implying in any way a change in the rights and obligations of the Contracting Parties under other international agreements.

“(b) Establishment of an ombudsman;

“Parties hereby establish an ombudsman office, to assist developing countries and indigenous and local communities in cases of alleged infringements of ABS. The governing body of this Protocol will decide at its first meeting the terms and conditions for the operation of this office.”

101. Finally, GRULAC reiterated its willingness to continue working in a constructive manner in the upcoming ABS negotiations.

102. The representative of Japan said that one of his country’s priorities was access and that it was important that the requirements enumerated in Article 5, paragraphs 2 (a)-(f), were ensured, in particular transparency was considered a key element. Applicants needed to know the criteria for access to genetic resources to be approved and to be informed of the reasoning for the decision made, especially in cases where access is declined. In that sense, the original paragraph 1 (c) of article 5, which stipulated “establish clear criteria against which applications for prior informed consent are judged and for a written decision by authority to be notified to the applicants within a reasonable period of time” should stay and not be replaced by the simple requirement of a timely written decision.

103. There was also a need for a mechanism to confirm that the provider country's PIC system or access regulation was in line with each of the requirements in article 5, paragraph 2. Therefore, Japan suggested the addition of a new paragraph after paragraph 3 of article 5, reading:

“Parties requiring prior informed consent for access to genetic resources shall confirm in writing to the Secretariat details of whether and how its domestic access and benefit-sharing framework is in conformity with paragraph 2 of this article.”

104. Japan also suggested the addition of a new paragraph after paragraph 2 (c) of article 5, reading:

“Provide a simplified procedure for access to genetic resources for non-commercial use research in accordance with national law

105. With regard to article 4, Japan believed that, if genetic resources were defined as including derivatives, the scope of the Convention itself would need to be amended. One solution would be to leave it to mutually agreed terms between providers and users to decide if they covered derivatives that are not genetic resources for benefit-sharing purposes. The current text of article 4, paragraph 2, did not include the mutually agreed terms element in requiring benefit-sharing for derivatives and ran the risk of reverting to the stage where there had been severe conflicts between Parties on the issue of whether derivatives should be included or not. He therefore suggested inserting in paragraph 2 of article 4 a phrase such as “if it is agreed in the mutually agreed terms”.

106. In addition, Japan did not believe that types of derivatives, such as “expression”, “replication” and “characterization” should be identified in the text of the protocol, given the rapid pace of development in genetic engineering. He proposed that specific examples of derivatives could be given in decisions of the Conference of the Parties, so that they could be updated in a more flexible manner as necessary. Likewise, annex II should be deleted and placed in a decision of the Conference of the Parties.

107. Japan had fundamental difficulties with the text of articles 12 and 13: first, there was the question of confidence in the legitimacy of other countries' legislation. In order for user countries to require the utilization of genetic resources within their jurisdiction to be in compliance with provider countries' national legislation, those user countries need to be assured that provider countries legislation are sufficiently reasonable and consistent with their own legislation in user countries in terms of their procedure; if the prior informed consent system in a provider country was confusing to its nationals, there might be little incentive for user countries to require their nationals to abide by it; secondly, there was the question of lack of information to confirm compliance with the other country's legislation. National authorities were not in a position to know whether or not their nationals were following other countries' legislation. Japan would need further clarification and come up with a solution on those issues before it finally agreed with the provisions of articles 12 and 13. In addition, Japan had concerns about the implications of checkpoints such as those dealing with intellectual property rights, public funding and regulatory marketing approval of products. Finally on Article 13, he proposed the insertion of the word “non-confidential” after the word “minimum” in the second line of paragraph 4 of article 13, to ensure that confidential information would not be required to provided in the international recognized certificate.

108. Japan then suggested the inclusion of a new article 3 *bis* entitled “Relationship with other international instruments”, as follows:

“1. The provisions of this Protocol shall not affect the rights and obligations of any Contracting Party deriving from any existing international agreement, except where the exercise of those rights and obligations would cause a serious threat or damage to biological diversity.

“2. The above is not intended to subordinate this Protocol to other international agreements.

“3. Whenever the provisions of a specialized international access and benefit-sharing apply, this Protocol shall not apply, provided the other regime is in force for the Party or Parties concerned and does not run counter to the objectives of the Convention.”

109. In conclusion, the representative of Japan raised a concern about the retroactive application of the protocol, which could result in a loss of support from a significant number of Parties and stakeholders. Japan also had concerns about the application of the protocol to Antarctica, feeling that it was not necessary to burden the current process with issues that needed to be addressed elsewhere. Finally, he drew attention to his Government’s emphasis on article 7 and the related preambular paragraph regarding the contribution of benefit-sharing to the conservation and sustainable use of biodiversity. That point was very important for Japan in order to achieve the potential value being sought in the negotiations and not to lose sight of the overall picture.

110. The representative of the Islamic Republic of Iran expressed concern that his delegation’s proposed text underlining the enormous contribution of farmers and importance of realizing their right in the international regime did not appear in the revised Co-Chair’s text. His delegation had submitted a preambular text, and had suggested the inclusion of the word “farmers” to be included in the text wherever the phrase “indigenous and local communities” appeared. The Islamic Republic of Iran believed that there had been a great level of common understanding developed on very important issues such as: special needs and features of agricultural sector and the fact those special needs required specialized solutions for ABS arrangements in order not to hamper food security, recognizing existing international ABS mechanisms, particularly the International Treaty on Plant Genetic Resources for Food and Agriculture, developed in harmony with the Convention on Biological Diversity and allowing future developments of specialized ABS arrangements as a requirement for full implementation of the international regime. His delegation had already raised its concerns regarding the need for a distinction throughout the text between an individual “provider” and a “provider that is the country of origin”. Noting that there was a need for an agreed strategy for the continuation of the work of the Group on to Nagoya, he suggested that the following preambular paragraph should be inserted:

*“Recognizing the enormous contribution that the local and indigenous communities and farmers of all regions of the world, particularly those in the centres of origin and diversity, have made and will continue to make for the conservation, development and utilization of genetic resources which constitute the basis for Farmers’ Rights.”*

111. In addition, he proposed that the word “farmers” be included in the text whenever the phrase “indigenous and local communities” appeared” and the following text should be included in article 4:

*“The Contracting Parties agree to take measures as appropriate, and subject to their national legislations, to promote and protect farmers’ rights, as they relate to genetic resources, including among others : to participate in the decision-making regarding, and in the fair and equitable sharing of the benefits arising from the use of genetic resources.”*

112. The representative of Australia said that Australia believed that it was crucial to the workability of the international regime to have clarity regarding the relationship with other international instruments, such as the International Treaty on Plant Genetic Resources for Food and Agriculture. The new stand-alone clause should also recognize work in other related forums and allow for the development and/or implementation of other more specialized access and benefit sharing arrangements Australia considered a stand-alone provision on these points as a necessary addition to the Cali Annex and saw Article 22 of the Convention on Biological Diversity as a good starting point.

113. A number of important concepts discussed during the meeting were not defined in the Convention, which are important concepts for the Parties. A key example was “associated traditional knowledge”. There should be a common understanding of this term, in order to ensure that each Party was

clear as to the nature and extent of their obligations under the regime. Australia would provide text on the subject for inclusion in Article 2. Likewise, Australia considered that a clear understanding of what was meant by utilization of genetic resources would be very useful. Utilization should capture the access and the use of genetic resources for the purposes of research and development on their genetic and biochemical makeup. This concept was addressed in article 4, paragraph 2. At the current stage, Australia would not suggest any additional wording, but might do so at a later stage if Parties thought that it would be useful. Australia also considered that it would be useful to insert language in article 2 to confirm that the Protocol must be read in conjunction with the Convention.

114. Australia was of the view that the geographical scope of the regime could not go beyond the scope of the Convention and so the international regime must apply only to genetic resources within national jurisdiction. It also considered the obligations arising under the regime could not apply retroactively. Australia saw access of genetic resources as the trigger that will give rise to obligations arising under the international regime and would like to insert in article 4, paragraph 2, after “genetic resources” on the second line: “accessed after the commencement of this Protocol”, which would make it clear that the obligations arose in relation to genetic resources accessed, and traditional knowledge where applicable, after the commencement of the international regime.

115. While it was in Australia’s interests for the international regime to provide a strong and effective compliance regime, such compliance mechanisms must be consistent with Parties’ international obligations and must not involve significant administrative burdens for stakeholders, including in the health system.

116. Australia also considered the following language should be inserted in article 13:

“Parties shall take legislative, administrative or policy measures, as appropriate, to establish the checkpoints to monitor the uses of genetic resources within their jurisdictions.”

117. Finally, Australia considered that the text did not fully recognize the special needs of agriculture and that preambular text consistent with decision V/5 of the Conference of the Parties should be inserted along the following lines:

“Recognizing the special nature of agricultural biodiversity, its distinctive features, and problems needing distinctive solutions.”

118. The representative of Norway said that the protocol must have strong, implementable and binding rules on compliance with national legislation in provider countries, including prior informed consent and mutually agreed terms, checkpoints, disclosure requirements and a certificate of compliance, while providing for a certain amount of flexibility. With regard to disclosure requirements, the work of the World Intellectual Property Organization (WIPO) and the current process should be mutually supportive. Regarding article 5, Norway also supported the need for legal certainty, clarity and transparency in national access legislation, but the requirements should not be too restrictive in order to provide some flexibility. It was crucial to have clear wording in article 4, to capture the emerging understanding of the utilization of genetic resources and associated traditional knowledge, so as not to make the protocol obsolete before it had entered into force. Lastly, there was a need to address the protocol’s relationship with other access and benefit-sharing instruments, primarily the International Treaty on Plant Genetic Resources for Food and Agriculture. In that regard, Norway submitted the following text:

“Article 3 *bis*

## “SCOPE IN RELATION TO OTHER INTERNATIONAL TREATIES ON ACCESS AND BENEFIT-SHARING

“The Protocol shall allow for the implementation and further development of other, more specialized international access and benefit-sharing systems that are in harmony with the Convention on Biological Diversity.

“This Protocol shall be without prejudice to the access and benefit-sharing provisions of the International Treaty on Plant Genetic Resources for Food and Agriculture and the two instruments shall be implemented in a mutually supportive manner.”

119. The representative of Egypt, speaking on behalf of the African Group, said that, although considerable efforts had been made to reflect the deliberations of the contact groups and the interregional Group in the revised text, the African Group’s concerns had not been adequately taken into account. It was therefore submitting the following text containing some compromise proposals:

## 2. Scope

*Temporal scope:* in Article 3, insert the following:

1. This Protocol shall apply to genetic resources and traditional knowledge within the scope of the Convention on Biological Diversity.
2. The Protocol shall also include benefits arising from the continuing and new utilization of genetic resources and associated traditional knowledge acquired before the date of entry into force of the Convention on Biological Diversity.
3. The Conference of the Parties serving as the meeting of the Parties to this protocol shall adopt modified procedures for benefit-sharing for genetic resources and associated traditional knowledge in paragraph 2.

Insert “and their derivatives” after genetic resources in Article 3.

*Geographic scope:* Antarctica and marine resources beyond national jurisdiction to be specifically included.

## 3. Relationship to other existing and future international conventions

1. For purposes of this protocol, Article 22 of the Convention shall apply.
2. This Protocol is the comprehensive instrument for the effective implementation of the access and benefit-sharing provisions of the Convention.
3. This protocol does not prejudice the implementation and development of other specialized international instruments that are in harmony with this Protocol.
4. When taking part in the implementation and development of other international instruments on access and benefit-sharing, the Parties shall give due consideration to paragraph 2 above.

**4. Article 13 bis:**

Non-compliance with mandatory disclosure requirement

If the user fails to disclose the relevant information on utilization based on genetic resources and/or associated traditional knowledge at the checkpoints:

(a) The user should be given the opportunity to remedy the omission within a specified time fixed under the relevant law or administrative requirement of the country of origin.

(b) If the user continues to fail to make any declaration, then the application shall not be further processed.

**5. Compliance with national legislation and benefit-sharing**

Article 12.1 *bis*:

In cases where the user has not as per para 1 obtained the necessary prior informed consent and mutually agreed terms, the user should be given the opportunity to remedy the omission within a specified time fixed under the relevant law or administrative requirement of the country of origin.

**6. International access and benefit-sharing ombudsperson**

Article 14 *bis*:

An office of an international access and benefit-sharing ombudsperson shall be established to support developing countries and indigenous and local communities to identify breaches of rights and to provide legal support in ensuring effective redress of such breaches.

**7. Article 6: Title**

Insert non-commercial before research.

**8. Miscellaneous:**

(a) Insert associated traditional knowledge in all provisions relating to compliance;

(b) Include *ex situ* collections in terms of “provider”, “country of origin”, “prior informed consent”, “mutually agreed terms” and disclosure and certificate.

**Draft decision:**

In the sixth preambular paragraph, second line, replace the word “plays” by “could play”.

120. The representative of the Republic of Korea proposed the following additional language to article 1:

“The objective of this Protocol is to ensure the fair and equitable sharing of the benefits arising from the utilization of genetic resources **by facilitating access to such resources, thereby** contributing to the conservation of biological diversity and the sustainable use of its components (additional language in **bold**.)”

121. With regard to the international regime, the Republic of Korea wished to emphasize the importance of a regime that could be workable and implementable at home. In view of the diversity of national circumstances, the regime must provide for certain flexibility and legal certainty at the same time. In particular, access, benefit-sharing, and compliance, should be formulated with prior informed consent and mutually agreed terms at its core. The role of the Parties in this regard would be to provide a legal framework for access and benefit-sharing, and the specific benefits to be shared should be set out in mutually agreed terms between the users and providers.

122. The representative of the Philippines proposed the addition of the following self-standing article regarding instances where no arrangements for prior informed consent or mutually agreed terms were in place:

“This Protocol shall ensure that the rights of the Parties and indigenous and local communities to benefit-sharing are not prejudiced, even:

“(a) When there is no access and benefit-sharing legislation or measure yet in place;  
or

“(b) In situations when access has occurred without mutually agreed terms or prior informed consent.”

123. He further suggested that whenever the phrase “subject to national legislation” appeared in the text of the protocol, the following phrase should be added: “and, where appropriate, the United Nations Declaration on the Rights of Indigenous Peoples”.

124. The representative of Peru suggested the introduction in the preamble of the draft protocol of a specific reference to the sovereign rights of States over their natural resources. She also suggested the qualified use of the term “derivatives” throughout the text, together with the term “associated traditional knowledge” and supported the GRULAC position on the deletion of annex II to the draft protocol. In addition, she stressed the importance of considering the creation of an international ombudsman for assisting developing countries and local communities in cases of alleged infringement of ABS legislation and the provisions of the protocol and the need to establish a clear obligation for the Parties to refrain from buying, selling, importing and exporting biopirated products. The first idea could be included as a new article after article 23, and the second, as a new paragraph 4 in article 12. There was a need to distinguish in article 5 between rules of transparency and due process of law, which should be indicative, and the obligation of the Parties to establish an internationally recognized certificate of compliance with national ABS legislation. Identification at the most detailed possible level and georeferenciation, to the extent provided in MAT, should be introduced in article 13, paragraph 4 (g).

125. Bearing in mind the importance to set clear rules in regards to the relation to other treaties and the protocol, Peru was submitting a self-standing provision establishing the Protocol as the special framework for access and benefit sharing arising from the utilization of genetic resources, derivatives and traditional knowledge and that the Parties should fulfil their obligations provided in other treaties, in conjunction with it and in a mutually supportive and consistent manner. Also, given the importance of providing for strong compliance measures, Peru was submitting as well, a new article 19 *bis*, providing for the creation

of an international fund for financing the tracking and monitoring of genetic resources, derivatives and associated traditional knowledge. In relation to the temporal scope, Peru recalled previous proposals forwarded to the working group to cover new uses and continuing uses of genetic resources, derivatives and traditional knowledge accessed or utilized since the date of entry into force of the Convention on Biological Diversity. Finally, Peru wished to introduce complementary provisions in relation to genetic resources and derivatives of migratory species, establishing that those belong to the country in which the species are found. Peru also suggested to carry out work on how to address human genetic resources; and on the respect of the rights of coastal countries in relation to marine genetic resources found in the high seas.

126. Peru provided the following text:

*In the preamble:*

*Reiterating the sovereign rights of the States over their natural resources and their rights to set the conditions for access to their genetic resources and derivatives.*

*Addition to article 3:*

*This Protocol also applies to new uses and continuing uses of genetic resources, derivatives and associated traditional knowledge accessed or used since the date of entry into force of the Convention on Biological Diversity.*

*Article 12, paragraph 4:*

*Parties shall refrain from selling, buying, importing and exporting products which are the result of activities that have not complied with the provisions of the Convention on Biological Diversity and this Protocol in relation to access and benefit-sharing.*

*Article 24 bis:*

*An international ombudsman is hereby created to assist developing countries member and indigenous and local communities in cases of alleged infringement of ABS national legislation and the provisions of this Protocol. The conference of the parties serving as the meeting of the Parties to this Protocol, shall implement this provision no later than two years after entry into force of this Protocol.*

*Complementary provisions:*

- 1. Access activities related to marine genetic resources and their derivatives or genetic resources shall be developed with due regard to the rights of the coastal States.*
- 2. The Conference of the Parties shall address issues concerning the relationship between this Protocol and human genetic resources and its derivatives, with the aim of developing guides and regulations to be compiled by the member countries, no later than...*

127. The representative of Brazil said that his delegation fully supported the statements by Malaysia and Mexico, on behalf of Like-Minded Megadiverse Countries and the Latin American and Caribbean Group, respectively, and welcomed the cautious progress that had been made during the week. The key questions remaining to be resolved had to do with compliance, disclosure, country of origin, derivatives and annex II of the draft protocol, scope, relationship with other treaties and traditional knowledge-related issues. He again stressed the importance of negotiating an international access and benefit-sharing regime, especially during the International Year of Biodiversity.

128. The representative of Switzerland said that his delegation had already stressed several times during the week that further work had to be done to better understand what was meant by utilization of genetic resources and that defining this might help further clarify the issues of temporal scope as well as derivatives. Regarding compliance, legally-binding compliance measures should be included in the protocol, however it was important that States had some flexibility regarding how these measures would be implemented, both with regard to checkpoints and what was to be disclosed at these checkpoints. The relationship between the protocol and other instruments and processes on access and benefit-sharing should also be clearer. He suggested the addition of the following preambular paragraph:

*“Recalling the Multilateral System on Access and Benefit-sharing established under the International Treaty on Plant Genetic Resources for Food and Agriculture as a legally-binding international instrument on access and benefit-sharing developed in harmony with the Convention on Biological Diversity”*

129. Regarding the issue of utilization of genetic resources, the representative of Switzerland suggested the following text:

*“ ‘Utilization of genetic resources’ means the modification, biosynthesis, breeding and selection, propagation and cultivation, conservation, characterization and evaluation, or any biotechnological application involving genetic resources in activities of research not aiming at commercialization, research and development aiming at commercialization, and commercialization.”*

130. The representative of Namibia, speaking on behalf of the African Group, said that the African Group’s rallying cry had been the need for fairness and benefit-sharing as incentives for sustainable use and conservation. He proposed the inclusion of the following text into the preamble of the draft protocol:

*“Believing that public awareness of the economic value of ecosystems and biodiversity, and the fair and equitable sharing of this economic value with the custodians of biodiversity is the primary incentive available for sustainable use and conservation”*

131. Recognizing the importance of local and indigenous communities and their traditional knowledge, Africa also proposed the following text to be added in the preamble:

*“Noting the interrelationship between genetic resources and traditional knowledge and the inseparable nature of these resources to indigenous and local communities”*

132. The representative of Namibia concluded by raising some concerns over some of the statements made prior to his intervention by other delegations, which could compromise the careful balance, integrity and “middle-of-the-road” approach provided by the draft protocol.

133. The representative of Canada suggested the following amendments to the text:

*(a) To be inserted after sixth preambular paragraph regarding Johannesburg:*

*“Recalling the mandate of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing in decision VII/19 D to elaborate and negotiate an international regime on access to genetic resources and benefit-sharing with the aim of adopting an instrument/instruments to effectively implement the provisions in Article 15 and Article 8(j) of the Convention and the three objectives of the Convention,*

*“Further recalling decision IX/12, in which the Conference of the Parties to the Convention on Biological Diversity instructed the Ad Hoc Open-ended Working Group on Access and Benefit-sharing to complete the elaboration and negotiation of the international access and benefit-sharing regime,”*

(b) *To be inserted as a preambular paragraph:*

“*Noting with appreciation* the FAO Conference resolution 18/2009 on policies and arrangements for access and benefit-sharing for genetic resources for food and agriculture, which invites the Conference of the Parties to work closely with the Commission on Genetic Resources for Food and Agriculture and the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture regarding access and benefit sharing in the area of genetic resources for food and agriculture in a mutually supportive manner in future years,”

(c) *Amendment to the fifteenth preambular paragraph*

In the second line, the words “owned” and “and developed” should be deleted.

(d) *Amendment to preambular paragraph 16*

In the first line, “existing” should be deleted and replaced by “any established”.

(e) *Amendment to the seventeenth preambular paragraph*

In the second line, delete the word “their” and replace with “national”

(f) *To be inserted in the preamble after the paragraph regarding mutually supportive access and benefit-sharing instruments:*

“*Acknowledging* ongoing work relating to access and benefit sharing in various forums, including, *inter alia*, the International Treaty on Plant Genetic Resources for Food and Agriculture, the Commission on Genetic Resources for Food and Agriculture of the Food and Agriculture Organization of the United Nations, the United Nations Ad Hoc Working Group on Marine Biological Diversity Beyond National Jurisdiction, the World Health Organization’s Intergovernmental Meeting on Pandemic Influenza Preparedness,

“*Mindful* of the International Health Regulations (2005) and the importance of ensuring access to human pathogens for public health preparedness and response purposes,”

(g) *To be inserted in Article 3 (Scope)*

“This Protocol does not apply to:

“(a) Genetic resources acquired prior to entry into force of the Protocol;

“(b) Human genetic resources;

“(c) Genetic resources, including marine genetic resources, beyond national jurisdiction;

“(d) Genetic resources covered by the Antarctic Treaty system;

“(e) Genetic resources under the multilateral system of the International Treaty on Plant Genetic Resources for Food and Agriculture, both current and as may be amended by the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture;

“(f) Commodities in trade;

“(g) Human pathogens;

“(h) Traditional knowledge associated with genetic resources that is in the public domain.”

(h) *To be added after Article 3 (Scope)*

**“Article 3 bis**

**“Relationship to other international agreements**

“1. Nothing in this Protocol shall be interpreted as implying any change in the rights and obligations of a Party under any existing international agreement.

“2. Nothing in this Protocol will prevent the development, recognition and accommodation of intergovernmental agreements relating to access and benefit sharing that achieve the objectives of the Convention and are consistent with the provisions of the international regime.”

(i) *Move the current article 4.4 under Article 5 bis as new paragraph 2 and add a new paragraph 3 to Article 5 bis as follows:*

“3. Benefits from the utilization of traditional knowledge associated with genetic resources may include monetary or non-monetary benefits, including but not limited to Annex I.”

(j) *Canada would bracket current article 5, (1)(e) and add the following:*

“(e) Outlines processes and/or criteria, as appropriate, for establishing mutually agreed terms with indigenous and local communities when access to their genetic resources are sought.”

(k). *Insert as an alternative to the existing article 12 (1)*

“Misappropriation of a genetic resource means to acquire a genetic resource in violation of the provision of domestic access and benefit-sharing legislation of a Party providing the genetic resource by failing to:

“(a) Obtain prior informed consent of the Party or any competent authority designated by the Party to provide such consent; or

“(b) Enter into mutually agreed terms on access and benefit-sharing arising from the commercial or other utilization of genetic resources.

*User measure associated with the international definition*

“Each Contracting Party [shall] [should] take measures aimed at preventing the use of misappropriated genetic resources.”

134. The representative of Canada stated that the submission of the above definition was without prejudice to whether a definition would be necessary in the regime and whether Canada would ultimately be in a position to agree to a compliance measure associated with any definition of misappropriation.

135. The representative of New Zealand said that it was important to have a distinct and separate article dealing with the relationship between the protocol and other international regimes on access and benefit-sharing. New Zealand sought a regime that provided clarity and legal certainty and, at the same time, provided flexibility to take into account national circumstances, including the diversity of situations regarding indigenous and local communities. Stating that, for New Zealand, Article 8(j) of the Convention was particularly important, she asked a colleague to give a brief description of relationship between the Iwi Maori and the Government of New Zealand.

136. The representative of India said the description of derivatives was too narrow as currently drafted, especially considering the rapid advancements in science. His delegation believed that the description as well as annex II needed to be broad without being ambiguous. In addition, the term “provider country” should be replaced by the term “country of origin”. On issues relating to traditional knowledge and benefit-sharing with indigenous and local communities, India recognized the rights of its local communities and had laws in place that also provided for benefit-sharing with those communities. He therefore felt that the language of article 5 *bis* was not quite appropriate as it asked Parties to enact laws with regard to local communities, who were already citizens of the country, something that did not squarely fit with the concept of sovereignty. India also saw itself as a user of resources and still believed that compliance issues constituted the core of the protocol. For example, article 14, paragraph 3, regarding the enforcement of foreign judgments and arbitral awards was very important. On the issue of checkpoints, India saw disclosure at intellectual property rights offices as being central and mandatory, while there might be flexibility for other checkpoints.

137. The representative of Colombia stressed the importance of compliance measures that could ensure, throughout different jurisdictions, compliance with national legislation and the terms of access to the genetic resources, derivatives and associated traditional knowledge. He requested the inclusion of the concepts of derivatives, traditional knowledge and country of origin throughout the text and considered that it was highly important to add a new stand alone binding article stating that the protocol was an umbrella framework for other existing and future instruments dealing with access and benefit-sharing, and that they should be developed in harmony with the protocol and not run counter to its objectives.

138. The representative of Indonesia said that his country had more than 350 ethnic groups. Indonesia would like to address the importance of national legislation in the seventeenth preambular paragraph that would effectively implement the Protocol by preventing misappropriation and misuse of the utilization of genetic resources associated with traditional knowledge. That was also consistent and in harmony with the fourth preambular paragraph of the Convention on Biological Diversity, which stated that, “States have the sovereign rights over their own biological resources”, and by which Indonesia protected the rights of its local communities by national legislation. Furthermore, the subject had been addressed in decision SS.XI/5 A of the eleventh of the UNEP Governing Council/Global Ministerial Environment Forum, held in Bali in February 2010, on guidelines for the development of national legislation on access to information, public participation and access to justice in environmental matters, guideline 3 of which referred to access to justice, information and public participation and guidelines 7 and 8 addressed public participation. Therefore, Indonesia proposed a slight amendment to the seventeenth preambular paragraph of the draft protocol so that it would read:

“*Mindful* that when traditional knowledge associated with genetic resources is being accessed, subject to national legislation, indigenous and local communities have the right to identify the rightful holders of knowledge within their indigenous and local communities.”

139. The representative of New Zealand, speaking on behalf of the Like-Minded-in-Spirit Group of Women, said that an important aim of the Group was to provide a gender perspective in the international regime in recognition of the vital role that women play in the conservation and sustainable use of biodiversity. She proposed the following text for inclusion in the preamble:

“*Recognizing* the vital role that women play in the conservation and sustainable use of biological diversity, and affirming the need for the full participation of women, including indigenous women, in access and benefit-sharing arrangements, and ensuring they receive a fair and equitable share of the benefits arising from the utilization of genetic resources”

140. She also made a number of proposals for the insertion of the words “including indigenous women” after the words “indigenous and local communities” in article 4, paragraph 4, article 9, paragraph 2, article 10, paragraph 1, and article 18, paragraph 3 *bis*, as well as the words “including the role of women in access and benefit-sharing arrangements” after the words “access and benefit-sharing issues” in the chapeau of article 17.

141. The representative of the International Indigenous Forum on Biodiversity (IIFB) thanked the Parties for the work undertaken at this session and the achievements made in addressing traditional knowledge in the draft protocol. IIFB wished to see the inclusion of two additional paragraphs, the first in the preamble and reading: “*Noting* the significance of the United Nations Declaration on the Rights of the Indigenous Peoples in regard to this Protocol”, and the second a new paragraph 1 *bis* to be inserted in article 12, the title which should be amended to read simply “Compliance”, as follows:

“1 *bis* Parties shall further take reasonable and effective legislative, administrative and policy measures to ensure that users of traditional knowledge associated with genetic resources within their jurisdiction comply with prior informed consent requirements of indigenous and local communities, in accordance with customary laws, community protocols and national and international law.”

142. Because compliance was at the heart of the protocol, IIFB underlined the importance of including associated traditional knowledge in all compliance measures and tools, including an internationally recognized certificate of compliance.

143. The representative of the Coordinating Body of Indigenous Organizations of the Amazon Basin (COICA) said that the preamble to the draft protocol should mention the United Nations Declaration on the Rights of Indigenous Peoples, which guaranteed the right of those peoples to maintain, control, protect and develop their traditional knowledge, including genetic resources. It should also make reference to the participation and approval of indigenous peoples and local communities in the text relating to access to traditional knowledge associated with genetic resources and should recognize the collective nature of such knowledge. Recognition should also be given to the role of indigenous peoples in the conservation and sustainable use of biodiversity and to the traditional institutions, forms of organization and authorities of each indigenous people and local community in relation to prior informed consent and mutually agreed terms under customary law. Compliance measures should include an internationally recognized certificate that containing information on the prior informed consent of the indigenous peoples and local communities involved. The core of the protocol was the recognition and protection of the rights of indigenous peoples to their traditional knowledge.

144. The representative from IUCN said the protocol should include language that recognized the linkage between access and benefit-sharing and biodiversity conservation, with the former acting as an incentive for the latter. There was also a need to recognize the relationship of the access and benefit-sharing process and the process of revising the Strategic Plan of the Convention for the post-2010 period, its long-term vision, the proposed 2020 mission and targets.

145. The representative of civil society organizations said that affordable access to justice, including an ombudsman’s office, rather than the minimization of transaction costs was the core of the protocol. A certificate and effective checkpoints under the protocol on access and benefit-sharing would facilitate progress towards inclusive sustainable consumption patterns, excluding biopiracy. Confidence and trust

in fairness, equity and justice, also in international relationships regarding benefit-sharing, were the basis and precondition for the necessary stable political will for conservation objective of the Convention on Biological Diversity at the national level. Reflections on the lack of political will and the lack of inter-ministerial consensus could be more helpful to promote creative and productive engagement for the process ahead.

### *Seventh plenary session*

146. At the 7th plenary session of the meeting, on Sunday, 28 March 2010, Co-Chair Hodges invited participants to forward a draft decision submitted by the Co-Chairs for the consideration of the Conference of the Parties at its tenth meeting (UNEP/CBD/WG-ABS/9/L.3). This would become annex II to the report. Participants were invited to do so on the understanding that the draft decision, which depended very much on the content of the protocol currently under negotiation, was merely a draft that would need to be negotiated at the tenth meeting of the Conference of the Parties. The annexed protocol and draft decision would both form an integral part of the report of the meeting and would be the basis for negotiations at the next meeting of the Working Group.

147. Following a proposal from the representative of Canada, the Working Group agreed to add a footnote similar to that added to the draft protocol stating that the document had not been negotiated and was without prejudice to the right of the Parties to make further amendments and additions to the text.

148. On the understanding that the draft decision for the consideration of the Conference of the Parties (UNEP/CBD/WG-ABS/9/L.3) had not been fully discussed and agreed, and was to be seen as a vehicle from the Working Group to the Conference of the Parties, was approved for inclusion as annex II to the present report.

149. In response to a concern expressed by the representative of Colombia regarding the name of the title of the protocol referred to in the document, the Co-Chairs reminded participants that the name of the instrument had not yet been decided.

150. The representative of Egypt, speaking on behalf of the African Group, said that with regard to the sixth preambular paragraph of the draft decision (UNEP/CBD/WG-ABS/9/L.3), the International Treaty on Plant Genetic Resources for Food and Agriculture should not be prejudged nor its current and future role with regards to the objectives of the Convention on Biological Diversity. He therefore suggested adding the word “may” before “play” in that paragraph.

### *Cali Nagoya work plan*

151. Reminding participants of the amount of work still needed in order to reach implementable results, and of the need to build political awareness and will, the Co-Chairs presented participants with a draft Cali-Nagoya work plan. Co-Chair Hodges noted that the plan had been developed in close consultation and with the support of the current and incoming COP Presidencies and had been discussed at length and constructively in the Bureau. Current elements of the preliminary plan included two meetings of the Friends of the Co-Chairs and two Co-Chairs’ Interregional Consultations and a resumed Working Group meeting. Given that the meetings would be informal and would not involve all Parties and with a view to maintaining clarity and transparency in the negotiations, the Co-Chairs said that it was important to reconvene the ninth meeting of the Working Group on Access and Benefit-sharing before the tenth meeting of the Conference of the Parties so as to give delegates the opportunity to take part in the final approval of the work. Thus, subject to availability of funding, the Working Group on Access and Benefit-sharing would then resume its work in Nagoya, from 13 to 15 October.

152. In order to facilitate the efficient organization of the interregional meetings, Co-Chair Hodges invited regional groups to nominate their ten representatives, if possible in Cali, but no later than 16 April. Countries should be designated and as the case may be, specific individuals identified.

153. Some delegates expressed concerns regarding the multiplicity of meetings and the transparency of the process.

154. The representative of Mexico, speaking on behalf of GRULAC, reminded participants that more than the number of meetings held, it was political will that was most important. It was also important to use negotiation formats allowing for the greatest participation possible. All the intersessional meetings between Cali and Nagoya should focus on negotiation and not exchanges of points of view and the ninth meeting of the Working Group should resume its work months before the tenth meeting of the Conference of the Parties. Transparency during the intersessional period should be increased and reports with sufficient details should be prepared after each intersessional meeting. The internal coordination of regional groups was also a crucial element for advancing in the negotiations. The representative expressed his gratitude to the Secretariat of the Convention on Biological Diversity as well as UNEP for its support during the regional consultations held in Panama in January 2010. For the interregional consultations, GRULAC nominated the following countries: Cuba, Haiti, Dominica, Saint Lucia, Mexico, Brazil, Peru, Colombia, Argentina and Costa Rica.

155. The representative of Uganda, speaking on behalf of the African Group said that the mandate of the Working Group was to elaborate and negotiate the protocol on access and benefit-sharing but that so far the Working Group had concentrated more on elaboration than on negotiation. The Group was concerned about the multiplicity of meetings and the difficulties that this would represent for some delegates to participate in all the proposed meetings. He proposed that the resumed session of the Working Group be held for a period of seven continuous days of negotiation. To allow enough time for regional and national consultations the Co-Chairs should avoid organizing any meeting in May and to allow delegates to process visas, as well as for national and regional reporting, two meetings should not be organized during the same month. In addition, the meetings should not run in parallel with meetings under the Biosafety Protocol, since a number of delegates took part in both meetings.

156. The representative of the Cook Islands, speaking on behalf of the Asian and Pacific Group, said that the proposal to have the resumed session of the ninth meeting of the Working Group in the periphery of the tenth meeting of the Conference of the Parties and in parallel with the meeting of the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety would pose problems to delegations within the Group that wore all biodiversity-related hats in their country and therefore would not be able to effectively participate and ensure a balanced outcome on the draft protocol. In order to properly address their concerns, the resumption of the ninth meeting of the Working Group should be conducted in an open, transparent and inclusive manner. The Asian and Pacific Group proposed that the resumed ninth meeting of the Working Group be conducted earlier than at the proposed time in order to give Parties time to advise their capitals properly before the tenth meeting of the Conference of the Parties and that it be conducted over an adequate number of days to ensure that proper negotiations were undertaken. The Working Group should therefore resume for seven days. Finally, the Asian and Pacific Group expressed its gratitude to those Parties that had pledged some financial support and invited Parties who could do so to offer some support towards the success of the protocol.

157. The representative of Switzerland said that, subject to available funding, priority should be given to resuming the work of the Working Group to engage into concrete negotiations rather than informal consultations with limited participation in order to ensure a clear, transparent and inclusive process and legitimacy. In addition, the resumed meeting of the Working Group should not be held in parallel with the meeting of the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety in order to allow full participation. His Government was ready to provide financial resources to support the work of the Working Group.

158. The representative of Australia said it was important to continue with text-based negotiations and that her delegation was in favour of a seven-day meeting. The meetings of the Friends of the Co-Chairs were useful but did not include all relevant Parties. Holding meetings of the Friends of the Co-Chairs and Co-Chairs' interregional meetings in a "plus" format might be a solution.

159. The representative of the European Union said that, in order to reach a successful conclusion of the protocol by the agreed deadline, further negotiation was needed. At the current juncture in the process it was critical that negotiations be undertaken in an inclusive and transparent format. The European Union also believed that Parties would benefit from exploring solutions for open issues in a non-negotiating mode, such as consultations, whether such consultations were to take place at regional level or in preparing negotiating sessions. If consultations were undertaken, it would then be very helpful to have reports about the discussions that took place.

160. The representative of Serbia, speaking on behalf of the Central and Eastern Europe Group, said that it was of great importance to organize one meeting of the Friends of the Co-Chair, regional and interregional consultations and to reconvene the ninth meeting of the Working Group before the tenth meeting of the Conference of the Parties, but bearing in mind that most of the countries within the Central and Eastern European Group would be taking part in the meeting of the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety, it was important to re-consider the proposed dates for the resumed meeting of the Working Group, which should be for a duration of 10 days.

161. The representative of New Zealand said that, although her delegation was open to the idea of further informal meetings, maximum time should be devoted to negotiations. She also asked the Co-Chairs to try to convene meetings ending during the working week instead of on the weekend in order to enable countries to consult with their capitals.

162. The representative of India said that his country recognized that significant progress had been made at the current meeting and that there was a reasonable chance of success at the tenth meeting of the Conference of the Parties. However, India was of the view, as witnessed at the current meeting, that the utility curve of exercises such as discussions at the conceptual level had already started to flatten out. India was inclined to think that any meaningful progress could be made only by commencing text-based negotiations within the Working Group. India was of the view that it would be best to have a fully participatory process so that all parties had ownership of the negotiation process. From that perspective, it would be best if the Working Group took up negotiations sufficiently ahead of the tenth meeting of the Conference of the Parties. If funding was an issue, India would suggest that a considerable amount of money could be saved by reducing the number of meetings in the Friends of the Co-Chair and CIIC formats. For the tenth meeting of the Conference of the Parties to be a success, there was a need for a transparent and fully inclusive meeting of the Working Group for text-based negotiations sufficiently ahead of the meeting of the Conference of the Parties.

163. After this exchange of views, the Co-Chairs said that text-based negotiations were essential but that political will was also crucial. Co-Chair also clarified that the Co-Chairs Interregional Consultations were intended to be negotiating sessions, not mere discussions. The Co-Chairs took note of the concerns expressed over the timing and spacing of the meetings, and confirmed the Working Group considered time for negotiating within the Working Group as a whole as the most important element to reach its mandate. He therefore proposed that the roadmap to Nagoya be composed of one three day meeting of the Friends of the Co-Chairs, and a minimum of one five days meeting of the Co-Chair's Interregional Consultations, both not held on a weekend and with a venue to be confirmed. Finally, the resumed Working Group would be seven days long with two days of informal consultations prior to the meeting. However, the timing for this meeting was subject to availability of funding and confirmation.

164. The representative of Uganda, speaking on behalf of the African Group, said that there was a clear call for resumption of all inclusive negotiations and if the Working Group chose to convene another

meeting of the Co-Chairs' interregional consultations it should be with the mandate to do text-based negotiations.

165. The representative of the European Union expressed his delegation's doubt regarding the Co-Chair's interregional consultations "plus" format and some concerns over holding the Working Group meeting in parallel with the meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol on Biosafety.

166. The representative of Australia said that if the Co-Chairs' interregional consultations were to be held, it should be in a "plus" format to allow for additional expert advice.

167. The Co-Chairs, taking note of the concerns expressed in the interventions reminded participants that resuming the work of the Working Group in September was contingent on financing and the availability of dates. Further expanding the format of the interregional consultations could disadvantage some regions.

168. The representative of Uganda reiterated the African Group's preferred option for focusing only on a resumed meeting of the Working Group in order to make best possible use of the limited funding.

169. The representative of the European Union proposed holding a Working Group meeting on the weekend between the meeting of the Parties to the Biosafety Protocol and the Conference of the Parties and one day into the Conference of the Parties.

170. The representative of Uganda stated that the weekend between the meeting of the Parties to the Cartagena Protocol and the tenth meeting of the Conference of the Parties to the Convention were to be devoted to regional consultations.

171. The Executive Secretary gave participants a short presentation of the cost scenarios for the different types of meetings, and underlined that if funding was not available the resumed meeting of the Working Group would have to take place in Nagoya before the Conference of the Parties.

172. Representatives of Australia and the European Union endorsed the proposal from the African Group to focus on holding a resumed Working Group meeting only, subject to available funding; raising the fact that financing was a priority.

173. Following these interventions, the Co-Chairs made a new proposal to participants, which provided that subject to financing and confirmation of specific dates, the ninth meeting of the Working Group on Access and Benefit-sharing would resume its work at the end of June in Montreal, in the form of a seven-day meeting with two days of informal regional and interregional consultations. A meeting of the Friends of the Co-Chairs could be held if deemed useful at some juncture in the remaining intersessional period.

174. The representative of Japan said that after consultation with its capital, his Government offered to finance the resumed meeting of the Working Group.

175. The representative of Malaysia expressed his concerns over the potential overlapping with the third meeting of the Group of the Friends of the Co-Chairs on Liability and Redress in the Context of the Cartagena Protocol on Biosafety, to be held in June.

176. The representative of Germany said that the COP-9 Presidency had underlined the importance of negotiations and tried to facilitate the process with a proposal but was ready to work with the Co-Chairs and the Secretariat to find appropriate ways to reach a positive outcome for the negotiations.

177. The representative of Namibia, speaking on behalf of the African Group, said that the current draft contained some issues that had not been agreed. Therefore, it was of crucial interest to elaborate on the areas that were not agreed to provide background for increased understanding and clear the ground for possible solutions. He suggested to request the Secretariat to commission work with the following terms of reference: (a) analyse areas of non-agreement in the current text with the aim of finding alternative solutions and analyze them from three perspectives: how alternative solutions could introduce legal certainty at (i) the user side, and (ii) the provider side, and to what extent the alternatives would provide legal enforceability. The study should also reflect on the potential for the draft protocol to provide for incentives for users of genetic resources to enter into mutually agreed terms and for them to actually share a fair and equitable part of the benefits arising there from; (b) explore the possibilities and ways of acquiring information, monitoring and tracking with regard to pre-CBD *ex situ* materials and accessions including botanical and microbial collections, and potential options for benefit-sharing arrangements; and (c) explore the possible ways of ensuring benefit-sharing from the utilization of publicly available traditional knowledge associated with genetic resources.

178. Co-Chair Hodges said that the studies would be carried out if funding was available but that priority for the resources would be given to negotiations, as was the strong desire expressed by Africa, all other regions, as well as of the Co-Chairs of the Working Group.

179. Co-Chair Hodges then summarized the agreed roadmap, which would then consist of a seven-day resumed Working Group meeting to be held in Montreal close to the end of June. The dates and venue would be confirmed along with the funding and the dates for the meeting of the Friends of the Co-Chairs. This item of the agenda was concluded with the Co-Chairs again highlighting the need to generate further political momentum in conjunction with emphasizing the importance of negotiating.

#### **ITEM 4. OTHER MATTERS**

180. The Working Group took up agenda item 4 at the 7th plenary session of the meeting, on 28 March 2010. Co-Chair Hodges proposed, and participants agreed, that the Working Group on Access and Benefit-Sharing would send a clear message to the Conference of the Parties regarding the need to ensure that the Strategic Plan of the Convention for the coming years covered the three objectives of the Convention in a balanced manner.

181. The Co-Chairs introduced a text containing a tribute to the Government and people of Colombia (UNEP/CBD/WG-ABS/9/L.4), which was then adopted by the Working Group. The text as adopted is contained in annex III to the present report.

#### **ITEM 5. ADOPTION OF THE REPORT**

182. The present report was adopted, as orally amended, at the 7th plenary session of the meeting, on 28 March 2010, on the basis of the draft report prepared by the Rapporteur (UNEP/CBD/WG-ABS/9/L.1).

183. The Co-Chairs recalled that the Working Group agreed to annex the Co-Chairs' draft protocol to the report of the meeting as annex I, with a footnote to clarify that the text, which was not negotiated, reflected the efforts by the Co-Chairs to elaborate the elements of a draft Protocol and was without prejudice to the rights of the Parties to make further amendments and additions to the text.

184. The Working Group agreed to suspend the meeting and, subject to confirmation and the availability of funds, to resume the meeting at the seat of the Secretariat in Montreal for a period of seven days at a date to be confirmed, in order to finalize the negotiations on the basis of annex I to the present report.

185. Statements were made by Canada, the European Union, the Islamic Republic of Iran, Japan, New Zealand, Malaysia and Thailand.

#### **ITEM 6. CLOSURE OF THE MEETING**

186. At the closure of the first part of the meeting, on 28 March 2010, statements were made by the representatives of regional groups.

187. The representative of Malawi, speaking on behalf of the African Group, urged Governments to work on those issues that did not allow the Working Group to reach a successful conclusion in Cali. The Group stood ready to negotiate the protocol in a spirit of fairness and flexibility and fulfil the mandate of the Conference of the Parties as well as the call by the WSSD and the General Assembly for an international regime.

188. The representative of Mexico, speaking on behalf of GRULAC, said Parties needed to build political will.

189. The representative of Cook Islands, speaking on behalf of the Asian and Pacific Group, said that benefit-sharing contributed to sustainable development in developing countries including poverty reduction and urged all Parties to travel together on the road to Nagoya.

190. In his closing statement, the representative of Malaysia, speaking on behalf of the Group of Like-minded Megadiverse Countries (LMMC), said that the Group had lost its voice and suffered from a loss of coherence because meetings had been organized on the basis of United Nations regional groupings. LMMC as a group had functioned very effectively since the mandate for the Working Group on Access and Benefit-sharing had been established and tried to play a significant role and was hoping to be able to once again speak as a group. He also reminded participants that it was essential to maintain a balance between users and providers. For users, coherent access standards had to be established and for providers adequate compliance measures needed to be in place. The text of the draft protocol reflected that balance. Therefore, it was a matter of concern to hear Parties talking about the need to enhance access requirements without reference to the establishment of adequate and effective compliance measures. It was crucial to maintain the balance and the basis upon which the group is entering into the negotiation for an international regime. He appealed to all concerned to recognize that it was important for his Group, in order to enter into negotiation, to get adequate compliance measures, including disclosure requirements and checkpoints.

191. The representative of Serbia, speaking on behalf of Central and Eastern Europe Group reaffirmed the Group's commitment towards the adoption of a legally binding instrument at the tenth meeting of the Conference of the Parties.

192. The representative of Spain, speaking on behalf of the European Union and its member States, thanked the Secretariat and the Government of Colombia for their efforts and warm welcome. He reaffirmed the commitment and political will of the European Union towards the adoption of the protocol in Nagoya in accordance with the conclusions of Environment Ministers Council which had taken place on 15 March.

193. The representative of Japan said that as Japan was preparing for the upcoming Conference of the Parties, its Government acknowledged and thanked the Government of Colombia for its hard work in organizing the current meeting and urged the Working Group to keep up the current momentum.

194. The representative of the International Indigenous Forum on Biodiversity expressed the hope that Parties would be able to affirm the important relationship between genetic resources and traditional

knowledge and the inseparable nature of these resources and knowledge to indigenous and local communities in the language of the protocol.

195. The representative of the Indigenous Women's Biodiversity Network thanked the Colombian Government and the indigenous peoples from the region. She note that some of the indigenous concerns had not been taken into account during the negotiations, namely: the reference to the United Nations Declaration on the Rights of Indigenous Peoples, the recognition of women's fundamental role, the recognition of the collective character of traditional knowledge, the importance of an international certificate of compliance including information on prior informed consent and mutually agreed terms from indigenous and local communities, and the importance of appropriate capacity-building for indigenous women.

196. A representative of local communities underlined the need to ensure the full participation of local communities in the processes of the Convention on Biological Diversity.

197. The representative of Colombia, Mrs. Yadir Salazar Mejia, thanked participants for their expressions of gratitude towards the country and the region and expressed and reiterated the country's engagement towards the process for the adoption of a legally binding instrument in Nagoya

198. The Executive Secretary, Ahmed Djoghlaif, thanked all those who made the meeting possible, including donor countries for their financial contributions, the Government of Colombia for its support and dedication to the success of the meeting, the Co-Chairs for their exceptional leadership and the staff of the Secretariat for its hard work.

199. In their concluding remarks, the Co-Chairs noted the significant step forward that was made in Cali, thanks to the dedication of all participants. Particularly noteworthy was the generation of a draft protocol on access and benefit-sharing for its subsequent circulation. This was a genuine concrete achievement. In the absence of this crucial step, adoption and success at Nagoya would be impossible. The Co-Chairs restated their commitment to the Working Group and expressed their keen interest in now ensuring conclusive negotiations would occur at the resumed ninth meeting of the Working Group.

200. After the customary exchange of courtesies, the first part of the ninth meeting of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing was declared closed at 7.45 p.m. on Sunday, 28 March 2010.

*Annex I***REVISED DRAFT PROTOCOL ON ACCESS TO GENETIC RESOURCES AND THE FAIR AND EQUITABLE SHARING OF BENEFITS ARISING FROM THEIR UTILIZATION TO THE CONVENTION ON BIOLOGICAL DIVERSITY\***

*The Parties to this Protocol,*

*Being* Parties to the Convention on Biological Diversity, hereinafter referred to as “the Convention”,

*Recalling* that the fair and equitable sharing of benefits arising from the utilization of genetic resources is one of three core objectives of the Convention,

*Recalling further* Article 15 of the Convention on access to genetic resources and sharing of the benefits arising from their utilization,

*Recognizing* the important contribution to sustainable development made by technology transfer and cooperation to build research and innovation capacities for adding value to genetic resources in developing countries, in accordance with Articles 16 and 19;

*Recalling* decision VI/24 of the Conference of the Parties adopting the Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of Their Utilization,

*Recalling as well* the Plan of Implementation adopted by the World Summit on Sustainable Development (Johannesburg, September 2002) which called for action to “negotiate within the framework of the Convention on Biological Diversity, bearing in mind the Bonn Guidelines, an international regime to promote and safeguard the fair and equitable sharing of benefits arising from the utilization of genetic resources”,

*Recognizing* the importance of genetic resources to food security, public health, biodiversity conservation, and the mitigation and adaptation to climate change,

*Acknowledging* the potential role of access and benefit-sharing to contribute to the conservation and sustainable use of biological diversity, poverty eradication and environmental sustainability and, thereby contributing to achieving the Millennium Development Goals,

*Recalling* Article 8(j) as it relates to access to traditional knowledge associated with genetic resources and the fair and equitable sharing of benefits arising from the utilization of such knowledge,

*Acknowledging* the linkage between access to genetic resources and the fair and equitable sharing of benefits arising from the utilization of such resources,

*Recognizing* the importance of providing legal certainty with respect to access to genetic resources and the fair and equitable sharing of benefits arising from their utilization,

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\* This document, which was not negotiated, reflects the efforts by the Co-Chairs to elaborate the elements of a draft Protocol, and is without prejudice to the rights of the Parties to make further amendments and additions to the text. This document should be read in conjunction with the main body of the report, which reflects the views of the Parties during the ninth meeting of the Working Group on Access and Benefit-sharing, which took place in Cali, Colombia.

*Further recognizing* the importance of promoting equality in negotiation of mutually agreed terms between providers and users of genetic resources,

*Recognizing* that international instruments related to access and benefit-sharing should be mutually supportive with a view to achieving the objectives of the Convention,

*Determined* to further support the effective implementation of the access and benefit-sharing provisions of the Convention,

*Recognizing* the diversity of circumstances in which traditional knowledge associated with genetic resources is owned, held and developed by indigenous and local communities,

*Taking into account* the existing rights of indigenous and local communities to genetic resources and associated traditional knowledge,

*Mindful* that when traditional knowledge associated with genetic resources is being accessed, it is the right of indigenous and local communities, consistent with their laws, customary laws, community protocols and procedures, as applicable, to identify the rightful holders of the knowledge within their indigenous and local communities.

*Have agreed as follows:*

## **ARTICLE 1**

### **OBJECTIVE**

The objective of this Protocol is to ensure the fair and equitable sharing of the benefits arising from the utilization of genetic resources, contributing to the conservation of biological diversity and the sustainable use of its components.

## **ARTICLE 2**

### **USE OF TERMS**

For the purposes of this Protocol:

- (a) *"Conference of the Parties"* means the Conference of the Parties to the Convention;
- (b) *"Regional economic integration organization"* means an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by this Protocol and which has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to it.

## **ARTICLE 3**

### **SCOPE**

This Protocol shall apply to genetic resources within the scope of the Convention on Biological Diversity and to the benefits arising from the utilization of such resources. This Protocol shall also apply to traditional knowledge associated with genetic resources and to the benefits arising from the utilization of such knowledge.

## ARTICLE 4

### FAIR AND EQUITABLE BENEFIT-SHARING

1. Benefits arising out of the utilization of genetic resources and associated traditional knowledge shall be shared in a fair and equitable way with the Party providing such resources or, where applicable, with the indigenous and local community holding such resources or associated traditional knowledge.
2. Parties shall take legislative, administrative or policy measures, as appropriate, with the aim of ensuring the fair and equitable sharing of the benefits arising from the utilization of genetic resources, including from derivatives produced through techniques such as expression, replication, characterization or digitalization, with the country providing such resources, taking into account the list of typical uses of genetic resources provided in Annex II. The Conference of the Parties serving as the Meeting of the Parties shall review this list on a regular basis with a view to keeping it in line with scientific and technological progress.
3. Benefits arising from the utilization of genetic resources and associated traditional knowledge shall be shared on mutually agreed terms, including as provided for by the Convention in Articles 8 (j), 15, 16 and 19. Benefits may include monetary and non-monetary benefits, including but not limited to those listed in Annex I.
4. Parties shall take legislative, administrative or policy measures, as appropriate, with the aim of ensuring the fair and equitable sharing of benefits arising from the utilization of traditional knowledge associated with genetic resources with indigenous and local communities holding such knowledge, taking into consideration the provisions of Article 9.

## ARTICLE 5

### ACCESS TO GENETIC RESOURCES

1. In the exercise of its sovereign rights over its genetic resources, access to genetic resources shall be subject to the prior informed consent of the Party providing such resources, unless otherwise determined by that Party.
2. Parties shall take the necessary legislative, administrative or policy measures, as appropriate, to:
  - (a) Provide for legal certainty, clarity and transparency of their national access and benefit-sharing requirements;
  - (b) Provide for easily obtainable information on how to apply for prior informed consent;
  - (c) Provide for a timely written decision by a competent national authority;
  - (d) Provide for the issuance of a permit or internationally recognized certificate as evidence of the decision to grant prior informed consent;
  - (e) Where applicable national law recognizes and affirms existing rights of indigenous and local communities to genetic resources, set out criteria for the prior informed consent/approval and involvement of such communities for access to their genetic resources; and
  - (f) Establish clear rules and procedures for requiring and establishing mutually agreed terms at the time of access. Such terms shall be set out in writing and may include:
    - (i) A dispute settlement clause;

- (ii) Terms on benefit-sharing, including any ownership of intellectual property rights;
- (iii) Terms on subsequent third-party use, if any; and
- (iv) Terms on changes of intent, where applicable.

3. Parties shall make their decisions to grant prior informed consent available to the Access and Benefit-sharing Clearing-House established under Article 11.

4. A Party that determines which of its genetic resources will or will not be subject to the access requirement of prior informed consent under Article 15(5) of the Convention, shall inform the Access and Benefit-sharing Clearing-House accordingly, along with any accompanying information.

## **ARTICLE 5 BIS**

### **ACCESS TO TRADITIONAL KNOWLEDGE ASSOCIATED WITH GENETIC RESOURCES**

Parties shall take legislative, administrative, or policy measures, as appropriate, with the aim of ensuring that traditional knowledge associated with genetic resources held by indigenous and local communities is accessed with the prior and informed consent/approval and involvement of indigenous and local communities, and is based on mutually agreed terms.

## **ARTICLE 6**

### **CONSIDERATIONS RELEVANT TO RESEARCH AND EMERGENCY SITUATIONS**

In the development and implementation of their national legislation on access and benefit-sharing, Parties shall:

- (a) Create conditions to facilitate, promote and encourage biodiversity-related research, important for the conservation of biological diversity and the sustainable use of its components; and
- (b) Pay due regard to emergency situations including serious threats to public health, food security or biological diversity, according to national legislation.

## **ARTICLE 7**

### **CONTRIBUTION TO CONSERVATION AND SUSTAINABLE USE**

Parties shall encourage users and providers to direct benefits arising from the utilization of genetic resources towards the conservation and sustainable use of biological diversity in support of the objectives of the Convention.

## **ARTICLE 8**

### **TRANSBOUNDARY COOPERATION**

1. In instances where the same genetic resources are found in-situ within the territory of neighbouring Parties, those Parties shall cooperate, as appropriate, with a view to implementing this Protocol, in order to ensure that measures taken are supportive of and do not run counter to its objectives.

2. Where the same traditional knowledge associated with genetic resources is shared by different indigenous and local communities in several Parties, those Parties shall cooperate, with the involvement of the indigenous and local communities concerned, with a view to implementing the objective of this Protocol.

OR

1. Where the same genetic resources and/or traditional knowledge associated with genetic resources are found *in situ* within the territory of more than one Party, those Parties shall cooperate with the involvement of the indigenous and local communities concerned, where applicable, with a view to implement the objective of this Protocol.

## ARTICLE 9

### TRADITIONAL KNOWLEDGE ASSOCIATED WITH GENETIC RESOURCES

1. In implementing their obligations under this Protocol, Parties shall give due consideration of indigenous and local community laws, customary laws, community protocols and procedures, of indigenous and local communities, as applicable, with respect to traditional knowledge associated with genetic resources.

2. Parties, with the effective participation of the indigenous and local communities concerned, shall establish mechanisms to inform potential users of traditional knowledge associated with genetic resources about their obligations for access to and fair and equitable sharing of benefits arising from the utilization of such knowledge.

3. Parties shall support, as appropriate, the development by indigenous and local communities of:

(a) Community protocols in relation to access to traditional knowledge associated with genetic resources and the fair and equitable sharing of benefits arising out of its utilization;

(b) Minimum requirements for mutually agreed terms to secure the fair and equitable sharing of benefits arising from the utilization of traditional knowledge associated with genetic resources; and

(c) Model contractual clauses for benefit-sharing arising from the utilization of traditional knowledge associated with genetic resources.

4. Parties, in their implementation of this Protocol, shall not restrict the customary use and exchange of genetic resources and associated traditional knowledge within and amongst indigenous and local communities.

5. Parties shall encourage the users of publicly available traditional knowledge associated with genetic resources to take all reasonable measures, including due diligence, to enter into fair and equitable benefit-sharing arrangements with the rightful holders of that knowledge.

## ARTICLE 10

### NATIONAL FOCAL POINTS AND COMPETENT NATIONAL AUTHORITIES

1. Each Party shall designate a national focal point on access and benefit-sharing. The national focal point shall inform applicants for access to genetic resources and/or associated traditional knowledge on procedures for acquiring prior informed consent and mutually agreed terms, including benefit-sharing,

/...

and on competent national authorities, relevant indigenous and local communities and relevant stakeholders, through the Access and Benefit-sharing Clearing-House. The national focal point shall be responsible for liaison with the Secretariat.

2. Each Party shall designate one or more competent national authorities on access and benefit-sharing. Competent national authorities shall, in accordance with applicable national legislative, administrative or policy measures, be responsible for granting access and be responsible for advising on applicable procedures and requirements for obtaining prior informed consent and entering into mutually agreed terms.

3. A Party may designate a single entity to fulfil the functions of both focal point and competent national authority.

4. Each Party shall, no later than the date of entry into force of this Protocol for it, notify the Secretariat of the names and addresses of its focal point and its competent national authority or authorities. Where a Party designates more than one competent national authority or authorities, it shall convey to the Secretariat, with its notification thereof, relevant information on the respective responsibilities of those authorities. Where applicable, such information shall, at a minimum, specify which competent authority is responsible for the genetic resources sought. Each Party shall forthwith notify the Secretariat of any changes in the designation of its national focal point or in the name and address or responsibilities of its competent national authority or authorities.

5. The Secretariat shall make information received pursuant to paragraph 4 available through the Access and Benefit-sharing Clearing-House.

## ARTICLE 11

### THE ACCESS AND BENEFIT-SHARING CLEARING-HOUSE AND INFORMATION-SHARING

1. An Access and Benefit-sharing Clearing-House is hereby established as part of the clearing-house mechanism under Article 18, paragraph 3, of the Convention. It shall serve as a means for sharing of information related to access and benefit-sharing. In particular, it shall provide access to information made available by each Party relevant to the implementation of this Protocol.

2. Without prejudice to the protection of confidential information, each Party shall make available to the Access and Benefit-sharing Clearing-House any information required by this Protocol, as well as information required pursuant to the decisions taken by the Conference of the Parties serving as the meeting of the Parties to this Protocol. The information shall include:

- (a) Legislative, administrative and policy measures on access and benefit-sharing;
- (b) Information on the national focal point and competent national authority(ies); and
- (c) Decisions to grant prior informed consent.

3. Additional information may include:

(a) Indigenous and local community laws, customary laws, community protocols and procedures as applicable, applied within the country with respect to traditional knowledge associated with genetic resources;

- (b) Model contractual clauses;

- (c) Methods and tools developed to monitor genetic resources; and
- (d) Codes of conduct and best practices.

4. The modalities of the operation of the Access and Benefit-sharing Clearing-House, including reports on its activities, shall be considered and decided upon by the Conference of the Parties serving as the meeting of the Parties to this Protocol at its first meeting, and kept under review thereafter.

## ARTICLE 12

### COMPLIANCE WITH NATIONAL LEGISLATION ON ACCESS AND BENEFIT-SHARING

1. Parties shall take appropriate, effective and proportionate measures to ensure that genetic resources utilized within their jurisdiction have been accessed and used in accordance with prior informed consent and that mutually agreed terms have been established, as specified in the national legislation on access and benefit-sharing of the country providing the genetic resources.
2. Parties shall take appropriate, effective and proportionate administrative or legal measures to address situations of non-compliance with measures adopted in accordance with paragraph 1.
3. Parties shall cooperate in cases of alleged violation of the national legislation on access and benefit-sharing of the country providing genetic resources.

## ARTICLE 13

### MONITORING, TRACKING AND REPORTING THE UTILIZATION OF GENETIC RESOURCES

1. In implementing Article 12, paragraph 1, Parties shall take measures, as appropriate, to monitor the utilization of genetic resources, including from derivatives produced through expression, replication and characterization, having regard to the list of typical uses of genetic resources provided in Annex II of the present Protocol. Such measures include:
  - (a) The identification and establishment of check points and disclosure requirements including at:
    - (i) Competent national authority (CNA) in the user country;
    - (ii) Research institutions subject to public funding;
    - (iii) Entities publishing research results relating to the utilization of genetic resources;
    - (iv) Intellectual property examination offices; and
    - (v) Authorities providing regulatory or marketing approval of products derived from genetic resources.

The disclosure requirement shall be met by providing *bona fide* evidence that a permit or certificate was granted at the time of access in accordance with Article 5, paragraph 2 (d);

- (b) Requiring users and providers of genetic resources to share information on the implementation of mutually agreed terms, including through reporting requirements; and

(c) Encouraging users and providers of genetic resources to use cost-effective communication tools and Internet-based systems for monitoring and tracking of genetic resources.

2. The permit or certificate issued at the time of access in accordance with Article 5, paragraph 2 (d) and registered with the Access and Benefit-sharing Clearing-House, in accordance with Article 5 paragraph 3 shall constitute an internationally recognized certificate of compliance.

3. The internationally recognized certificate of compliance shall serve as evidence that the genetic resource in question has been obtained/obtained, accessed and used in accordance with prior informed consent and that mutually agreed terms have been entered into, as specified in the national legislation on access and benefit-sharing of the country providing the genetic resource. Disclosure requirements shall be met by providing an internationally recognized certificate.

4. The internationally recognized certificate of compliance shall contain the following minimum information:

- (a) Issuing national authority;
- (b) Details of the provider;
- (c) A codified unique alpha numeric identifier
- (d) Details of the rights holders of associated traditional knowledge, as appropriate;
- (e) Details of the user;
- (f) Subject-matter covered by the certificate;
- (g) Geographic location of the access activity;
- (h) Link to mutually agreed terms;
- (i) Uses permitted and restrictions of use;
- (j) Conditions of transfer to third parties;
- (k) Date of issuance.

5. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall consider additional modalities of the internationally recognized certificate of compliance system, taking into account the need to minimize transaction costs and to ensure feasibility, practicality and flexibility.

## **ARTICLE 14**

### **COMPLIANCE WITH MUTUALLY AGREED TERMS**

1. In the implementation of Article 5, paragraph 5 (f) (i), Parties shall encourage providers and users of genetic resources and/or associated traditional knowledge to include provisions in mutually agreed terms to cover, where appropriate, dispute resolution including:

- (a) The jurisdiction to which they will subject any dispute resolution processes;
- (b) The applicable law; and/or

- (c) Options for alternative dispute resolution, such as mediation or arbitration.
2. Parties shall ensure that an opportunity to seek recourse is available under their legal systems, consistent with applicable jurisdictional requirements, in cases of disputes arising from mutually agreed terms.
3. Parties shall take effective and proportionate measures, as appropriate, to address cases of alleged non-compliance with mutually agreed terms including measures to:
  - (a) Facilitate access to justice;
  - (b) Facilitate mutual recognition and enforcement of foreign judgments and arbitral awards;
  - (c) Facilitate cooperation between Parties; and
  - (d) Provide assistance to those seeking legal redress.
4. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall review the effectiveness of measures referred to in paragraph 3 and based on this review shall consider the need for and modalities of further action.

## **ARTICLE 15**

### MODEL CONTRACTUAL CLAUSES

1. Parties shall encourage, as appropriate, the development, update and use of sectoral menus of model contractual clauses for mutually agreed terms in consultation with users and providers from key sectors.
2. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall periodically take stock of the use of sectoral menus of model contractual clauses.

## **ARTICLE 16**

### CODES OF CONDUCT AND BEST PRACTICE STANDARDS

1. Parties shall encourage, as appropriate, the development, update and use of codes of conduct and best practice standards in relation to access and benefit-sharing in consultation with users and providers from key sectors.
2. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall periodically take stock of the use of codes of conduct and best practice standards.

## **ARTICLE 17**

### AWARENESS-RAISING

Parties shall take measures to raise awareness of the importance of genetic resources and associated traditional knowledge, and related access and benefit-sharing issues. Such measures may include *inter alia*:

- (a) Promotion of this Protocol and its objective;
- (b) Organization of stakeholder meetings;
- (c) Establishment and maintenance of a help desk for stakeholders;
- (d) Information dissemination through a national-level clearing-house;
- (e) Promotion of codes of conduct and best practice standards in consultation with stakeholders; and
- (f) Promotion of regional exchange of experiences.

## ARTICLE 18

### CAPACITY

1. Parties shall cooperate in the development and strengthening of human resources and institutional capacities to effectively implement this Protocol in developing country Parties, in particular the least developed countries and small islands developing States among them, and Parties with economies in transition, including through existing global, regional, subregional and national institutions and organizations.

2. The needs of Parties referenced in paragraph 1 for financial resources in accordance with the relevant provisions of the Convention, shall be taken fully into account for capacity-building to implement this Protocol.

3. Parties should identify their national capacity needs and priorities, through national capacity self-assessments, as a basis for appropriate measures, and should provide this information to the Access and Benefit-sharing Clearing-House established under Article 11.

3bis. Parties shall support capacity-building for indigenous and local communities, based on needs and priorities identified by them.

4. In support of the implementation of this Protocol, capacity shall address the following key areas: (a) capacity to comply with the obligations of this Protocol; (b) capacity to negotiate mutually agreed terms; (c) capacity to develop, implement and enforce national legislative, administrative or policy measures on access and benefit-sharing; and (d) capacity to support countries providing genetic resources in the development of their endogenous research capabilities to add value to their own genetic resources.

5. Measures in accordance with paragraphs 1 to 4 may include *inter alia*:

- (a) Legal and institutional development;
- (b) Promoting equality in negotiations, such as training to negotiate mutually agreed terms;
- (c) Monitoring and enforcing compliance;
- (d) Employment of best available communication tools and Internet-based systems for access and benefit-sharing activities;
- (e) Development and use of valuation methods;

- (f) Bioprospecting, associated research and taxonomic studies;
- (g) Technology transfer, and infrastructure and technical capacity to make such technology transfer sustainable ;
- (h) Enhancing the contribution of access and benefit-sharing activities to the conservation and sustainable use of biodiversity;
- (i) Special measures to increase the capacity of access and benefit-sharing stakeholders; and
- (j) Special measures to increase the capacity of indigenous and local communities in relation to access to traditional knowledge associated with genetic resources.

5. Information on capacity-building initiatives at national, regional and international levels, undertaken in accordance with paragraphs 1 to 4, should be provided to the Access and Benefit-sharing Clearing-House with a view to promote synergy and coordination on capacity-building for access and benefit-sharing.

### **ARTICLE 18 BIS**

#### **TECHNOLOGY TRANSFER AND COOPERATION**

In accordance with Articles 15, 16 and 19, Parties shall collaborate, cooperate and contribute in scientific research and development programmes, particularly biotechnological research activities, as a means to generate and share benefits in accordance with Article 4 of this Protocol. This shall include measures by developed country Parties that provide incentives, to companies and institutions within their jurisdiction, to promote and encourage access to technology by, and transfer of technology to, developing countries, including the least developed among them, in order to enable them to create a sound and viable technological base. Where possible, such collaborative activities shall take place in the country providing genetic resources.

### **ARTICLE 18 TER**

#### **NON-PARTIES**

The Parties shall encourage non-Parties to adhere to this Protocol and to contribute appropriate information to the Access and Benefit-sharing Clearing-House.

### **ARTICLE 19**

#### **FINANCIAL MECHANISM AND RESOURCES**

1. In considering financial resources for the implementation of this Protocol, the Parties shall take into account the provisions of Article 20 of the Convention.
2. The financial mechanism of the Convention shall be the financial mechanism for this Protocol.
3. Regarding the capacity-building referred to in Article 18, the Conference of the Parties serving as the meeting of the Parties to this Protocol, in providing guidance with respect to the financial mechanism referred to in paragraph 2, for consideration by the Conference of the Parties, shall take into account the need for financial resources by developing country Parties, in particular the least developed and the small island developing States among them.

4. In the context of paragraph 1, the Parties shall also take into account the needs of the developing country Parties, in particular the least developed and the small island developing States among them, and of the Parties with economies in transition, in their efforts to identify and implement their capacity-building requirements for the purposes of the implementation of this Protocol.

5. The guidance to the financial mechanism of the Convention in relevant decisions of the Conference of the Parties, including those agreed before the adoption of this Protocol, shall apply, *mutatis mutandis*, to the provisions of this Article.

6. The developed country Parties may also provide, and the developing country Parties and the Parties with economies in transition avail themselves of, financial and other resources for the implementation of the provisions of this Protocol through bilateral, regional and multilateral channels.

## ARTICLE 20

### CONFERENCE OF THE PARTIES SERVING AS THE MEETING OF THE PARTIES TO THIS PROTOCOL

1. The Conference of the Parties shall serve as the meeting of the Parties to this Protocol.
2. Parties to the Convention that are not Parties to this Protocol may participate as observers in the proceedings of any meeting of the Conference of the Parties serving as the meeting of the Parties to this Protocol. When the Conference of the Parties serves as the meeting of the Parties to this Protocol, decisions under this Protocol shall be taken only by those that are Parties to it.
3. When the Conference of the Parties serves as the meeting of the Parties to this Protocol, any member of the Bureau of the Conference of the Parties representing a Party to the Convention but, at that time, not a Party to this Protocol, shall be substituted by a member to be elected by and from among the Parties to this Protocol.
4. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall keep under regular review the implementation of this Protocol and shall make, within its mandate, the decisions necessary to promote its effective implementation. It shall perform the functions assigned to it by this Protocol and shall:
  - (a) Make recommendations on any matters necessary for the implementation of this Protocol;
  - (b) Establish such subsidiary bodies as are deemed necessary for the implementation of this Protocol;
  - (c) Seek and utilize, where appropriate, the services and cooperation of, and information provided by, competent international organizations and intergovernmental and non-governmental bodies;
  - (d) Establish the form and the intervals for transmitting the information to be submitted in accordance with Article 24 and consider such information as well as reports submitted by any subsidiary body;
  - (e) Consider and adopt, as required, amendments to this Protocol and its annex, as well as any annexes to this Protocol, that are deemed necessary for the implementation of this Protocol; and
  - (f) Exercise such other functions as may be required for the implementation of this Protocol.

5. The rules of procedure of the Conference of the Parties and financial rules of the Convention shall be applied, *mutatis mutandis*, under this Protocol, except as may be otherwise decided by consensus by the Conference of the Parties serving as the meeting of the Parties to this Protocol.

6. The first meeting of the Conference of the Parties serving as the meeting of the Parties to this Protocol shall be convened by the Secretariat in conjunction with the first meeting of the Conference of the Parties that is scheduled after the date of the entry into force of this Protocol. Subsequent ordinary meetings of the Conference of the Parties serving as the meeting of the Parties to this Protocol shall be held in conjunction with ordinary meetings of the Conference of the Parties, unless otherwise decided by the Conference of the Parties serving as the meeting of the Parties to this Protocol.

7. Extraordinary meetings of the Conference of the Parties serving as the meeting of the Parties to this Protocol shall be held at such other times as may be deemed necessary by the Conference of the Parties serving as the meeting of the Parties to this Protocol, or at the written request of any Party, provided that, within six months of the request being communicated to the Parties by the Secretariat, it is supported by at least one third of the Parties.

8. The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State member thereof or observers thereto not party to the Convention, may be represented as observers at meetings of the Conference of the Parties serving as the meeting of the Parties to this Protocol. Any body or agency, whether national or international, governmental or non-governmental, that is qualified in matters covered by this Protocol and that has informed the Secretariat of its wish to be represented at a meeting of the Conference of the Parties serving as a meeting of the Parties to this Protocol as an observer, may be so admitted, unless at least one third of the Parties present object. Except as otherwise provided in this Article, the admission and participation of observers shall be subject to the rules of procedure, as referred to in paragraph 5.

## ARTICLE 21

### SUBSIDIARY BODIES

1. Any subsidiary body established by or under the Convention may, upon a decision by the Conference of the Parties serving as the meeting of the Parties to this Protocol, serve the Protocol, in which case the meeting of the Parties shall specify which functions that body shall exercise.

2. Parties to the Convention that are not Parties to this Protocol may participate as observers in the proceedings of any meeting of any such subsidiary bodies. When a subsidiary body of the Convention serves as a subsidiary body to this Protocol, decisions under the Protocol shall be taken only by the Parties to the Protocol.

3. When a subsidiary body of the Convention exercises its functions with regard to matters concerning this Protocol, any member of the bureau of that subsidiary body representing a Party to the Convention but, at that time, not a Party to the Protocol, shall be substituted by a member to be elected by and from among the Parties to the Protocol.

## ARTICLE 22

### SECRETARIAT

1. The Secretariat established by Article 24 of the Convention shall serve as the Secretariat to this Protocol.

2. Article 24, paragraph 1, of the Convention on the functions of the Secretariat shall apply, *mutatis mutandis*, to this Protocol.

3. To the extent that they are distinct, the costs of the secretariat services for this Protocol shall be met by the Parties hereto. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first meeting, decide on the necessary budgetary arrangements to this end.

## **ARTICLE 23**

### **RELATIONSHIP WITH THE CONVENTION**

Except as otherwise provided in this Protocol, the provisions of the Convention relating to its protocols shall apply to this Protocol.

## **ARTICLE 24**

### **MONITORING AND REPORTING**

Each Party shall monitor the implementation of its obligations under this Protocol, and shall, at intervals to be determined by the Conference of the Parties serving as the meeting of the Parties to this Protocol, report to the Conference of the Parties serving as the meeting of the Parties to this Protocol on measures that it has taken to implement the Protocol.

## **ARTICLE 25**

### **COMPLIANCE WITH THE PROTOCOL**

The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first meeting, consider and approve cooperative procedures and institutional mechanisms to promote compliance with the provisions of this Protocol and to address cases of non-compliance. These procedures and mechanisms shall include provisions to offer advice or assistance, where appropriate. They shall be separate from, and without prejudice to, the dispute settlement procedures and mechanisms established by Article 27 of the Convention.

## **ARTICLE 26**

### **ASSESSMENT AND REVIEW**

The Conference of the Parties serving as the meeting of the Parties to this Protocol shall undertake, five years after the entry into force of this Protocol and every five years thereafter, an evaluation of the effectiveness of the Protocol, including an assessment of its procedures.

## **ARTICLE 27**

### **SIGNATURE**

This Protocol shall be open for signature at {...}, on 4 June 2011, by States and regional economic integration organizations and at United Nations Headquarters in New York from 11 June 2011 to 10 June 2012.

## **ARTICLE 28**

### ENTRY INTO FORCE

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the 50<sup>th</sup> instrument of ratification, acceptance, approval or accession by States or regional economic integration organizations that are Parties to the Convention.
2. This Protocol shall enter into force for a State or regional economic integration organization that ratifies, accepts or approves this Protocol or accedes thereto after its entry into force pursuant to paragraph 1, on the ninetieth day after the date on which that State or regional economic integration organization deposits its instrument of ratification, acceptance, approval or accession, or on the date on which the Convention enters into force for that State or regional economic integration organization, whichever shall be the later.
3. For the purposes of paragraphs 1 and 2, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

## **ARTICLE 29**

### RESERVATIONS

No reservations may be made to this Protocol.

## **ARTICLE 30**

### WITHDRAWAL

1. At any time after two years from the date on which this Protocol has entered into force for a Party, that Party may withdraw from the Protocol by giving written notification to the Depositary.
2. Any such withdrawal shall take place upon expiry of one year after the date of its receipt by the Depositary, or on such later date as may be specified in the notification of the withdrawal.

## **ARTICLE 31**

### AUTHENTIC TEXTS

The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

DONE at Nagoya on this twenty-ninth day of October, two thousand and ten.

IN WITNESS WHEREOF the undersigned, being duly authorized to that effect, have signed this Protocol on the dates indicated.

*Annex I to the revised draft protocol*

**MONETARY AND NON-MONETARY BENEFITS**

1. Monetary benefits may include, but not be limited to:
  - (a) Access fees/fee per sample collected or otherwise acquired;
  - (b) Up-front payments;
  - (c) Milestone payments;
  - (d) Payment of royalties;
  - (e) Licence fees in case of commercialization;
  - (f) Special fees to be paid to trust funds supporting conservation and sustainable use of biodiversity;
  - (g) Salaries and preferential terms where mutually agreed;
  - (h) Research funding;
  - (i) Joint ventures;
  - (j) Joint ownership of relevant intellectual property rights.
  
2. Non-monetary benefits may include, but not be limited to:
  - (a) Sharing of research and development results;
  - (b) Collaboration, cooperation and contribution in scientific research and development programmes, particularly biotechnological research activities, where possible in the country providing genetic resources;
  - (c) Participation in product development;
  - (d) Collaboration, cooperation and contribution in education and training;
  - (e) Admittance to ex situ facilities of genetic resources and to databases;
  - (f) Transfer to the provider of the genetic resources of knowledge and technology under fair and most favourable terms, including on concessional and preferential terms where agreed, in particular, knowledge and technology that make use of genetic resources, including biotechnology, or that are relevant to the conservation and sustainable utilization of biological diversity;
  - (g) Strengthening capacities for technology transfer;
  - (h) Institutional capacity-building;
  - (i) Human and material resources to strengthen the capacities for the administration and enforcement of access regulations;
  - (j) Training related to genetic resources with the full participation of countries providing genetic resources, and where possible, in such countries;

- (k) Access to scientific information relevant to conservation and sustainable use of biological diversity, including biological inventories and taxonomic studies;
- (l) Contributions to the local economy;
- (m) Research directed towards priority needs, such as health and food security, taking into account domestic uses of genetic resources in country providing genetic resources;
- (n) Institutional and professional relationships that can arise from an access and benefit-sharing agreement and subsequent collaborative activities;
- (o) Food and livelihood security benefits;
- (p) Social recognition;
- (q) Joint ownership of relevant intellectual property rights.

*Annex II to the revised draft protocol*

**LIST OF TYPICAL USES OF GENETIC RESOURCES**

This list may include, but is not limited to:

- (a) Modification;
- (b) Biosynthesis;
- (c) Breeding and selection;
- (d) Propagation and cultivation;
- (e) Conservation;
- (f) Characterization and evaluation; or
- (g) Any biotechnological application involving genetic resources in activities of research not aiming at commercialization, research and development aiming at commercialization, and commercialization.

*Annex II to the report*

**ADOPTION OF THE NAGOYA PROTOCOL ON ACCESS TO GENETIC RESOURCES AND  
THE FAIR AND EQUITABLE SHARING OF BENEFITS ARISING FROM THEIR  
UTILIZATION TO THE CONVENTION ON BIOLOGICAL DIVERSITY**

*Draft decision of the Conference of the Parties\**

**Decision X/.....**

*The Conference of the Parties,*

*Recalling* that the fair and equitable sharing of the benefits arising from the utilization of genetic resources is one of the three objectives of the Convention on Biological Diversity,

*Recalling* Article 15 of the Convention on access to genetic resources and sharing of the benefits arising from their utilization,

*Recalling* the World Summit on Sustainable Development held in Johannesburg in September 2002, which called for action to negotiate within the framework of the Convention on Biological Diversity, bearing in mind the Bonn Guidelines, an international regime to promote and safeguard the fair and equitable sharing of benefits arising out of the utilization of genetic resources,

*Recalling* decision VII/19 D, in which the Ad Hoc Open-ended Working Group on Access and Benefit-sharing was mandated with the collaboration of the Ad Hoc Open-ended Intersessional Working Group on Article 8(j) and Related Provisions, to elaborate and negotiate an international regime on access to genetic resources and benefit-sharing with the aim of adopting an instrument/instruments to effectively implement the provisions of Article 15 and Article 8(j) of the Convention and the three objectives of the Convention,

*Noting with appreciation* the work carried out by the Ad Hoc Open-ended Working Group on Access and Benefit-sharing,

*Recognizing* the complementary role that the International Treaty on Plant Genetic Resources for Food and Agriculture plays in the achievement of the objectives of the Convention,

*Considering* the need for interim arrangements pending the entry into force of the Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of the Benefits Arising from their Utilization to prepare for its effective implementation once it enters into force,

**I. ADOPTION OF THE PROTOCOL**

1. *Decides* to adopt the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity (the Protocol) as set out in the annex I to the present decision;

2. *Requests* the Secretary-General of the United Nations to be the Depositary of the Protocol and requests the Executive Secretary to make arrangements for organizing a signing ceremony to be held on 4 June 2011 and for the Protocol to remain open for signature from 11 June 2011 to 8 June 2012 at

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\* This document, which was not negotiated, is without prejudice to the rights of the Parties to make further amendments and additions to the text. This document should be read in conjunction with the main body of the report, which reflects the views of the Parties during the ninth meeting of the Working Group on Access and Benefit-sharing, which took place in Cali, Colombia.

United Nations Headquarters in New York, and *further requests* the Secretary-General to make arrangements for organizing a signing ceremony in Rio de Janeiro, in June 2012, in conjunction with the United Nations Conference on Sustainable Development;

3. *Calls upon* the Parties to the Convention on Biological Diversity to sign the Protocol at the earliest opportunity in 2011 and to deposit instruments of ratification, acceptance or approval or instruments of accession, as appropriate, with a view of ensuring the entry into force of the Protocol as soon as possible;

4. *Urges* States that are not Parties to the Convention to ratify, accept, approve or accede to it, as appropriate, thereby enabling them also to become Parties to the Protocol;

## II. INTERGOVERNMENTAL COMMITTEE FOR THE PROTOCOL

5. *Decides* to establish an Open-ended Ad Hoc Intergovernmental Committee for the Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (the Intergovernmental Committee);

6. *Decides* that the Intergovernmental Committee shall undertake, with the support of the Executive Secretary, the preparations necessary for the first meeting of the Parties to the Protocol, at which time it will cease to exist, taking into account the budgetary provisions adopted by the Conference of the Parties;

7. *Notes* that the rules of procedure for the Conference of the Parties to the Convention shall apply, *mutatis mutandis*, to meetings of the Intergovernmental Committee;

8. *Decides* that the Intergovernmental Committee shall hold its first meeting from 4 to 8 June 2011 and the second meeting from 23 to 27 April 2012;

9. *Decides* that the Co-Chairs of the Intergovernmental Committee shall be Mr/Ms..... of ..... and Mr/Ms..... of ..... and *invites* the Intergovernmental Committee to elect its Bureau at its first meeting from among the representatives of the Parties to the Convention;

10. *Endorses* the work plan for the Intergovernmental Committee as contained in annex II to the present decision;

11. *Urges* the Parties to the Convention and other States and regional economic integration organizations to designate, before 31 March 2011, a focal point for the Intergovernmental Committee and to inform the Executive Secretary accordingly;

## III. ADMINISTRATIVE AND BUDGETARY MATTERS

12. *Decides* that, pending the entry into force of the Protocol, the financial costs of the interim mechanisms shall be borne by the Trust Fund for the Convention on Biological Diversity (BY);

13. *Decides* also to establish until the first meeting of the Parties to the Protocol an interim secretariat of the Protocol hosted by the Secretariat of the Convention;

14. *Takes note* of the amounts supplementary to the funding estimates for the Special Voluntary Trust Fund (BE) for Additional Voluntary Contributions in Support of Approved Activities for the biennium 2011-2012 specified by the Executive Secretary and included in the annex III and *invites* Parties and other States to make contributions to that fund;

15. *Decides* to consider and adopt the budget for the Protocol for the biennium 2013-2014 at its eleventh meeting and *requests* the Executive Secretary to submit the draft budget six months in advance.

*Annex I to the draft decision*

**PROTOCOL ON ACCESS TO GENETIC RESOURCES AND THE FAIR AND EQUITABLE SHARING OF BENEFITS ARISING OUT OF THEIR UTILIZATION**

*[To be inserted]*

*Annex II to the draft decision*

**WORK PLAN FOR THE INTERGOVERNMENTAL COMMITTEE FOR THE PROTOCOL ON ACCESS TO GENETIC RESOURCES AND THE FAIR AND EQUITABLE SHARING OF BENEFITS ARISING OUT OF THEIR UTILIZATION**

*[To be inserted]*

*Annex III to the draft decision*

**BUDGET FOR THE INTERIM SECRETARIAT OF THE PROTOCOL ON ACCESS TO GENETIC RESOURCES AND THE FAIR AND EQUITABLE SHARING OF BENEFITS ARISING FROM THEIR UTILIZATION DURING THE BIENNIUM 2011-2012**

*[To be inserted]*

*Annex III to the report*

**TRIBUTE TO THE GOVERNMENT AND PEOPLE OF COLOMBIA**

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

*Having met* in Cali from 22 to 28 March 2010, at the gracious invitation of the Government of the Republic of Colombia,

*Deeply appreciative* of the special courtesy and warm hospitality extended, and the excellent facilities provided, by the Government and people of the Republic of Colombia, to the members of delegations, observers and members of the Secretariat attending the meeting,

*Expresses its sincere gratitude* to the Government of the Republic of Colombia and to its people for the cordial welcome that they accorded to the Working Group and those associated with it and for their contribution to facilitating its work.

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