UNEP

CBD

Convention on Biological Diversity

Distr.
GENERAL

UNEP/CBD/COP/10/5/Add.1
5 May 2009

ORIGINAL: ENGLISH

CONFERENCE OF THE PARTIES TO THE
CONVENTION ON BIOLOGICAL DIVERSITY
Tenth meeting
Nagoya, Japan 18-29 October 2010

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

INTRODUCTION

1. The seventh meeting of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing was held at the headquarters of the United Nations Educational, Scientific and Cultural Organization (UNESCO), in Paris, from 2 to 8 April 2009. The meeting was preceded by two days of regional and interregional consultations consistent with paragraph 5 of decision IX/12.

2. The meeting was attended by representatives of the following Parties and other Governments: Algeria, Angola, Antigua and Barbuda, Argentina, Armenia, Australia, Austria, Bahamas, Belarus, Belgium, Benin, Bhutan, Bolivia, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Cook Islands, Costa Rica, Côte d'Ivoire, Cuba, Czech Republic, Democratic Republic of the Congo, Denmark, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, European Community, Finland, France, Gabon, Georgia, Germany, Grenada, Guinea, Guinea-Bissau, Haiti, India, Indonesia, Iraq, Italy, Jamaica, Japan, Jordan, Kiribati, Kyrgyzstan, Lebanon, Liberia, Madagascar, Malawi, Malaysia, Mali, Mauritania, Mauritius, Mexico, Micronesia (Federated States of), Morocco, Mozambique, Namibia, Nauru, Nepal, Netherlands, New Zealand, Niger, Norway, Panama, Peru, Philippines, Poland, Republic of Korea, Republic of Moldova, Romania, Rwanda, Saint Lucia, Saint Vincent and the Grenadines, Sao Tome and Principe, Saudi Arabia, Senegal, Serbia, Singapore, Solomon Islands, South Africa, Spain, Sudan, Swaziland, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Thailand, Tunisia, Turkey, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, Venezuela, 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, Global Environment Facility, International Treaty on Plant Genetic Resources for Food and Agriculture, United Nations Conference on Trade and Development (UNCTAD), United Nations Environment Programme, United Nations Institute for Training and Research, United Nations University - Institute of Advanced Studies, World Health Organization, World Intellectual Property Organization, World Trade Organization,

4. The following organizations were also represented by observers:

Access and Benefit Sharing Alliance
African Indigenous Women Organisation
ASEAN Centre for Biodiversity
ASEED Japan (Youth NGO)
Asia Indigenous Peoples Pact Foundation

/…

In order to minimize the environmental impacts of the Secretariat's processes, and to contribute to the Secretary-General's initiative for a C-Neutral UN, this document is printed in limited numbers. Delegates are kindly requested to bring their copies to meetings and not to request additional copies.

Asociacion de la Juventud Indigena Argentina
Asociación Ixacavaa De Desarrollo e Información Indígena
Assembly of First Nations
Association pour le développement social et culturel des Mbororo du Cameroun
Baikal Buryat Center for Indigenous Cultures
Berne Declaration
Bio Critical Connections
Biotechnology Industry Organization
Bioversity International
Botanic Gardens Conservation International
CBD Alliance
Center for International Sustainable Development Law
Centre for Economic and Social Aspects of Genomics
Centro de accion Legal-Ambiental y Social de Guatemala
Centro de Estudios Multidisciplinarios Aymara
Chibememe Earth Healing Association
Church Development Service (Evangelischer Entwicklungsdienst)
Commission of Forestry in Central Africa
Confederation of Agriculture Workers (Brazil-CONTAG)
Consejo Regional Otomí del Alto Lerma
Dena Kayeh Institute
Deutsche Forschungsgemeinschaft
ECOROPA
Eli Lilly and Company
Enza Zaden Research & Development B.V.
Ethnobotanical Conservation Organization for South-East Asia (ECOSEA)
EUROPABIO (European Association for Bioindustries)
European Federation of Pharmaceutical Industries and Associations
European Seed Association
European University Institute
Federacion de comunidades Nativas Fronterizas del Putumayo
Fondation Française de Recherche sur la Biodiversite
Forum Environment & Development
Foundation for Aboriginal and Islander Research Action
Fundación para la Promoción del Conocimiento Indígena
Global Biodiversity Information Facility
Global Forest Coalition
INBRAPI
Indigenous Information Network
INKA - Instituto Kaingang
Institut National de la Recherche Agronomique
Institute for Science and Ethics - Institut für Wissenschaft und Ethik
Institute for Biodiversity
International Alliance of Indigenous and Tribal Peoples of the Tropical Forests
International Biocontrol Manufacturers Association
International Centre of Insect Physiology and Ecology
International Chamber of Commerce
International Research Institute for Sustainability
International Seed Federation
International Trade and Business Law; Colas, Moreira, Kazandjian, Zikovsky
International Union for the Protection of New Varieties of Plants
IUCN - Countdown 2010
IUCN Environmental Law Centre
J. Craig Venter Institute
Junta Parroquial Salasaca Ecuador
Kobe University
Limagrain
Louis Vuitton Moet Hennessy (LVMH)
L'Unissons-nous pour la Promotion des Batwa
Malaysian Biotechnology Corporation
Michigan State University
Nascimento Silva e Figueiredo Mourao
National Aboriginal Health Organization
Natural Justice (Lawyers for Communities and the Environment)
Natural Resources Stewardship Circle
Nepal Federation of Indigenous Nationalities
Nepal Indigenous Nationalities Preservation Association
Organisation Internationale de la Francophonie Institut de l'Énergie et

de l'Environnement de la Francophonie
Phyto Trade Africa
Public Research and Regulation Initiative
Red de Mujeres Indigenas sobre biodiversidad
Redaktion & Recherche
Reserach and Information System for Developing Countries (RIS)
Russian Association of Indigenous Peoples of the North (RAIPON)
Saami Council
Sociedad Peruana de Derecho Ambiental
South Pacific Regional Environment Programme
Tebtebba Foundation
The Energy and Resources Institute (TERI)
The Union for Ethical Biotrade
Third World Network
Tulalip Tribes
University of Bath
University of Lucerne
University of Lund
University of Nagoya
University of Paris II
University of Tübingen
WIMSA - Working Group of Indigenous Minorities in Southern Africa
World Federation for Culture Collections
World Trade Organization
Yves Rocher

ITEM 1. OPENING OF THE MEETING

5. The meeting was opened at 10 a.m. on Thursday, 2 April 2009, by Mr. Fernando Casas and Mr. Timothy Hodges, Co-Chairs of the Working Group. The Co-Chairs welcomed the participants and expressed thanks to the Governments of Canada and Colombia for their ongoing support of the Co-Chairs. They recalled that the Working Group had 21 days left to discharge the mandate given to it by the Conference of the Parties, of finalizing the International Regime. There was sufficient time to fulfil that mandate, but no time to lose. The Working Group had it within its power to make concrete and positive differences to the world. The Conference of the Parties had provided the means for that task to be accomplished: specific instructions, the basis for negotiation, clear milestones, a firm deadline, and a precise goal. The Working Group had been fully enabled, and the prospects for finalizing the International Regime had never been better. The final course for the negotiations had been set at the ninth meeting of the Conference of the Parties to the Convention on Biological Diversity. At the current meeting, the Working Group was embarking on its last important leg. While there was some distance to the tenth meeting of the Conference of the Parties, in 2010, everyone – Parties, Governments, international organizations, indigenous and local communities and stakeholders – was on board. The wind was favourable, and it was high time to set sail.

6. Opening statements were made by Mr. Jochen Flasbarth, representative of the President of the ninth meeting of the Conference of the Parties to the Convention on Biological Diversity; Mr. Ahmed Djoghlaf, Executive Secretary of the Convention on Biological Diversity; Mr. Walter Erdelen, Assistant Director-General for Natural Sciences of UNESCO; and Mr. Bakary Kante, Director of the UNEP Division of Environmental Law and Conventions.

7. Mr. Flasbarth said that early findings from a study on "The Economics of Ecosystems and Biodiversity", carried out under the leadership of Mr. Pavan Sukhdev, had shown that biodiversity had an incredibly high economic value, equivalent to that of the entire car and information technology industries. Part of that economic value related to ecosystems and the rest was linked to biodiversity, some of which was shared by the world as a whole and some of which was present in individual countries or groups. That was the background to the current negotiations on the access and benefit-sharing regime, a clear mandate for which had been set out at the ninth meeting of the Conference of the Parties, held in Bonn in 2008. He reminded the members of the Working Group that they had a limited but sufficient amount of time to finalize their negotiations, and urged them to work in a spirit of constructiveness and compromise. It was time to end abstract discussion and commence negotiations on a text based on operational proposals.

8. In the hands of its very experienced Co-Chairs, the Working Group was on a successful course. It was clear that different views existed among the members, which was perfectly legitimate. While many of them had arrived with clear instructions from their Governments, it was incumbent on each individual negotiator to create a spirit of compromise by demonstrating flexibility, and even using their personal charisma, to make the negotiations a success. He thanked his colleagues in the Bureau, noting that all the meetings it had held since the Bonn meeting had been conducted in a positive spirit. He thanked the regions for sending capable delegates. He also thanked the Executive Secretary and the Secretariat of the Convention for the excellent job they had done in preparing the current meeting, with the limited means available to them.

9. Mr. Djoghlaf welcomed participants and stressed the importance of the meeting in preparation for the tenth meeting of the Conference of the Parties. He said that the leadership of the two Co-Chairs of the Working Group, the German Presidency of the Conference of the Parties and the other members of the Bureau deserved special recognition. The letter addressed the previous week by the President of the Conference of the Parties, Mr. Gabriel Sigmar, to all ministers in charge of access and benefit-sharing had been a strong and timely message of high political significance. He also expressed his appreciation to the Governments of Spain and Sweden for their financial support for the organization of the meeting, and to the Governments of Germany, Norway and Spain for their support for the participation of representatives from developing countries and countries with economies in transition.

10. He thanked the United Nations Environment Programme (UNEP), noting that it had contributed to and participated in the two expert meetings held in recent months. It had also provided the financial support for the commissioning of the five studies requested by the Conference of the Parties, and its commitment to organizing regional consultations was another key contribution to the current negotiations. He also expressed his appreciation to UNESCO for hosting the meeting and for doing its utmost to accommodate the needs of the Secretariat in a very busy period. There had been a long history of collaboration between UNESCO and the Convention on Biological Diversity. UNESCO had been a key and reliable partner in the implementation of many of the Convention's work programmes. Further collaboration was currently being discussed, notably within the context of the International Year of Biodiversity in 2010. It was therefore fitting that the current meeting was taking place at UNESCO Headquarters in Paris.

11. Stressing the pivotal nature of the current meeting on the road to the tenth meeting of the Conference of the Parties, he said that the mandate of the Working Group emphasized the link between peace and sustainable and equitable development. Its successful implementation would bring the world one step closer to peace and shared prosperity through global solidarity.

12. Mr. Erdelen welcomed the Working Group on behalf of Mr. Koïchiro Matsuura, Director-General of UNESCO. The Organization was very pleased to be able to host the meeting, which was taking place in the context of the long and fruitful collaboration between UNESCO and the CBD. UNESCO had been recognized by the Parties to the CBD as a key partner in the implementation of the programme of work under the Convention, in particular through the Man and the Biosphere Programme (MAB), the World Heritage Convention, and UNESCO's work on environmental education, the United Nations Decade of Education for Sustainable Development, and in the fields of biodiversity research, monitoring and assessment. He indicated that UNESCO would also be prepared to contribute its experience in access and benefit-sharing with regard to the scientific, cultural, educational and communication aspects, including with regard to participation by stakeholders, partnerships and agreements. While it was not for UNESCO to anticipate the content of the Working Group's discussions, it could provide the environment for a successful and productive meeting resulting in the finalization, in good time before the tenth meeting of the Conference of the Parties, of an international regime on access and benefit-sharing.

13. Mr. Kante, speaking on behalf of the Executive Director of UNEP, expressed his admiration for the energy, commitment and leadership of the President and Bureau of the Conference of the Parties, and

the Executive Secretary of the Convention. To demonstrate its support for efforts to finalize the International Regime on access and benefit-sharing, UNEP was pledging US$ 1 million to the process. US$ 250,000 had been delivered so far and a further US$ 500,000 had been committed. To illustrate the meaning of biodiversity and the ecosystem, he told the story of his own happy, healthy childhood as one of 12 children who had never gone hungry. They had never had to buy food. They were living in a green and environmentally friendly manner without knowing it at the time. The current meeting was all about sustainability: sharing instead of selfishness. Despite not receiving media attention, it was probably just as important as the G20 summit taking place in London since what was at stake was not only the economy but the very survival of the planet. He was sure that it would achieve its objectives.

14. The Co-Chairs of the Working Group conveyed their thanks to the President of the Conference of the Parties for the dedication and support offered by the host country of the ninth meeting of the Conference of the Parties. They thanked the Executive Secretary of the Convention, and expressed appreciation for the excellent work done by his team both in Montreal and Paris. They also expressed thanks to UNESCO for hosting the present meeting, to UNEP for its active and generous support of the access and benefit-sharing process, and, finally, to the Bureau of the Conference of the Parties.

15. The representative of Mexico (on behalf of the Latin American and Caribbean Group) said that the Latin American and Caribbean Group was committed to the access and benefit-sharing process and would be working, in a spirit of cooperation and flexibility, to finalize the International Regime. It hoped that the meeting of the Conference of the Parties to be held in Nagoya, Japan, in 2010 would lead to the adoption of a binding instrument. Furthermore, it supported the idea of working in contact groups, participation in which should be limited in order to increase efficiency.

16. The representative of the Czech Republic (on behalf of the European Community and its member States) expressed thanks to the Bureau of the Conference of the Parties and to the Secretariat for the work done in preparation for the meeting of the Working Group. Many of the questions the Group was addressing were closely related and, in that connection, she praised the work done by the Group of Technical and Legal Experts on Concepts, Terms, Working Definitions and Sectoral Approaches and the Group of Technical and Legal Experts on Compliance. In the view of the European Community and its member States, contact groups should not be set up at the beginning of the Working Group's meeting, but during the course of the meeting.

17. The representative of Ukraine (on behalf of the Central and Eastern European Group) thanked the Secretariat for the work done in preparation for the meeting of the Working Group. That meeting was vital to drawing up the International Regime on access and benefit-sharing. Guided by a spirit of compromise, the Central and Eastern European Group would be using its knowledge and expertise to contribute to the process.

18. The representative of Namibia (on behalf of the African Group) expressed his thanks to UNESCO for hosting the meeting of the Working Group and to the Secretariat and the Co-Chairs for the work done in preparation for the meeting. He said that it was time to put aside lengthy explanations of views and begin negotiating the text of the International Regime, in a spirit of cooperation, good faith, flexibility and innovation. Benefit-sharing was the key to attaining the other objectives of the Convention. Without effective and wide-ranging sharing of benefits, the cost of conservation would be too high.

19. The representative of Brazil (on behalf of the Like-Minded Megadiverse Countries) said that the Convention was at a crucial phase in its history. It was time to find the means and legal basis to enhance the value of natural resources, genetic resources and traditional knowledge as a tool to promote sustainable development, and to devise an effective instrument to recognize the rights of indigenous and local communities to their knowledge. It was time to agree on a binding legal instrument to ensure the fair and equitable sharing of the benefits from the utilization of genetic resources, their derivatives and associated traditional knowledge, and to prevent misappropriation and misuse. Compliance must be

secured in user countries with national laws and requirements, including the previous informed consent and mutually agreed terms of the country providing such resources. The agreements reached at the World Summit on Sustainable Development and the eighth and ninth meetings of the Conference of the Parties had provided a basis for substantive negotiations on an operative text, and the megadiverse countries were ready to negotiate and to seek common understandings so as to fulfil the common duty to reach a successful outcome at the current meeting on all of the issues on the agenda.

20. The representative of the Cook Islands (on behalf of the Asia and the Pacific Group) thanked the Executive Secretary and his staff for their hard work in staging the current meeting in Paris. She also thanked the donors that had made it possible for developing countries to take part, and expressed her appreciation of the invaluable inputs provided by the comprehensive work of the two expert groups and the five studies commissioned by the Secretariat. Her group stood ready to play its part in the urgent work of finalizing an effective International Regime capable of keeping up with the alarming speed of growth in demands on resources and technological progress. Time was short and there was no room for complacency. She said that her group looked forward to the important work of the expert group on traditional knowledge associated with genetic resources.

21. A written statement was submitted to the Working Group by the International Chamber of Commerce (ICC)/Business Delegation. In its statement, ICC drew attention to the fact that the nature of accessing and managing genetic resources in the public and private sectors was fundamentally changing. In pursuing its negotiations, the Working Group must therefore be cognizant of, and capable of, reacting to those changes. In response to a weakened global economy, the Working Group needed to draw up an international regime that was based on responsible cost-benefit analysis. Furthermore, in view of the continuous reduction in the resources of the United Nations, member countries, local communities and business, it would be irresponsible for the Working Group to produce a broad-based and bureaucratic access and benefit-sharing regime, which would only be ineffective. Finally, industry remained fully supportive of the objectives set out under Article 1 of the Convention on Biodiversity.

ITEM 2. ORGANIZATIONAL MATTERS

2.1. Officers

22. 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 ninth meeting, Mr. Fernando Casas and Mr. Timothy Hodges served as Co-Chairs of the Working Group.

23. On the proposal of the Bureau, Mr. Damaso Luna of Mexico was designated to serve as Rapporteur.

2.2. Adoption of the agenda

24. At the 1st session of the meeting, on 2 April 2009, the Working Group adopted the following agenda, on the basis of the provisional agenda (UNEP/CBD/WG/ABS/7/1):

1. Opening of the meeting.

2. Organizational matters.

3. International regime on access and benefit-sharing: negotiation of operational text on:

   3.1. Objective;

   3.2. Scope;

3.3. Compliance;

3.4. Fair and equitable benefit-sharing;

3.5. Access.

4. Other matters.

5. Adoption of the report.

6. Closure of the meeting.

2.3. Organization of work

25. At the 1st session of the meeting, on 2 April 2009, the Working Group adopted the organization of work as proposed in annex II of the revised annotated provisional agenda (UNEP/CBD/WG-ABS/7/1/Add.1/Rev.1).

26. The Co-Chairs reminded the Working Group that the key question of the nature of the International Regime was not on the agenda of the current meeting and would be addressed at its next meeting.

27. In course of the meeting, three contact groups were established on, respectively, agenda items 3.1 and 3.2 (Objective and scope), 3.3 (Compliance) and 3.4 and 3.5 (Fair and equitable benefit-sharing and access (see paras. 59, 73 and 97 below) . The contact group on objective and scope was chaired by Ms. Birthe Ivars (Norway) and Mr. David Hafashimana (Uganda), while those on compliance and on fair and equitable benefit-sharing and access were chaired by Mr. René Lefeber (Netherlands) and Mr. Pierre du Plessis (Namibia)

28. At the 8th session of the meeting, the Co-Chairs of the Working Group invited contact groups to submit finalized working documents by the deadline set to enable their translation into the six official United Nations languages in time for the final session of the Working Group. The five separate working papers containing the draft text on each agenda item would be submitted for approval to the plenary with a view to inclusion as an annex to the final report, to serve as the basis for the Working Group's future negotiations on objective, scope, compliance, fair and equitable benefit-sharing and access.

ITEM 3. INTERNATIONAL REGIME ON ACCESS AND BENEFIT-SHARING: NEGOTIATION OF OPERATIONAL TEXT

29. The Ad Hoc Open-ended Working Group took up agenda item 3 at the 1st session of the meeting, on 2 April 2009.

30. In considering the item, the Working Group had before it a collation of operative text submitted (UNEP/CBD/WG-ABS/7/4 and Add.1-3); a collation of operative text including related explanations and rationale (UNEP/CBD/WG-ABS/7/5), a collation of other views and information submitted (UNEP/CBD/WG-ABS/7/6 and Add.1); and the text of annex I to decision IX/12 (UNEP/CBD/WG-ABS/7/7). The Working Group also had before it the report of the Group of Legal and Technical Experts on Concepts, Terms, Working Definitions and Sectoral Approaches (UNEP/CBD/WG-ABS/7/2), held in Windhoek, Namibia, from 2 to 5 December 2008, and the report of the Group of Legal and Technical Experts on Compliance in the Context of the International Regime on Access And Benefit-Sharing (UNEP/CBD/WG-ABS/7/3), held in Tokyo, from 27 to 30 January 2009.

31. It also had before it, as information documents, a compilation of submissions received by Parties, other Governments, international organizations, indigenous and local communities and relevant

stakeholders (UNEP/CBD/WG-ABS/7/INF/1 and Add.1); the study on the identification, tracking and monitoring of genetic resources (UNEP/CBD/WG-ABS/7/INF/2); studies 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); the 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); the 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); the report of a Workshop on Access and Benefit-sharing in Non-Commercial Biodiversity Research, held in Bonn, from 17 to 19 November 2008, (UNEP/CBD/WG-ABS/7/INF/6); the report of the Vienna Workshop on Matters related to Traditional Knowledge associated with Genetic Resources and the International Regime on Access and Benefit-sharing (UNEP/CBD/WG-ABS/7/INF/7); and a study prepared by the Secretariat of the United Nations Conference on Trade and Development (UNCTAD) on elements of an international regime for the recognition of national regulations on access to genetic resources (UNEP/CBD/WG-ABS/7/INF/8).

32. Ms. Rosell (Peru), Co-Chair of the Group of Legal and Technical Experts on Compliance, introducing the group's report, said that the meeting had produced very substantive results that could serve as a useful tool for the debates. As a general remark, although beyond the Group's terms of reference, where non-compliance by the Parties with the provisions of the Convention was concerned, it was recognized that the International Regime might result in a full compliance mechanism being required. However, recognizing the sovereign rights of States over their resources, complete harmonization of national measures was not considered practical, so the regime might rather include a minimum set of benefit-sharing requirements to facilitate compliance across jurisdictions. There was a need to achieve a clearer understanding by users and providers through awareness-raising. The group had therefore concluded that establishing internationally agreed obligations to ensure compliance with national ABS laws and the International Regime, and to prevent misappropriation, misuse and biopiracy was a more cost-effective and practical solution than diverting resources into judicial processes.

33. As to national access and benefit-sharing laws, where national legislation existed, compliance would depend on whether the provisions of the Convention were detailed enough to be directly enforceable. Article 15 did not compel Parties to adopt access legislation, but they were obliged to take measures with the aim of sharing benefits. Where no such laws existed, the International Regime could call for them, in order to ensure protection of rights to genetic resources and/or associated traditional knowledge. Alternatively, international law principles and mechanisms could be developed or referred to, and capacity-building and financial measures could be provided under the International Regime. Internationally agreed minimum standards and conditions could be used as a default procedure. The absence of national ABS legislation would not prevent contracts being concluded between providers and users.

34. Where national access and benefit-sharing laws existed, each country had the right to develop its own range of sanctions for breach within its own jurisdiction. Enforcement of criminal and administrative sanctions, on the other hand, was generally not possible across jurisdictions. Bilateral treaties for mutual legal assistance sometimes required proof of dual criminality, which could not be satisfied where there was no national access and benefit-sharing legislation. The International Regime could include measures to facilitate cooperation in such cases.

35. Some of the existing mechanisms identified by the experts could accommodate violations of national access and benefit-sharing laws and CBD requirements, but not all. They could be further harmonized. The International Regime might include additional measures, but not on a "one-size-fits-all" basis. The various measures to be considered ranged from internationally recognized certificates of compliance to monitoring and dispute settlement mechanisms.

36. Mr. Isozaki (Japan), Co-Chair of the Group of Legal and Technical Experts on Compliance, summarized the experts' views on compliance with private ABS contractual agreements between providers and users. There was a wealth of accumulated experience in international society, especially in relation to commercial transactions. Private international law instruments governed access to courts in cross-border disputes, and there were also alternative dispute resolution (ADR) mechanisms available, as listed in the report. Many of those could be applicable in the context of the International Regime. However, those instruments and mechanisms did not provide a comprehensive response. Many of the measures referred to by Ms. Rosell, and listed on pages 8 and 9 of the group's report in the context of compliance with legal instruments, as well as those measures listed in the appendix, were equally applicable to compliance with private contracts. Specific ADR systems could be devised for access and benefit-sharing, such as setting up special panels of experts in the field.

37. The group had examined the possibility of establishing an internationally agreed definition of misappropriation and misuse of genetic resources and associated traditional knowledge, and found it would make it easier to enforce contract violations in user countries.

38. As to compliance with customary law, one idea put forward had been the digital library or clearing house system. However, for those communities reluctant to disclose their customary laws, maximum stakeholder involvement at the first stage of access would be advisable to ensure that the customary laws were indirectly represented in the negotiation process.

39. On the question of whether special compliance measures were needed for research with non-commercial intent, the group had concluded that it was a matter for each contracting party, with the proviso that the contract should set out the consequences of a change of intent.

40. The report was the product of the dedication of everyone who had participated in Tokyo, and Mr. Isozaki expressed the thanks of the co-chairs to all of them. He hoped the report would serve as a useful contribution to the discussions ahead.

41. Mr. Mahon (Canada), Co-Chair of the Group of Legal and Technical Experts on Concepts, Terms, Working Definitions and Sectoral Approaches, introducing the group's report, said that the 30 members of the expert group had worked very hard, in a collegial manner, on what was considered to be an extremely complex issue, with the able assistance of the Government of Namibia and the Secretariat of the Convention on Biological Diversity.

42. There had been broad differences of opinion as to what constituted a genetic resource. After lengthy debate, it had been generally acknowledged that functionality should be considered the key factor in distinguishing between biological and genetic resources, the latter being characterized by the use of functional units of heredity. The experts had then identified a series of activities that could clearly be characterized as using genetic resources. General agreement had also been reached with regard to products, derivatives and commodities: rather than being separate categories, they were considered to exist along a continuum that reflected their degree of commercialization, marketability or added value. The group had felt that it might be useful to have indicators as to what point had been reached on the continuum.

43. The expert group had met in smaller sectoral groups to identify current practices in each sector. A clear distinction had emerged between commercial and non-commercial practices, while it had been more difficult to define the specific approaches of other, smaller sectors. The group had concluded that it would be useful to further investigate the approaches associated with individual sectors.

44. Mr. du Plessis (Namibia), Co-Chair of the Group of Legal and Technical Experts on Concepts, Terms, Working Definitions and Sectoral Approaches, continuing the introduction to the report of the expert group, said that for logistical reasons, the developing countries had been under-represented in the

expert group, while the agricultural sector and the non-commercial research sector had been over-represented. The questions addressed by the group had arisen to a great extent from a lack of clarity in the Convention itself. Nevertheless, renegotiation of the definitions set out in the Convention was not regarded as a practical solution by the expert group, although in fact, it was no more difficult than adopting a protocol and could still be considered by the Working Group as a last resort.

45. The expert group had concluded that there was currently no shared understanding of what the term "derivatives" meant, and that clear definitions were necessary if that term were to be included in the International Regime. Furthermore, focusing on the utilization of genetic resources was a key concept that could go a long way towards resolving some of the obstacles to finalizing the International Regime.

46. The expert group had also concluded that flexibility rather than a "one-size-fits-all" approach was important. In any event, many of the problems relating to the definition of concepts and terms would be resolved if the International Regime could effectively guarantee enforcement of mutually agreed terms. He noted also that even very effective sectoral approaches, like the International Treaty on Plant Genetic Resources for Food and Agriculture, could not entirely prevent misappropriation and misuse within sectors.

47. There had been a broad consensus that the International Regime should be simple, effective and applicable, allow for multiple approaches, build trust between providers and users, and increase legal certainty for all the parties involved.

48. He expressed his thanks to all those who had participated in the expert group for their diligent work and to the members of the Secretariat for their professionalism and dedication.

49. At the 1st session of the meeting, on 2 April 2009, the Co-Chairs of the Working Group requested that printed and electronic copies of any new proposals, or amendments to existing proposals, of operational text on agenda item 3 be submitted by specific deadlines. They would be incorporated into a consolidated non-paper for each item also including operational text submitted prior to the meeting.

50. Participants should confine their comments in plenary to proposals of new operational text or changes to text already submitted.

3.1. Objective

and

3.2. Scope

51. The Ad Hoc Open-ended Working Group took up agenda item 3.1 at the 1st session of the meeting, on 2 April 2009.

52. Comments and proposals were made by the representatives of Algeria, Argentina, Brazil (on behalf of the Like-Minded Megadiverse Countries), Czech Republic (on behalf of the European Community and its member States), Indonesia, Japan, Peru, Syria and Thailand.

53. At its 9th session, on 8 April 2009, the Working Group approved document UNEP/CBD/WG-ABS/7/L.2, containing the outcome of the work of the contact group under agenda item 3.1.

54. The Ad Hoc Open-ended Working Group took up agenda item 3.2 at the 1st session of the meeting, on 2 April 2009.

55. Comments and proposals were made by Brazil (on behalf of the Like-Minded Megadiverse Countries) and Namibia (on behalf of the African Group).

56. The Ad Hoc Open-ended Working Group resumed its consideration of agenda item 3.2 at the 2nd session of the meeting, on 2 April 2009.

57. Comments and proposals were made by the representatives of Argentina, Australia, Brazil (on behalf of the Like-Minded Megadiverse Countries), Canada, Cuba, Czech Republic (on behalf of the European Community and its member States), Japan, Namibia (on behalf of the African Group), Norway, Peru, Switzerland, Thailand and Venezuela.

58. The European Union reserved its position with regard to the exclusion of specific uses of pathogens of particular public concern for the health of humans, animals or plants from the scope of the international regime. Internal consultations were being held within the Union on how the matter should be addressed, and a proposal would be presented once those consultations had concluded.

59. The Ad Hoc Open-ended Working Group decided at the 3rd session of the meeting, on 3 April 2009, to set up an open-ended contact group on items 3.1 and 3.2 of the agenda (Objective and Scope) with Ms. Birthe Ivars (Norway) and Mr. David Hafashimana (Uganda) serving as co-chairs. Its mandate would be to review the respective compilations and to identify areas of convergence and those which needed more work.

60. Comments and statements were made by the representatives of Brazil (on behalf of the Like-Minded Megadiverse Countries), Haiti and Namibia (on behalf of the African Group).

61. At the 4th session of the meeting, on 4 April 2009, Ms. Birthe Ivars (Norway), co-chair of the contact group on objective and scope, reported on the group's discussions the previous day. The group had had before it a non-paper containing a compilation of operational text proposed in relation to item 3.1 (Objective). The group had engaged in a first reading of the text under the heading "Objective", as set out in annex 1 of decision IX/12, and had arrived at a firm basis on which to pursue its negotiations. She recommended that at its next meeting the group begin its first reading under the heading "Scope".

62. At the 5th session of the meeting, on 5 April 2009, Mr. David Hafashimana, co-chair of the contact group on objective and scope, reported on the group's discussions the previous evening. A consolidated text had been produced, which would provide the basis for further negotiations, and the document would be made available by the end of the day. More time was requested for the group to complete its work.

63. At the 7th session of the meeting, on 6 April 2009, Ms. Birthe Ivars, co-chair of the contact group on objective and scope, reported on the group's discussions during the day. The group had pursued its work on "objective", and would be proceeding to "scope". She stressed the need for compromise.

64. At the 8th session of the meeting, on 7 April 2009, Mr. David Hafashimana (Uganda), co-chair of the contact group on objective and scope, reported on the group's discussions the previous day. The group had made good progress, considerably reducing the text on "objective" and eliminating many of the square brackets. At its next meeting, it would take up the working document on "scope" and, time permitting, review the revised document on "objective".

65. At the 9th session, on 8 April 2009, Ms. Birthe Ivars, co-chair of the contact group on objective and scope, reported on the group's discussions the previous day. Despite the size of the group and the time spent on procedural issues, there had been good discussions resulting in documents UNEP/CBD/WG-ABS/7/L.2 and L.3 that were before the plenary for adoption. It was the sincere hope and expectation of the co-chairs that a more like-minded spirit would prevail in future negotiations, and

they looked forward to more interaction with the Co-Chairs of the Working Group. As well as the Co-Chairs of the Working Group, she thanked the delegates and observers, interpreters and Secretariat.

66. At its 9th session, on 8 April 2009, the Working Group approved document UNEP/CBD/W-ABS/7/L.3, containing the outcome of the work of the contact group under agenda item 3.2, as amended by Brazil (on behalf of the Like-Minded Megadiverse Countries) and subject to the correction by the Secretariat of translation issues raised by the representatives of Peru, Colombia and Egypt.

3.3. Compliance

67. The Ad Hoc Open-ended Working Group took up agenda item 3.3 at the 2nd session of the meeting, on 2 April 2009.

68. Comments and proposals were made by the representatives of Brazil (on behalf of the Like-Minded Megadiverse Countries), Czech Republic (on behalf of the European Community and its member States), Japan, Namibia (on behalf of the African Group), New Zealand, Peru and Thailand.

69. A comment was also made by the representative of the World Intellectual Property Organization (WIPO).

70. The Ad Hoc Open-ended Working Group resumed its consideration of agenda item 3.3 at the 3rd session of the meeting, on 3 April 2009.

71. Comments and proposals were made by Brazil (on behalf of the Like-Minded Megadiverse Countries), Czech Republic (on behalf of the European Community and its member States) and New Zealand.

72. A comment was also made by the representative of the International Indigenous Forum on Biodiversity (IIFB).

73. The Ad Hoc Open-ended Working Group decided at the 4th session of the meeting, on 4 April 2009, to set up a second open-ended contact group, on item 3.3 of the agenda (Compliance), with Mr. René Lefeber (Netherlands) and Mr. Pierre du Plessis (Namibia) serving as co-chairs. Its mandate would be to review the non-paper and to identify areas of convergence and those which needed more work.

74. Comments were made by the representatives of Brazil (on behalf of the Like-Minded Megadiverse Countries) and Czech Republic (on behalf of the European Community and its member States).

75. At the 5th session of the meeting, on 5 April 2009, Mr. Lefeber, co-chair of the contact group on compliance, reported on the group's discussions the previous day. It had been agreed that all proposals for preambular text be "parked" and that attention be focused on substance. The co-chairs were mandated to "place in suspension" the text as to structure and nature. A three-step process had been established: first, to identify the basis for further work on each "brick" and "bullet" in the non-paper on compliance; second, to consolidate the views of the Parties; and third, to move on to negotiate the text. The group had completed the first step, producing the basis of an operational text. He recommended that it be reconvened in order to complete the second and third steps based on a revised version of the non-paper.

76. At the 7th session of the meeting, on 6 April 2009, Mr. Lefeber, co-chair of the contact group on compliance, reported on the group's discussions during the day. It had agreed ground rules and was halfway through the revised paper.

77. At the 8th session of the meeting, on 7 April 2009, Mr. Lefeber, co-chair of the contact group on compliance, reported on the group's discussions the previous evening. The work had come to a halt owing to entrenched positions and, having failed to resolve an issue over placement of texts, was suspended until a closed meeting between the co-chairs and spokespersons of the regional groups had arrived at a solution. The majority of the participants favoured the solution of eliminating the methodology involving the use of "bricks" and "bullets".

78. The representative of Canada said that the use of "bricks" and "bullets" was a critical procedural tool, devised at the sixth meeting of the Working Group, which had enabled the Parties to clearly distinguish elements to be further elaborated with the aim of incorporation into the International Regime from those whose inclusion required further consideration. An agreement to remove the distinction between "bricks" and "bullets" did not mean that all items would suddenly become "bricks". Instead, they should all be treated on an equal footing as elements for consideration, without prejudice to their ultimate inclusion in the regime.

79. The representatives of Brazil (on behalf of the Like-Minded Megadiverse Countries), Colombia, Cuba, the Czech Republic (on behalf of the European Community and its member States), India, Japan, Malaysia, Namibia (on behalf of the African Group) and Peru made statements in support of that understanding.

80. Mr. Lefeber confirmed that the use of "bricks" and "bullets" was a methodology that had outlived its usefulness. Rules of engagement for negotiations could not, and should not, be codified or made the subject of a parallel negotiation. In response to concerns raised with regard to duplication, he invited participants in the contact group to withdraw proposals appearing under more than one heading. The group must work, in good faith, to streamline and merge text where necessary.

81. Mr. du Plessis, co-chair of the contact group, pointed out that "bricks" and "bullets" had helped resolve a difficult position and make progress. They also reflected the Geneva consensus, but consensus needed to be advanced to reach agreement in Nagoya.

82. The representative of New Zealand, supported by Norway, observed that what constituted duplication was not always cut and dried.

83. The representative of Brazil (on behalf of the Like-Minded Megadiverse Countries) reiterated his understanding that the removal of the distinction between "bricks" and "bullets" did not allow for the renegotiation of the agreement on some specific components that were to be included in the International Regime, as agreed by all Parties at the sixth meeting of the Working Group on Access and Benefit-sharing in Geneva, and ratified by decision IX/12.

84. He said that while the text of decision IX/12 of the Conference of the Parties remained the basis for negotiations, the annex to the report of the current meeting, which represented a giant step forward, would also be the basis for future negotiations. He sought confirmation that, even after having eliminated the use of "bricks" and "bullets", text that had already been agreed would remain part of the International Regime.

85. The representative the Czech Republic (on behalf of the European Community and its member States) said that the decision to eliminate "bricks" and "bullets" had been a major step forward which meant that all the proposed text was on the table on an equal footing. The European Community would itself be making a new submission under "development of tools to enforce compliance".

86. The representative of Malaysia, supporting the position of the Like-Minded Megadiverse Countries, said that the agreement to remove "bricks" and "bullets" had been made on the understanding that essential elements previously agreed upon would remain in the International Regime, and not be

watered down or eliminated. He was reassured by the previous speaker's statement that the understanding was shared.

87. The representative of the Czech Republic (on behalf of the European Community and its member States) said that, in harmony with the procedure used in preparation of the seventh meeting of the Working Group, the Secretariat should invite the Parties to make submissions with regard to the items to be considered by the eighth meeting. Any texts submitted in that regard should build on the annex to the present report. Text submitted would then be compiled and distributed to give Parties the opportunity to review them prior to the eighth meeting.

88. The Co-Chairs of the Working Group said that submissions on both new items to be considered at the eighth meeting and items that had been considered at the seventh meeting would be acceptable.

89. The representative of China, concerned that many substantive items remained in square brackets, stressed that the focus must remain on substance rather than form. Developing a roadmap called for a spirit of compromise.

90. Following that discussion, the Co-Chairs of the Working Group confirmed the understanding that the distinction between "bricks" and "bullets" had outlived its usefulness and, therefore, would no longer be applied to the main components, with all proposed text on an equal footing. On the recommendation of its Co-Chairs, the Working Group adopted the three-step methodology outlined in the 5th session of the meeting (see paragraph 75 above).

91. At the 9th session of the meeting, on 8 April 2009, Mr. Pierre du Plessis, co-chair of the contact group on compliance, reported on the group's discussions the previous day. He said that good progress had been made. Many square brackets remained, as the issues were interconnected. Parties were reserving their positions, or their right to introduce new text at a later stage, or were unwilling to commit until the complete picture emerged. There was a clear need to start working on definitions in order to progress further. Mr. du Plessis pointed out certain editing changes that remained to be made to document UNEP/CBD/WG-ABS/7/L.4.

92. At its 9th session, on 8 April 2009, the Working Group approved document UNEP/CBD/WG-ABS/7/L.4, containing the outcome of the work of the contact group under agenda item 3.3, as amended by the co-chairs of the contact group and Brazil (on behalf of the Like-Minded Megadiverse Countries).

3.4. Fair and equitable benefit-sharing

and

3.5. Access

93. The Ad Hoc Open-ended Working Group took up agenda item 3.4 at the 3rd session of the meeting, on 3 April 2009.

94. Comments and proposals were made by Brazil (on behalf of the Like-Minded Megadiverse Countries), Czech Republic (on behalf of the European Community and its member States), Haiti, Japan, Namibia (on behalf of the African Group), Peru, Switzerland and Thailand.

95. The Ad Hoc Open-ended Working Group took up agenda item 3.5 at the 3rd session of the meeting, on 3 April 2009.

96. Comments and proposals were made by the representatives of Brazil (on behalf of the Like-Minded Megadiverse Countries), Czech Republic (on behalf of the European Community and its member States), Namibia (on behalf of the African Group) and Thailand.

97. The Ad Hoc Open-ended Working Group decided at the 5th session of the meeting, on 5 April 2009, to set up a third open-ended contact group on agenda items 3.4 and 3.5 (Benefit-sharing and Access), with Mr. René Lefeber (Netherlands) and Mr. Pierre du Plessis (Namibia) serving as co-chairs. It would have a mandate to negotiate the main components those two agenda items, as presented in their respective non-papers, using the three-step methodology established by the contact group on compliance.

98. At the 6th session of the meeting, on 6 April 2009, Mr. René Lefeber, co-chair of the contact group on benefit-sharing and access, reported on the group's discussions the previous day. As mandated, it had followed the same three-step methodology as had been adopted for compliance. The group had substantially reduced the text to go forward to the consolidation stage, and its co-chairs would shortly circulate a working paper to be used as the basis for that discussion. He expressed thanks to all the participants, and to the Secretariat and the interpreters, for their willingness to work on a Sunday.

99. Comments were made by the representatives of Brazil (on behalf of the Like-Minded Megadiverse Countries) and Mexico (on behalf of the Group of Latin American and Caribbean Countries).

100. In response to a concern expressed by the representative of Burkina Faso, the Secretariat announced that translations of working documents into the other official United Nations languages would be available the following day.

101. At the 9th session of the meeting, on 8 April 2009, Mr. du Plessis, co-chair of the contact group on benefit-sharing and access, reported on the group's discussions the previous day. He said that his remarks about the work on compliance applied equally to documents UNEP/CBD/WG-ABS/7/L.5 and L.6. Many issues remained in square brackets. Access and benefit-sharing still required very substantial progress before consensus was reached. He pointed out editing changes that remained to be made to the documents.

102. At its 9th session, on 8 April 2009, the Working Group approved document UNEP/CBD/WG-ABS/7/L.5, containing the outcome of the work of the contact group under agenda item 3.4, as amended by the co-chair of the contact group, Brazil (on behalf of the Like-Minded Megadiverse Countries) and Peru.

103. At its 9th session, on 8 April 2009, the Working Group approved document UNEP/CBD/WG-ABS/7/L.6, containing the outcome of the work of the contact group under agenda item 3.5, as amended by the co-chair of the contact group and Brazil (on behalf of the Like-Minded Megadiverse Countries) and subject to the correction by the Secretariat of translation issues raised by the representative of Egypt.

Action by the Working Group on item 3 as a whole

104. At the 5th session of the meeting, on 5 April 2009, the Co-Chairs of the Working Group approved the suggestions by the representative of Brazil (on behalf of the Like-minded Megadiverse Countries) that a single set of criteria be established for "placing in suspension" texts with regard to the issue of the nature of the International Regime.

105. Non-papers, after a first reading, would be recategorized as working documents, starting with the consolidated texts produced by the contact groups on objective and scope, and on compliance.

106. The representative of Haiti requested that contact group meetings be organized in such a way as to enable small delegations to participate fully.

107. In response to a concern expressed by the representative of Peru at the 6th session of the meeting, on 6 April 2009, the Co-Chairs of the Working Group confirmed that no more than two meetings would be held in parallel to enable delegations to organize their participation. Organization of the day's work would be at the discretion of the co-chairs of the respective contact groups.

108. At the 8th session of the meeting, on 7 April 2009, the representative of Canada said that the three phases of development of the International Regime were: consolidation of the operational text submitted; giving Parties an opportunity to bracket text, import text from non-retained submissions and introduce alternative text; the negotiating process at which time Parties could introduce words, phrases, ideas and alternative text to clarify and simplify the regime with a view to arriving at a consensus.

109. At the request of the representative of Brazil (on behalf of the Like-Minded Megadiverse Countries), the Co-Chairs of the Working Group ruled that the three stages referred to were part of the negotiations.

ITEM 4. OTHER MATTERS

110. At the 3rd session of the meeting, on 3 April 2009, Mr. Jochen Flasbarth, representing the President of the Conference of the Parties, announced the sad news of the sudden death of Mr. Ben Turtur Donnie, Executive Director of the Environment Agency of Liberia, a well-known colleague who had been deeply committed to the cause of biodiversity, and had attended many meetings held under the Convention on Biological Diversity. The Executive Secretary had sent a message of condolence to Mr. Donnie's family. The meeting observed a minute of silence to pay tribute to the memory of their colleague.

111. The representative of Namibia (speaking on behalf of the African Group) thanked his colleagues in the Working Group and the Secretariat for the sentiments expressed on the death of Mr. Donnie. He gratefully acknowledged the message of condolence from the Executive Secretary, which he had conveyed to the family, and asked all the delegates to complete the negotiations of the International Regime as a tribute to the memory of their friend.

112. At the 3rd session of the meeting, on 3 April 2009, the representative of Norway announced that her Government had submitted a new bill to parliament on access to genetic material and benefit-sharing, which had been drafted in consultation with, and unanimously approved by, the Sami Parliament.

113. At the 7th session of the meeting, on 6 April 2009, the Co-Chairs of the Working Group expressed condolences on behalf of the Working Group to the delegation of Italy for the earthquake that had struck during the night leaving many dead and tens of thousands homeless.

114. At the 9th session of the meeting on 8 April 2009, the representative of Algeria expressed heartfelt condolences to the delegation of Italy for the earthquake suffered in their country.

115. At the 9th session of the meeting, on 8 April 2009, the representative of Brazil made the following declaration on behalf of the Like-Minded Megadiverse Countries on the ongoing negotiations in the WHO on a Pandemic Influenza Preparedness Framework for the Sharing of Influenza Viruses and Access to Vaccines and other Benefits:

> "Aware of the ongoing negotiations in the World Health Organization on a Pandemic Influenza Preparedness Framework for the Sharing of Influenza Viruses and Access to Vaccines and other Benefits, pursuant to WHA Resolution 60.28, the Group of Like-

> Minded Megadiverse Countries is of the view that: In consistence with the CBD, the said Resolution recognizes the sovereign right of States over their biological resources; virus and other pathenogenic organisms are biological resources and therefore are included in the scope of the CBD; the negotiations on the Pandemic Influenza Preparedness Framework for the Sharing of Influenza Viruses and Access to Vaccines and other Benefits should be consistent with the objectives of the CBD, in that they must recognize: the sovereign rights of States over their biological resources (Art.1 and Art. 15); the authority of states to determine access to genetic resources (Art. 15.1); the aim of sharing in a fair and equitable way the results of research and development and the benefits arising from commercial and other utilization of genetic resources with the Party providing such resources (Art. 15.7); that access to and transfer of technologies may be provided to developing countries under fair and most favourable terms, including on concessional and preferential terms (Art. 16.2). The Pandemic Influenza Preparedness Framework for the Sharing of Influenza Viruses and Access to Vaccines and other Benefits shall not prejudice, pre-empt or prejudge the outcome of ABS negotiations under the CBD". 1/

116. The representative of Egypt (speaking on behalf of the African Group), endorsed the LMMC declaration.

117. At the 9th session of the meeting, on 8 April 2009, the Secretariat signed a Memorandum of Understanding with the Indigenous Women's Biodiversity Network of the Latin American and Caribbean region, which would facilitate a three-year strategy to build capacity on issues relevant to articles 8(j) and 15 of the Convention. Seven regional and subregional workshops were being planned in the region over the period leading up to the tenth meeting of the Conference of the Parties. The Secretariat thanked the Government of Spain for its generous support.

118. The Co-Chairs of the Working Group announced that they had been informed by Ms. Monique Barbut, Chief Executive Officer of the Global Environment Facility (GEF), that GEF had recently approved project identification forms pertaining to three regional projects, for Africa, Latin America and the Caribbean, and South-East Asia and the Pacific, together with one country project for India, on building capacity on access and benefit-sharing. There was every confidence that GEF would continue to support ABS capacity-building in the Biodiversity Strategy for GEF-5.

ITEM 5. ADOPTION OF THE REPORT

119. At the 9th session of the meeting, on 8 April 2009, Mr. Damaso Luna, the Rapporteur, introduced the draft report of the meeting (UNEP/CBD/WG-ABS/7/L.1). He commended the Secretariat for its invaluable work. The draft report was adopted with amendments on the understanding that the Rapporteur, together with the Co-Chairs of the Working Group, would make the necessary additions to the text to reflect the proceedings of the 9th and final session.

120. At the 9th session of the meeting, on 8 April 2009, the Co-Chairs of the Working Group confirmed that documents UNEP/CBD/WG-ABS/7/L.2-6, containing the outcome of the work of the contact groups under agenda items 3.1 to 3.5, as approved by the Working Group, would be compiled into a single annex to become an integral part of the report of the meeting. The annex would follow the same format as annex I to decision IX/12. It would be the basis for further negotiations on those issues at the eighth meeting of the Working Group in the case of compliance, fair and equitable benefit-sharing and access, and the ninth meeting in the case of objective and scope.

1/ Consultations are ongoing in regard to subscription of all LMMCs to this declaration and China is also in consultation.

121. The Co-Chairs of the Working Group also confirmed that, in keeping with paragraphs 9 and 10 of decision XI/12 of the Conference of the Parties to the Convention, Parties, other Governments, international organizations and indigenous and local communities, and relevant stakeholders would be invited to submit views and proposals including operational text, where relevant, in respect of the main components listed in the annex I to decision IX/12 that had not been addressed at the current meeting, namely, nature, traditional knowledge associated with genetic resources, and capacity-building. Submissions on the main components taken up at the current meeting (i.e., fair and equitable benefit-sharing, access and compliance) should build on the annex to the present report.

ITEM 6. CLOSURE OF THE MEETING

122. The representative of Algeria said that it was incumbent on the Working Group to send out a message that good progress had been made. It must demonstrate a spirit of compromise, move away from entrenched positions, and produce the best text possible. Members of the Working Group were in a win-win situation and could go far by acting collectively.

123. The representative of Egypt (on behalf of the African Group) said that the African Group was disappointed with the slow progress made during the first round of negotiations. There was a tendency to subordinate the Convention to non-environmental instruments, which was unfortunate considering the close interdependence of the Convention's three objectives, the advancing rate of biodiversity depletion, and the reduced emphasis on sustainable use of resources and scientific research on biodiversity with their concomitant contribution to poverty reduction. The obstacles to the achievement of the Convention's three objectives were global in nature and could be tackled only through an international approach. Unfortunately, some Parties were choosing to sectoralize the International Regime and expand its exclusions to the point where it could become an empty instrument. Such an attitude was detrimental to the Convention and directly contradicted the commitment of those same Parties to its three objectives, calling into question the added value of the entire Convention to biodiversity. He hoped that the Parties concerned would reconsider their attitude and make a concerted effort to save the Convention by drawing up an effective International Regime which would be as legally binding as the Convention itself.

124. The representative of Venezuela requested the inclusion in the report of the following statement:

> "The Bolivarian Republic of Venezuela is clear about its responsibility towards future generations to comply with the long-term objectives of the Convention, a demonstration of its political will. We therefore express our support for the negotiation process leading to the adoption, in 2010, of an International Regime on access and the fair and equitable distribution of the benefits derived from the use of genetic resources and associated traditional knowledge within the framework of the Convention on Biological Diversity.
>
> "The Bolivarian Republic of Venezuela recognizes the key role of the Convention on Biological Diversity with respect to the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources.
>
> "After intense negotiations at the eighth meeting of the Conference of the Parties, held in Curitiba, Brazil, in 2006, our country put forward a proposal to advance agreement on the matter, in the form of a paragraph that I will read out verbatim, which is contained in Working Group document UNEP/CBD/COP/8/WG.1/CRP.12/Add.1:
>
> "*The Conference of the Parties*
>
> *"*(…)

> "*Recognizes* that the Convention on Biological Diversity has a key role in supporting the work of the General Assembly with regard to marine protected areas beyond national jurisdiction, by focusing on provision of scientific and, as appropriate, technical information and advice relating to marine biological diversity, the application of the ecosystem approach and the precautionary approach, and in delivering the 2010 target. 2/

> "Furthermore, at the ninth meeting of the Conference of the Parties, held in Bonn in 2008, it was recognized that there was a process of discussion on the conservation and sustainable use of biological resources in marine areas beyond the limits of national jurisdiction, as reflected in decision IX/20 (Marine and coastal biodiversity, fifth preambular paragraph).

> "It should be noted that to date there is no international legal instrument regulating marine genetic resources beyond the limits of national jurisdiction. Nevertheless, there is an ongoing discussion in the General Assembly of the United Nations on what should be the legal regime to cover those genetic resources, and for that reason they should not be excluded from the International Regime, as long as the General Assembly of the United Nations has not clarified the international debate on this issue, since it would be pre-judge any decision from that global forum.

> "For these reasons, the Bolivarian Republic of Venezuela maintains its position that the scope of the International Regime on access and benefit-sharing should include marine genetic resources beyond the limits of national jurisdiction."

125. The representative of Haiti, speaking on behalf of the Group of Latin American and Caribbean Countries, requested the inclusion in the report of the following statement:

> "The Group of Latin American and Caribbean Countries is grateful to the host country for its hospitality and for having provided an opportunity for us to meet in the temple of diversity that is UNESCO.

> "The Group is also grateful to the Secretariat and the Co-Chairs of the Working Group and of the contact groups for their efforts and the diligence that they have shown to give us the outcomes that we have been able to have at the end of this seventh meeting of the Working Group on Access and Benefit-sharing.

> "The Group of Latin American and Caribbean Countries would like to reiterate its support for the development of a legally binding International Regime and is pleased that the results of the current meeting can serve as a basis for our future negotiations. Our Group reaffirms its political will to contribute to the success of the future rounds of negotiations.

> "GRULAC is well aware that the road to Nagoya is fraught with pitfalls, and therefore appeals to the spirit of going the extra mile and the good faith of all who firmly believe that, with good will on the part of all, we can provide the world at Nagoya with a powerful instrument for sustainable development of which our children could be proud."

126. Statements were also made by the representatives of Algeria, Brazil (on behalf of the Like-Minded Megadiverse Countries), Cuba, Czech Republic (on behalf of the European Community and its

2/ *Note by the Secretariat.* This text was subsequently adopted as paragraph 42 of decision VIII/24 of the Conference of the Parties.

members States), Namibia (on behalf of the African Group) and Ukraine (on behalf of the Central and Eastern European Group).

127. The International Indigenous Forum on Biodiversity (IIFB) also made a statement.

128. The Executive Secretary also made a statement.

129. The Co-Chairs of the Working Group said that the Group had made significant progress by producing a substantial body of text –"the Paris Annex" – to take forward to its next meeting, when operational text must be completed on all the main components of the International Regime for consolidation at the ninth meeting. Intersessional regional and interregional preparations were becoming increasingly critical, and discussions with UNEP and other institutions and donors had been encouraging. The Co-Chairs concluded by reconfirming their full dedication to the task as set out by the Conference of the Parties of ensuring that the Working Group would complete its work at the earliest possible time.

130. The seventh meeting of the Ad Hoc Open-ended Working Group was then declared closed at 7.40 p.m. on 8 April 2009.

Annex

INTERNATIONAL REGIME ON ACCESS AND BENEFIT-SHARING 3/ 4/

I. OBJECTIVE

The objective of the International Regime on Access and Benefit-sharing is to effectively implement the provisions in Articles [1,] [3,] 8(j), 15, [16 and 19.2] of the Convention on Biological Diversity and pursue its three objectives by:

- [[Facilitating] [regulating] [transparent] [appropriate] access to [biological resources] genetic resources, [their derivatives][and products] [containing genetic material] [through a transparent regulatory framework]; [for environmentally sound uses recognizing the sovereign rights of states over their natural resources and that the authority to determine access to genetic resources rests with the national governments and is subject to national legislation.];]

- Ensuring [the establishment of enabling conditions for] the effective, fair and equitable sharing of benefits arising out of the utilization of [biological resources] genetic resources, [their derivatives][and products] and associated traditional knowledge;

- [Preventing the misappropriation and misuse of [biological resources] genetic resources, [their derivatives] and/or associated traditional knowledge;]

- [[Securing] [supporting] compliance [in user countries with] [the International Regime, and] [national laws and requirements] [with domestic regulatory ABS frameworks [in provider countries]], including prior informed consent and mutually agreed terms, [of the country [of origin] providing such resources or of the Party that has acquired those resources in accordance with the Convention on Biological Diversity];]

[taking into account [all rights over those resources] [all sovereign rights of States over their natural resources], including the rights of indigenous and local communities, [subject to national legislation] [and the United Nations Declaration on the Rights of Indigenous Peoples][, where appropriate]].

II. SCOPE

1. The International Regime on Access and Benefit-sharing applies to [all] [biological resources,] genetic resources, [including viruses and other pathogenic [, as well as potentially pathogenic] organisms and genetic sequences regardless of their origin] [derivatives,] [products] [benefits arising from commercial and other utilization] as well as [to their] [associated] traditional knowledge, innovations and practices [covered by the Convention on Biological Diversity] [in accordance with Article 8(j)] [within national jurisdiction and of a transboundary nature] [in accordance with the relevant provisions of the Convention on Biological Diversity] [subject [and mutually supportive] to other [relevant] international obligations] [and without prejudice to other international obligations]. [The International Regime will also apply to genetic resources of migratory species that for natural reasons are found on the territories of the Parties.]

[2. Subject to paragraph 1, the international regime on access and benefit-sharing applies to:

3/ For ease of reference, the headings in annex I to decision IX/12 reproduced in this document have been shaded.

4/ Reference to the International Regime on Access and Benefit-sharing in this text is without prejudice to the nature of the International Regime.

[(a) Benefits [including access to [funding] and transfer of technology,] arising from commercial and other utilization] [from] [biological resources] [derivatives] [products] [genetic resources acquired after] [and associated traditional knowledge] [the effective date of] [the entry into force of] the [International Regime] [Convention on Biological Diversity];

[(b) Continuing benefits [and benefits from new uses arising from commercial and other utilization of genetic resources, [biological resources], [products] [and derivatives] and associated traditional knowledge acquired prior to the entry into force of the Convention on Biological Diversity.] arising from commercial and other utilization taken prior to the coming into force of the Convention on Biological Diversity.]

[(c) All intellectual property rights (IPRs) associated with research and technology arising from the use of all genetic resources, [biological resources], [their derivatives], [products] and associated traditional knowledge of indigenous and local communities]]

3. The International Regime on Access And Benefit-sharing does not apply to:

(a) [Human genetic resources;]

(b) [[Biological resources], genetic resources [derivatives][and products] that were acquired [before the entry into force of the Convention on Biological Diversity [for a Party]] [or before the effective date of the international regime];] [on the understanding that any additional obligations under the international regime on access and benefit-sharing will not apply retroactively.]]

(c) [[Biological resources], genetic resources [and/or derivatives][and products] which a Party decides to offer or maintain without access requirements and/or benefit-sharing, provided that the rights of that Party over those biological resources, genetic resources,[and/or derivatives][and products] are fully respected]

(d) [[Species] [Crops] [listed in Annex I of] [Genetic resources covered under] the International Treaty on Plant Genetic Resources for Food and Agriculture [unless they are used beyond the purpose of the said treaty];]

[Plant genetic resources for food and agriculture (PGRFA) accessed under the Multilateral System established under the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) and other plant genetic resources for food and agriculture, which a Contracting Party to the ITPGRFA has determined shall be subject to the Standard Material Transfer Agreement (SMTA) under the ITPGRFA. Plant genetic resources for food and agriculture which have been transferred by an IARC or other international institutions under the SMTA in accordance with the agreements between the Governing Body of the ITPGRFA and the IARCs and other international institutions.]

(e) [[[Biological resources] genetic resources [derivatives],[products] including] marine genetic resources in areas beyond the limits of national jurisdiction;]

(f) [[Biological resources], genetic resources [derivatives] [products] located in the Antarctic Treaty Area[, which is the area south of latitude 60^{o}S,][or the Area of the Convention on the Conservation of Antarctic Marine Living Resources];]

(g) [Commodities in trade;]

(h) [The exchange of genetic resources, [their derivatives,] [the biological resources containing them], [products] or their associated traditional knowledge among indigenous and local communities for their own consumption based on their customary practices;]

(i) [Specific uses of pathogens.]

4. [The International Regime on Access and Benefit-sharing should provide [[flexibility] to respect] existing [and allow for the implementation and potential and further development of other, more] [specialized international access and benefit-sharing systems].] [The international regime on access and benefit-sharing will not apply if and in so far as [determined by the Governing Body of the international regime,] other more specialized international access and benefit-sharing systems apply.] [Nothing in the international regime will prevent the development, recognition and accommodation of intergovernmental agreements relating to access and benefit-sharing [, which as determined by the Governing Body of the international regime,] [achieves] that achieve the objectives of the Convention on Biological Diversity and are consistent with the provisions of the international regime.]

[OR]

[The International Regime on Access and Benefit-sharing and [other] relevant international treaties [shall][should] [be interpreted and applied] in harmony [and in a mutually supportive manner]. In the implementation and further development of the international regime, special consideration should be given to [other] intergovernmental multilateral agreements in regard to access to [biological resources] genetic resources [derivatives] [products] and associated traditional knowledge [in a manner that will not run counter to the objectives of the Convention on Biological Diversity and the international regime].]

[OR]

[The International Regime on Access and Benefit-sharing [shall] [should] [be interpreted and applied] in harmony [and in a mutually supportive manner] with [other] relevant international treaties on access and benefit-sharing.]

5. [This International Regime on Access and Benefit-sharing [shall] [should] [be interpreted and applied] in harmony [and in a mutually supportive manner] with the International Treaty on Plant Genetic Resources for Food and Agriculture [to ensure] their effective, adequate and coherent implementation.

5.1 [[Parties] recognize that the Multilateral System created under the International Treaty on Plant Genetic Resources for Food and Agriculture [governs][regulates] access and benefit-sharing arrangements for crops specified in the coverage of the Multilateral System, in accordance with the decisions taken by the Governing Body of that Treaty.]

5.2 This international regime [shall][should] reinforce the relationship between the Convention on Biological Diversity and the International Treaty on Plant Genetic Resources for Food and Agriculture in order to develop the cooperation that has been provided for in the International Treaty.

5.3 [[Parties] reaffirm that genetic resources of Annex I of the International Treaty on Plant Genetic Resources for Food and Agriculture used for purposes other than those regulated by the Multilateral System of that Treaty are subject to national legislative, administrative or policy measures.]]

6. [The International Regime on Access and Benefit-sharing will be implemented in harmony with [and not duplicate] relevant [work of other organizations and] treaties [including, inter alia, the FAO Commission on Genetic Resources for Food and Agriculture (CGRFA), [the International Union for the Protection of New Varieties of Plants (UPOV),] the World Intellectual Property Organization (WIPO), the World Health Organization (WHO), the International Plant Protection Convention (IPPC), and the World Organization for Animal Health (OIE) [and the International Labour Organization (ILO)]].]

III. MAIN COMPONENTS

A. FAIR AND EQUITABLE BENEFIT-SHARING

1) Linkage of access to the fair and equitable sharing of benefits 5/

[*Recognizing* that the fair and equitable sharing of benefits can only be realized after access to genetic resources has been granted {*preambular paragraph*}]

[*Recalling* that Article 15(5) of the Convention provides that access to genetic resources shall be subject to prior informed consent of the Contracting Party providing genetic resources, unless otherwise determined by that Contracting Party {*preambular paragraph*}]

[*Further recalling* that Article 15(4) of the Convention provides that Contracting Parties shall take measures to ensure that access, where granted, is on mutually agreed terms {*preambular paragraph*}]

[1. (a) [Parties requiring]Prior informed consent for access to [their] [genetic resources][biological resources][, their derivatives][and products] [and/or associated traditional knowledge], where applicable, [shall][should] be obtained [according to the access and benefit-sharing requirements of][from] [the Party] [country of origin or Party that has acquired the genetic resources [, their derivatives][and products] [in accordance with the Convention] providing such resources[, their derivatives][and products] [and/or associated traditional knowledge] [through its competent national authority(ies)][, [as defined in *{...}*,]] unless otherwise determined by that Party.

[(b) Subject to the national legislation[, regulations and/or requirements] of the country where these [indigenous and local] communities are located, [international law, [indigenous and local] community protocols and relevant customary laws of indigenous peoples and local communities] where access is sought to traditional knowledge, innovations and practices associated to [genetic resources][biological resources][, their derivatives][and products], users [shall][should] obtain the prior informed consent of [indigenous] and/or local communities holding such traditional knowledge, innovations and practices, in accordance with Article 8(j) of the Convention. [Such consent should also be obtained with regard to indigenous peoples and local communities rights to [genetic resources][biological resources][, their derivatives][and products].]]

(c) [[Parties may provide in their national legislation and regulations that][Prior informed consent] [shall][should] be based on the specific uses of specific [genetic resources][biological resources][, their derivatives][and products][and/or associated traditional knowledge] for which consent has been granted [under mutually agreed terms].] [Parties requiring prior informed consent for access to their [genetic resources][biological resources][, their derivatives][and products] [shall][should] clearly stipulate the permitted uses.][Permitted uses [shall][should] be clearly stipulated and further prior consent for changes or unforeseen uses [not covered by mutually agreed terms] [shall][should] be required].

(d) Specific needs of taxonomic and systematic research as specified by the Global Taxonomy Initiative [shall][should] be taken into consideration.]

2. Parties [requiring prior informed consent for access to their [genetic resources][biological resources][, their derivatives][and products]] [shall][should] take measures [to encourage providers and users] to provide in their mutually agreed terms[, as appropriate,] for the fair and equitable sharing of benefits arising from the utilization of [genetic resources][biological resources][,their derivatives][and

5/ There is also a section on linkages of access to the fair and equitable sharing of benefits under section III.B.1.2 of annex I to decision IX/12.

products][.][, whilst recognizing that the fair and equitable sharing of benefits can only be realized after access to [genetic resources][biological resources][, their derivatives][and products] has been granted.]

3. Each Contracting Party [shall][should] take [appropriate] legislative, administrative, or policy measures[, as appropriate,] with the aim of sharing in a fair and equitable way the results of research and development and the benefits arising from the commercial and other utilization of [genetic resources][biological resources][, their derivatives][and products] with the [Contracting Party] [and/or indigenous peoples and local communities] [providing such resources][, their derivatives][and products][country of origin or Party that has acquired the genetic resources in accordance with the Convention]. [Such sharing [shall][should] be subject to prior informed consent] of the [Contracting Party] [and/or indigenous peoples and local communities] [providing such resources][, their derivatives][and products][country of origin or Party that has acquired the genetic resources in accordance with the Convention], unless otherwise determined by that Party and on mutually agreed terms.

4. Each Contracting Party [shall][should][may] take the following measures:

[(a) Establish mechanisms to provide information to potential users concerning [their] [any] obligations regarding access to [genetic resources][biological resources][, their derivatives][and products] [and/or associated traditional knowledge] [within that Party's jurisdiction];]

[(b) Introduce rules requiring that users of [genetic resources][biological resources][, their derivatives][and products] comply with national legislation [in] [of] the providing country [or, where relevant, the]/country of origin [customary protocols and relevant customary laws of indigenous peoples and local communities] and the mutually agreed terms on which access was granted, including requirements to equitably share the benefits arising from the utilization of such resources[, their derivatives][and products].]

2) Benefits to be shared on mutually agreed terms

[*Further recalling* that Article 15(4) of the Convention provides that Contracting Parties shall take measures to ensure that access, where granted, is on mutually agreed terms {*preambular paragraph*}]

[*Further recalling* that in accordance with Article 15(7) of the Convention the fair and equitable sharing of benefits arising from the commercial and other utilization of genetic resources shall be upon mutually agreed terms as decided between the provider and user {*preambular paragraph*}]

[*Recognizing* that benefit-sharing on mutually agreed terms may include monetary and/or non-monetary benefits {*preambular paragraph*}]

1. [Each Party [shall][should][may] stipulate [in its national legislation] measures to ensure the fair and equitable sharing of the benefits arising out of the use of [genetic resources][biological resources][, their derivatives][and products] and/or associated traditional knowledge. [Those measures [shall][should] be incorporated in mutually agreed terms and in prior informed consent.]][Parties requiring prior informed consent for access to their [genetic resources][biological resources][, their derivatives][and products] [shall][should] take measures to encourage providers and users to provide in their mutually agreed terms, as appropriate, for the fair and equitable sharing of benefits arising from the utilization of [genetic resources][biological resources][, their derivatives][and products], whilst recognizing that the fair and equitable sharing of benefits can only be realized after access to [genetic resources][biological resources][, their derivatives][and products] has been granted.][[Each Contracting Party][Contracting Parties] [shall][should] in accordance with Article 15(7) of the Convention take [legislative, administrative or policy] measures [, as appropriate, with the aim of sharing in a fair and equitable way the][to ensure the fair and equitable sharing of] benefits arising from the commercial and other utilization of [genetic resources][biological resources][, their derivatives][and products] with the

[country of origin][Contracting Party providing the resources][. Such sharing shall be] on mutually agreed terms.]

[2. The conditions for the equitable sharing of the benefits arising out of the use of traditional knowledge, innovations and practices associated with [genetic resources][biological resources][, their derivatives][and products] [shall][should] be stipulated in mutually agreed terms[, in accordance with national legislation][, community protocols and relevant customary laws of indigenous peoples and local communities]:

[a) between the indigenous or local communities and the users; or b) between users and the national authority of the provider country, with active involvement of concerned indigenous and local communities].]

3. Parties [requiring prior informed consent for access to their [genetic resources][biological resources][, their derivatives][and products]] [shall][should] take measures to [ensure] [encourage providers and users of [genetic resources][biological resources][, their derivatives][and products], when establishing mutually agreed terms, to consider]:

[(a) Including in these terms [model] clauses and using relevant inventories/catalogues of typical utilizations of [genetic resources][biological resources][, their derivatives][and products] and related monetary or non-monetary benefits developed in accordance with *{...}*;]

(b) Sharing of results of research and development;

(c) Access to and transfer of technology which makes use of those resources;

(d) The effective participation of [providers][country of origin] of the [genetic resources][biological resources][, their derivatives][and products] in research activities and/or to facilitate the joint development of research activities between the [provider][country of origin] and the user;

[(e) The Bonn Guidelines].

[4. The elements of paragraph 44 of the Bonn Guidelines [shall][should] be considered in the development of mutually agreed terms.]

[5. Sharing of benefits shall proceed upon mutually agreed terms. Mutually agreed terms may consider, *inter alia*, time, amount, conditions and other characteristics of such sharing of benefits in accordance with applicable national law. However, the existence of mutually agreed terms must not constitute grounds for the denial or non-recognition of the sharing of benefits. In such cases Contracting Parties shall promote the reaching of an agreement between the conflicting parties. If the user denies to enter into an agreement, or if the parties fail to reach such agreement, the competent authorities of the Contracting Parties in which the claim is filed will take a decision and make it effective. The decision shall take into account the legitimate rights and interests of both parties and shall be given in a timely manner, observe due process of law, be transparent, non-discriminatory, and shall be made public.]

3) Monetary and/or non-monetary benefits

[*Recognizing* that benefit-sharing on mutually agreed terms may include monetary and/or non-monetary benefits {*preambular paragraph*}]

1. [Parties [shall][should] take measures to [ensure][encourage] that benefit-sharing includes, as far as possible, [all forms of utilization of] [genetic resources][biological resources][, their derivatives][and products] and/or associated traditional knowledge.]

2. [The International Regime on Access and Benefit-sharing will include an indicative list of mutually agreed terms.] Mutually agreed terms [may][shall][should] identify the types of monetary and/or non-monetary benefits to be shared for the utilization of [genetic resources][biological resources][, their derivatives][and products] and/or associated traditional knowledge, innovations and practices.

3. [Parties [shall][should], subject to Article 16 of the Convention, take measures to share the benefits of research and technology linked to conservation and sustainable use, irrespective of access to [genetic resources][biological resources][, their derivatives][and products] and/or associated traditional knowledge.]

[4. Parties [shall][should] establish a financial mechanism for the International Regime on Access and Benefit-sharing, including a trust-fund for benefit-sharing arrangements.]

Option 1

3. The benefits shared [shall][should][could] be monetary[, including, *inter alia*, Appendix II of the Bonn Guidelines,] and/or non-monetary. Monetary benefits [may][shall][should] include[, but are not limited to]:

(a) Access fees/fee per sample;

(b) Up-front payments;

(c) Milestone payments;

(d) Payment of royalties;

(e) License fees in case of commercialization;

(f) Research funding; and

(g) Investment in joint ventures.

4. Non-monetary benefits [may][shall][should] include[, but not be limited to]:

(a) Sharing of research and development results;

(b) Participation in product development;

(c) Collaboration, cooperation and contribution in education and training;

(d) [Transfer to the provider of the [genetic resources][biological resources][, their derivatives] [and products] and/or associated traditional knowledge, the technology developed using such resources [, their derivatives][and products] and/or associate traditional knowledge, including biotechnology, or the technology which is relevant to the conservation and sustainable use of biological diversity, on fair and most favourable terms, including on concessional and preferential terms where mutually agreed;]

(e) [Strengthening capacities to enable effective technology transfer to user developing country Parties and to Parties that are countries with economies in transition and technology development in the country of origin that provides [genetic resources][biological resources][, their derivatives] [and products]. Also to facilitate abilities of indigenous and local communities to conserve and sustainably use their [genetic resources][biological resources] [, their derivatives][and products];]

(f) Institutional capacity-building;

(g) Human and material resources to strengthen the capacities for the administration and enforcement of access regulations;

(h) Training related to [genetic resources][biological resources][, their derivatives][and products] with the full participation of providing Parties, and where possible, in such Parties;

(i) Access to scientific information relevant to conservation and sustainable use of biological diversity, including biological inventories and taxonomic studies;

(j) Contributions to the local economy;

(k) Food and livelihood security benefits; and

(l) Joint ownership of relevant intellectual property rights.

Option 2

3. The benefits to be shared may include, but are not limited to:

(a) Monetary and non-monetary benefits listed in Appendix II of the Bonn Guidelines; and

(b) Non-monetary benefits in accordance with Articles 15(6), 16(3), 16(4) and 19 of the Convention.

4) Access to and transfer of technology

[Option 1

1. Each Party that develops technologies making use of [genetic resources][biological resources][, their derivatives][and products] [and/or associated traditional knowledge] [shall][should] take legislative, administrative or policy measures [with the aim that the private sector facilitates][, as appropriate, with the aim that] [to facilitate] access to, [joint development] and transfer of those technologies [is provided] to developing countries [which provide genetic resources][biological resources][that are the origin of such resources,] [, their derivatives][and products] [and/or associated traditional knowledge] under mutually agreed terms, in accordance with Article 16 of the Convention.]

2. [Parties [shall][should] subject to Article 16 of the Convention also facilitate access to and transfer of technologies that are relevant to conservation and sustainable use, or make use of [genetic resources][biological resources] [, their derivatives][and products] to all other Contracting Parties to the Convention irrespective of access to [genetic resources][biological resources][, their derivatives] [and products.]

[Option 2

Parties [requiring prior informed consent for access to their [genetic resources][biological resources][, their derivatives][and products]] [shall][should] take measures to [encourage][ensure] [providers][countries of origin or countries providing the resource in accordance with the Convention] and users of [genetic resources][biological resources][, their derivatives][and products], when establishing mutually agreed terms, to [consider][ensure] access to and transfer of technology which makes use of those resources.]

5) Sharing of results of research and development on mutually agreed terms

[1. Parties [shall][should] establish, taking into account Article 15, paragraph 7, Article 16, paragraph 3 and 4, Article 19, paragraph 1 and 2, and Article 20, paragraph 4, of the Convention, measures to ensure the fair and equitable sharing of benefits from the results of research and development, including through facilitating access to the results of such research and development and through access to and technology transfer, and other utilization of [genetic resources][biological resources][, their derivatives][and products] and/or associated traditional knowledge[, including technology protected by patents and other intellectual property rights on concessional and preferential terms to developing countries], taking into account prior informed consent and mutually agreed terms and respecting national legislations of the country of origin of such resources or the parties that have acquired the resources in accordance with the Convention.]

2. Parties requiring prior informed consent for access to their [genetic resources][biological resources][, their derivatives] [and products] [shall][should] take measures to encourage providers and users of [genetic resources][biological resources][, their derivatives][and products], when establishing mutually agreed terms, to consider sharing of results of research and development.

6) Effective participation in research activities, and/or joint development in research activities

[1. Parties [shall][should] agree to strengthen research capability and ensure effective involvement of national counterparts, taking into account the special needs of developing country Parties in particular the least developed among them, small island developing States and countries with economies in transition.]

[2. Parties [requiring prior informed consent for access to their genetic resources][biological resources][, their derivatives][and products] [shall][should] take measures to [ensure][encourage the [providers][countries of origin] and users when establishing mutually agreed terms, to [consider][ensure] the effective participation of [providers][countries of origin] of the [genetic resources][biological resources][, their derivatives][and products] [in research activities and/or to facilitate the joint development of research activities between the [provider][country of origin] and the user.]

[3. Parties [shall][should] take measures to ensure that the private sector facilitates joint development of technologies relevant to the conservation and sustainable use of biodiversity or make use of [genetic resources][biological resources][, their derivatives][and products] for the benefit of both government institutions and the private sector of developing countries in accordance with Article 16 of the Convention.]

[4. Parties [shall][should] in accordance with Article 18 of the Convention promote the establishment of joint research programmes and joint ventures for the development of technologies relevant to the objectives of the Convention.]

7) Mechanisms to promote equality in negotiations

[*Recognizing* the importance of promoting equality in negotiations of mutually agreed terms between providers and users of genetic resources{*preambular paragraph*}]

1. Parties [shall][should][may] take measures such as:

(a) Making information available to users and [providers][countries of origin or Parties that have acquired [genetic resources][biological resources][, their derivatives][and products] in accordance with the Convention] through the designated access and benefit-sharing focal point in a timely manner[.][, including the [model] clauses and relevant inventories developed [in accordance with *{...}*][under the International Regime on Access and Benefit-sharing];]

(b) [Enabling engagement between][Developing consultative arrangements with] relevant stakeholders and indigenous and local communities holding traditional knowledge associated with [genetic resources][biological resources][, their derivatives][and products];

(c) Supporting the capacity of [providers][countries of origin or indigenous and local communities] and[, where appropriate,] users of [genetic resources][biological resources][, their derivatives][and products] to negotiate mutually agreed terms[, prior informed consent] and contractual arrangements[, as appropriate].

[2. Contracting Parties [providing [genetic resources][biological resources]][, their derivatives][and products] which are countries of origin of [genetic resources][biological resources][, their derivatives][and products], or other Parties which have acquired the [genetic resources][biological resources][, their derivatives][and products] in accordance with the Convention, [shall][should][may]:]

[(a) Take measures to ensure appropriate participation by relevant indigenous peoples and local communities in access procedures where their rights are associated with the [genetic resources][biological resources][, their derivatives][and products] being accessed or where traditional knowledge associated with these [genetic resources][biological resources][, their derivatives][and products] is being accessed;]

[(b) Establish mechanisms to ensure that decisions are made available to relevant indigenous peoples and local communities and relevant stakeholders;]

[(c) The effective involvement of indigenous and local communities should be promoted by:

(i) Providing information especially regarding scientific and legal advice in order for them to be able to participate effectively;

(ii) Providing support for capacity building in order for them to be actively engaged in various stages of access and benefit-sharing arrangements such as in the development and implementation of mutually agreed terms and contractual arrangements.]

8) Awareness-raising 6/

Parties [shall][should] take [the following] measures to raise awareness of access and benefit-sharing issues [in support of [mandatory][voluntary] compliance measures to [ensure][promote] benefit-sharing]. Such measures could include[, but not be limited to]:

(a) Making available up to date information about their domestic access and benefit-sharing framework, in particular national laws, policies and procedures;

(b) Steps to promote the International Regime on Access and Benefit-sharing [, including the promotion of a wider understanding among the public on the concepts of misappropriation, misuse, and biopiracy as well as for the recognition of the contribution made by indigenous and local communities to biological diversity and the benefits generated by that contribution];

(c) Organization of stakeholder meetings;

(d) Establishment and maintenance of a help desk for stakeholders;

6/ There is also a section on awareness-raising under section III.C.1.1.(a) of annex I to decision IX/12.

(e) Information dissemination through [a specialized website][an access and benefit-sharing clearing house][, as well as hard copies];

(f) Promotion of codes of conduct [and best practice tools] in consultation with stakeholders;

(g) Promotion of regional exchange of experiences related to access and benefit-sharing;

[(h) Communication, education and awareness-raising of access and benefit-sharing-related issues to the relevant sectors and stakeholders.]

[2. Awareness-raising, or the lack of any effort on it, by the Parties and users [shall][should] not be made a precondition for the implementation of benefit-sharing arrangements.]

9) Measures to ensure participation and involvement of indigenous and local communities in mutually agreed terms and sharing of benefits with traditional knowledge holders

[1. The elements of the International Regime on Access and Benefit-sharing [shall][should] be developed and implemented in accordance with Article 8(j) of the Convention:

(a) [In consultation with the relevant indigenous and local communities,] Parties [may][shall][should] consider developing, adopting and/or recognizing, as appropriate, [community protocols and/or other] sui generis systems for the [protection][and/or promotion] of traditional knowledge, innovations and practices associated to [genetic resources][biological resources][, their derivatives][and products];

(b) Parties [shall][should] [respect,] recognize and protect the rights of indigenous and local communities to their knowledge, innovations and practices and ensure the equitable sharing of benefits arising from the utilization of the knowledge, innovations and practices associated with [genetic resources][biological resources][, their derivatives][and products], subject to the national legislation[, regulations and requirements] of the countries where these communities are located;

(c) [When access to traditional knowledge associated with [genetic resources][biological resources][, their derivatives][and products] is sought,] Users [shall][should] obtain the prior informed consent of indigenous and local communities holding [that] traditional knowledge associated with [genetic resources] in accordance with Article 8(j) of the Convention, [subject to][in accordance with] national legislation[, regulations and requirements] of the country where these communities are located[, community protocols and relevant international law].]

[2. Contracting Parties [shall][should] in accordance with Article 8(j) of the Convention [encourage][ensure] fair and equitable sharing of benefits arising from the utilization of knowledge, innovations and practices [associated with [genetic resources] of indigenous and local communities. The benefits referred to here are [benefits to humanity in general and] benefits to indigenous and local communities in particular:

(a) Benefits to humanity:

[All Contracting Parties [shall][should]:

(a) Promote the wider application of knowledge, innovations and practices of indigenous and local communities with their [voluntary] approval and involvement in accordance with Article 8(j) of the Convention;

(b) Further the customary use of biological resources in line with traditional customary practices that are compatible with conservation and sustainable use of biological diversity in accordance with Article 10(c) of the Convention;

[(c) Take into account the customs, decision-making processes and systems integral to indigenous and local communities in the process of seeking access to their [genetic resources][biological resources][, their derivatives][and products] and/or associated traditional knowledge, and also in negotiating mutually agreed terms;]

(c) Encourage and develop methods of cooperation for the development and use of indigenous and traditional technologies in furtherance of the objectives of the Convention by the training of personnel and provision of expertise by representatives of indigenous and local communities in accordance with Article 18(4) of the Convention.]

[(b) Benefits to indigenous and local communities:

Contracting Parties [shall][should] [ensure][encourage] the fair and equitable sharing of benefits with indigenous and local communities arising from the utilization of their knowledge, innovations and practices[, and their [genetic resources][biological resources][, their derivatives][and products]. These benefits [shall][should] be based on mutually agreed terms with the indigenous and local communities and may include but not be limited to monetary and non-monetary benefits listed in Appendix II of the Bonn Guidelines.]]

[3. Indigenous peoples and local communities [shall][should] be consulted by the appropriate national authorities, and their views taken into consideration, when their rights are associated with the [genetic resources][biological resources][, their derivatives][and products] being accessed or where traditional knowledge associated with these [genetic resources][biological resources][, their derivatives][and products] is being accessed, including:

(a) When determining access, prior informed consent, and when negotiating and implementing mutually agreed terms, and in the sharing of benefits;

(b) In the development of a national strategy, policies or regimes on access and benefit-sharing;

(c) Appropriate consultative arrangements, such as national consultative committees, comprising relevant stakeholder representatives, [shall][should] be established;

(d) Providing information in order for them to be able to participate effectively;

(e) Prior informed consent of indigenous peoples and local communities and the approval and involvement of the holders of traditional knowledge, innovations and practices, in accordance with their traditional practices, national access policies and subject to national legislation;

(f) Documentation of traditional knowledge, innovations and practices, [shall][should] be subject to the prior informed consent of indigenous peoples and local communities;

(g) Providing support for capacity-building, in order for them to be actively engaged in various stages of access and benefit-sharing arrangements, such as in the development and implementation of mutually agreed terms and contractual arrangements.]

[4. Contracting Parties which are countries of origin of [genetic resources][biological resources][, their derivatives][and products] or other Parties which have acquired the [genetic resources][biological resources][, their derivatives][and products] in accordance with the Convention, [shall][should]:

(a) Take measures to ensure appropriate participation by relevant indigenous peoples and local communities in access procedures where their rights are associated with the [genetic

resources][biological resources][, their derivatives][and products] being accessed or where traditional knowledge associated with these [genetic resources][biological resources][, their derivatives][and products] is being accessed;

(b) Establish mechanisms to ensure that decisions are made available to relevant indigenous peoples and local communities and relevant stakeholders.]

[5. Parties shall provide timely guidance, legal representation, monitoring, information and assistance in prior informed consent and mutually agreed terms of traditional knowledge of indigenous and local communities at the request of indigenous and local communities seeking the recognition and/or enforcement of their rights.]

10) Mechanisms to encourage benefits to be directed toward conservation and sustainable use of biodiversity and socio-economic development, in particular the Millennium Development Goals (MDGs) in accordance with national legislation

Parties [shall][should] encourage users and providers, in their mutually agreed terms, to consider directing benefits arising from the utilization of [genetic resources][biological resources][, their derivatives] [and products] towards the conservation and sustainable use of biological diversity in accordance with the objectives set out in Article 1 of the Convention, [and] to contribute to [domestic] sustainable [socio-economic] development [strategies].

11) Development of international minimum conditions and standards

[1. Parties [shall][should] take measures and establish minimum conditions and standards for ensuring fair and equitable sharing of results of research, and of benefits arising from every commercial and other form of utilization of [genetic resources][biological resources][, their derivatives][and products] and/or associated traditional knowledge, upon mutually agreed terms.]

[2.[7]/ The definition of "fair and equitable benefit-sharing" is non-exhaustive and inclusive. It [shall][should] however encompass the following minimum conditions. Fair and equitable benefit-sharing [shall][should]:

(a) Contribute to strengthening the situation of the less powerful party/parties at all levels in the sharing relation, including by enabling:

(i) Equal access to information;

(ii) Effective participation by all relevant stakeholders;

(iii) Capacity building;

(iv) Preferential access to markets, new technology and products;

(b) Contribute toward, or as a minimum not counteract, the two other objectives of the Convention: conservation of biological diversity and the sustainable use of its components;

(c) Not interfere with existing forms of fair and equitable benefit-sharing, including customary benefit-sharing mechanisms;

(d) Respect value and legal systems across cultural borders, including customary laws and practices and indigenous intellectual property systems;

---

[7]/ The placement of the paragraphs in this text must be further considered.

(e) Allow democratic and meaningful participation in policy decisions and contract negotiation by all stakeholders, including stakeholders at the local level;

(f) Be transparent enough that all parties understand the process equally well, especially indigenous and local communities, and have time and opportunity to make informed decisions (effective prior informed consent);

(g) Include provisions for independent third party review to ensure that all transactions are on mutually agreed terms and preceded by effective prior informed consent;

(h) Provide for identification of the origin of [genetic resources][biological resources][, their derivatives][and products] and/or associated traditional knowledge;

(i) Make information about agreed terms publicly available.]

12) Benefit-sharing for every use

[There [shall][should] be measures and principles established in the International Regime on Access and Benefit-sharing to ensure benefit-sharing for every use of [genetic resources][biological resources][, their derivatives][and products].

13) Multilateral benefit-sharing options when origin is not clear or in transboundary situations

[1. [Genetic resources][biological resources] [, their derivatives][and products] accessed pre-Convention, [shall][should] be subject to access and benefit-sharing agreements with provider countries and all continuing benefits arising from these [genetic resources][biological resources][, their derivatives][and products] will be fairly and equitably shared with their countries of origin. In cases where the origin of the [genetic resources][biological resources][, their derivatives][and products] is unclear, a multilateral system of exchange [shall][should] be developed.]

[2. Contracting Parties who share [genetic resources][biological resources][, their derivatives][and products] [shall][should] enter into bilateral or multilateral agreements based on mutually agreed terms to ensure the fair and equitable sharing of benefits arising from the utilization of transboundary [genetic resources][biological resources][, their derivatives][and products].]

[3. Contracting Parties [shall][should] facilitate the inclusion of the different indigenous and local communities, within and across their boundaries that share a particular knowledge, innovation or practice in the negotiation of relevant access and benefit-sharing agreements and support the fair and equitable sharing amongst these indigenous and local communities of the benefits arising from such agreements.]

14) Establishment of trust funds to address transboundary situations

[Knowledge, innovations and practices of indigenous and local communities accessed pre-Convention [shall][should] be subject to access and benefit-sharing agreements with the indigenous and local communities concerned and all continuing benefits arising from such knowledge, innovations and practices [shall][should] be fairly and equitably shared with the relevant indigenous and local communities. In cases where the origin of the knowledge, innovations and practices are unclear, a fund [shall][should] be established which [shall][should] be administered by representatives of indigenous and local communities who [shall][should] ensure that it is used to further the rights of indigenous and local communities.]

15) Development of menus of model clauses for potential inclusion in material transfer agreements 8/

[Option 1

Parties [shall][should][may][, in addition to [promoting][ensuring binding] compliance measures]:

a) In consultation with users and providers from key sectors, develop sectoral menus of [model] clauses for contracts;

b) Encourage users and providers to use these sectoral menus of [model] clauses when negotiating mutually agreed terms.]

[Option 2

[*Emphasizing* that both providers and users of genetic resources benefit from the availability of model clauses for potential inclusion in material transfer agreements and inventories/catalogues of typical utilizations of genetic resources since the use of such clauses and inventories will raise legal certainty, may lower transaction costs and will contribute to creating a level playing field between provider and user when negotiating mutually agreed terms {*preambular paragraph*}]

1. Parties[, in addition to [promoting][ensuring binding] compliance measures,][shall][should] [take measures to] encourage providers and users of [genetic resources][biological resources][, their derivatives][and products], when establishing mutually agreed terms, to consider:

(a) Including in these terms [model] clauses developed in accordance with paragraphs 2 and 3 below[, as appropriate];

(b) Relevant inventories/catalogues of typical utilizations of [genetic resources][biological resources][, their derivatives][and products] and related monetary and non-monetary benefits.

2. [In order to enhance legal certainty, lower transaction costs and promote equality in negotiations of mutually agreed terms, the] Parties [collectively][shall][should][consider to][may wish to][establish[, as appropriate,] a procedure] [at the national level] [for the] develop[ment] [menus] of [sectoral] [model] clauses [and inventories/catalogues] of typical utilizations of [genetic resources][biological resources][, their derivatives][and products] and related monetary or non-monetary benefits. [The procedure [shall][should][may]][In this context, they should]:

[(a) Identify sectors[, *inter alia* those] for which [model] clauses and inventories/catalogues of typical utilizations of [genetic resources][biological resources][, their derivatives][and products] and related benefits should be developed [in cooperation with key international sectoral organizations and relevant users and providers] [and reflect best practices]];

(b) Identify issues that [should][may] be addressed in [model] clauses [taking account of common elements of various sectors and the particularity of each sector];

(c) Include clear and transparent [rules][suggestions] to facilitate the involvement of stakeholders.

8/ There are also sections on sectoral menus of model clauses in section III.C.2.1.b and in section III.E.1.5 of annex I to decision IX/12.

3. The Parties [shall][should][may] [collectively] consider and, where appropriate, [adopt [at the national level] recommendations for][submit a compilation to the clearing house mechanism of menus of] [model] clauses [and inventories/catalogues] of typical uses of [genetic resources][biological resources][, their derivatives][and products]. They [shall][should][may] regularly review and, where appropriate, update such [model] clauses [and inventories/catalogues] of typical uses of [genetic resources][biological resources] [, their derivatives][and products].]

[4. Parties [shall][should] take measures to encourage the use of the [model] clauses of Annex *{...}* of the International Regime on Access and Benefit-sharing to be included into mutually agreed terms between providers and users of [genetic resources][biological resources][, their derivatives][and products] and/or associated traditional knowledge for the following three categories of utilization of [genetic resources][biological resources][, their derivatives][and products]:

(a) Research not aiming at commercialization;

(b) `Research and development aiming at commercialization; and

(c) Commercialization.]

[5. Indicators for the identification of these three categories of utilization of [genetic resources][biological resources][, their derivatives][and products] are provided in Annex *{...}* of the International Regime on Access and Benefit-sharing.]

16) Enhanced utilization of the Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of Their Utilization

[*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 {*preambular paragraph*}]

B. ACCESS TO GENETIC RESOURCES 9/

1) Recognition of the sovereign rights and the authority of Parties to determine access

[*Recalling* the sovereign rights of States over their natural resources and that the authority to determine access to genetic resources rests with the national governments and is subject to national legislation {*preambular paragraph*}]

[*Further recalling* that each Contracting Party shall endeavour to create conditions to facilitate access to genetic resources for environmentally sound uses by other Contracting Parties and not impose restrictions that run counter to the objectives of the Convention {*preambular paragraph*}]

[*Further recalling* that access to genetic resources shall be subject to the prior informed consent of the Contracting Party providing such resources, unless otherwise determined by that Party; and in this context *recognizing* that each Contracting Party may determine that access to its genetic resources will not be subject to prior informed consent in the context of Article 15 of the Convention on Biological Diversity {*preambular paragraph*}]

[1. Contracting Parties have sovereign rights over their natural resources and the authority to determine access to [genetic resources][biological resources][, their derivatives][and products] rests with the national governments. [Where access to [genetic resources][biological resources][, their derivatives][and products] has an impact on the knowledge, innovations and practices of indigenous and local

9/ The title is without prejudice to the eventual scope of the International Regime on Access and Benefit-sharing.

communities [embodying traditional lifestyles], the indigenous and local communities concerned [shall][should] have a say in determining access[, subject to national legislation].]]

[2. Access to [genetic resources][biological resources][, their derivatives][and products] and/or associated traditional knowledge [shall][should] be subject to the free prior informed consent of indigenous and local communities.][Access to the genetic resources and associated traditional knowledge of indigenous and local communities [shall][should] be subject to their prior informed consent.]

[3. Each Party [shall][should] introduce rules to ensure facilitated access to genetic resources.]

[4. Each Party [shall][should] designate one national focal point for access and benefit-sharing which [shall][should] be responsible on its behalf for liaison with the Secretariat. The national focal point [shall][should] inform applicants for access to [genetic resources][biological resources][, their derivatives][and products] on applicable procedures, including procedures for prior informed consent, mutually agreed terms and benefit-sharing. [It [shall][should] also [inform applicants of [any][the] rights][make available, as appropriate, information] pertaining to indigenous peoples and local communities and relevant stakeholders.]]

[5. Each Party [requiring prior informed consent for access to its [genetic resources][biological resources][, their derivatives][and products]] [shall][should] also, as appropriate, designate one or more competent national authorities, which [shall][should] be responsible for handling and processing of access applications, including mutually agreed terms and benefit-sharing arrangements. [A Party [may][shall][should] designate a single entity to perform the functions of both Focal Point and competent national authority.]]

[6. Each Party [shall][should] no later than the [effective] date [of entry into force] of this International Regime on Access and Benefit-sharing [for it], notify the Secretariat of the names and addresses of the focal point and competent [national] authority or authorities.] 10/ 11/

2) Linkage of access to fair and equitable sharing of benefits 12/

[*Recognizing* that the fair and equitable sharing of benefits can only be realized after access to genetic resources has been granted {*preambular paragraph*}]

[*Recalling* that Article 15(5) of the Convention provides that access to genetic resources shall be subject to prior informed consent of the Contracting Party providing genetic resources, unless otherwise determined by that Contracting Party {*preambular paragraph*}]

[*Further recalling* that Article 15(4) of the Convention provides that Contracting Parties shall take measures to ensure that access, where granted, is on mutually agreed terms {*preambular paragraph*}]

[1. Parties [shall][should][may] take [the] necessary measures [, as appropriate,] to establish an appropriate national regulatory framework to protect their rights over [genetic resources][biological resources][, their derivatives][and products] [and/or associated traditional knowledge][, as well as rights of indigenous peoples and local communities] and ensure [that] benefit-sharing [is on mutually agreed terms].]

10/ The placement of paragraphs 4 to 6 above must be further considered.

11/ There is also a section on competent domestic authority, as addressed in paragraphs 4 to 6 above, in section III.C.1.2.b of annex I to decision IX/12.

12/ There is also a section on the linkage of access to fair and equitable sharing of benefits under section III.A.1.1 of annex I to decision IX/12.

2. [Parties [requiring prior informed consent for access to their [genetic resources][biological resources][, their derivatives][and products]] [shall][should] take measures to [encourage][ensure] [providers][countries of origin or Parties that have acquired the resources in accordance with the Convention] and users to provide in their mutually agreed terms [, as appropriate,] for the fair and equitable sharing of benefits arising from the utilization of [genetic resources][biological resources][, their derivatives][and products][.][, whilst recognizing that the fair and equitable sharing of benefits can only be realized after access to [genetic resources][biological resources][, their derivatives][and products] has been granted.][Contracting Parties [shall][should] ensure that access to [genetic resources][biological resources][, their derivatives][and products] [shall][should] be subject to the prior informed consent of the country of origin/provider country[.][and be based on mutually agreed terms with fair and equitable sharing of benefits arising from the utilization of the [genetic resources][biological resources][, their derivatives][and products].] Where the access to the [genetic resources][biological resources][, their derivatives][and products] is linked to the use of any knowledge, innovations and practices of indigenous and local communities, it [shall][should] [where necessary] be subject to the prior informed consent and mutually agreed terms of the concerned indigenous and local communities with fair and equitable sharing of benefits [in accordance with national legislation].]]

3. [Contracting Parties may provide that] New uses of [genetic resources][biological resources][, their derivatives][and products] [they have provided] [and/or associated traditional knowledge] beyond the scope what has been consented to under [prior informed consent and] mutually agreed terms [shall][should] [require new prior informed consent and mutually agreed terms[.][from the country of origin and/or the indigenous and local communities][may be addressed under such mutually agreed terms].]

[4. Access to [genetic resources][biological resources][, their derivatives][and products] [and associated traditional knowledge] [may][shall][should] be revoked by the country of origin/provider country [or the indigenous and local communities providing access to [genetic resources][biological resources][, their derivatives][and products] and associated traditional knowledge] if any of the mutually agreed terms are violated by the user and/or the continuing use of the [genetic resources][biological resources][, their derivatives][and products] has negative environmental implications.]

5. [Parties [shall][should] take measures, which are clear and transparent, [to facilitate access for environmentally sound uses, on mutually agreed terms and subject to prior informed consent of country providing [genetic resources][biological resources][, their derivatives][and products], so as] to ensure fair and equitable sharing of benefits arising from such use to the country providing the resource [takes place on mutually agreed terms] [including by using certificates of compliance with national legislation].][Contracting Parties which are countries of origin of [genetic resources][biological resources][, their derivatives][and products], or other Parties which have acquired the [genetic resources][biological resources][, their derivatives][and products] in accordance with the Convention, [shall][should] endeavour to [facilitate] access to [genetic resources][biological resources][, their derivatives][and products] for environmentally sound uses by other Contracting Parties. In accordance with Article 15, paragraph 5, of the Convention, access to genetic resources shall be subject to prior informed consent of the Contracting Party providing such resources, unless otherwise determined by that Party.]

3) Legal certainty, clarity and transparency of access rules

[1. To create conditions to [facilitate][ensure the sovereign rights of States of their natural resources and their authority to determine] access to [genetic resources][biological resources][, their derivatives][and products] and to support compliance with access and benefit-sharing related obligations across jurisdictions, Parties requiring prior informed consent [shall][should] take [the] necessary legislative, policy or administrative measures [referred to in *{...}*] to provide for legal certainty, clarity and transparency of their domestic access and benefit-sharing frameworks.]

[2. Contracting Parties [shall][should] create conditions of legal certainty, clarity and transparency to [facilitate][ensure the sovereign rights of States over their natural resources and their authority to determine] access to [genetic resources][biological resources][, their derivatives][and products] and not impose any restrictions that run counter to objectives of the Convention in accordance with Article 1 of the Convention. [Access [may][shall][should] however be denied if it is required for uses that are not environmentally sound. Countries of origin [shall][should] have the authority to determine the environmental soundness of a particular use. [The notion of 'use' [shall][should] be understood as including restrictions to use by third parties and countries of origin [shall][should] have the authority to determine whether the restriction of the use of [genetic resources][biological resources][, their derivatives][and products] through patents and other intellectual property rights are environmentally sound and whether such restrictions negatively impact the conservation and sustainable use of biological diversity.]]]

[3. Contracting Parties which are countries of origin of [genetic resources][biological resources][, their derivatives][and products], or other Parties which have acquired the [genetic resources][biological resources][, their derivatives][and products] in accordance with the Convention, [shall][should]:

(a) [Review their policy, administrative and legislative measures to ensure they are fully complying with Article 15 of the Convention in order to ensure clarity, legal certainty and transparency;]

(b) [Report on access applications through the clearing-house mechanism][Provide information on the process for obtaining access in accordance with national legislation and regulations];

(c) [Require providers only to supply [genetic resources][biological resources][, their derivatives][and products] and/or associated traditional knowledge when they are entitled to do so;]

(d) The Contracting Parties [shall][should][may] use elements of an access application referred to in paragraph 36 of the Bonn Guidelines, while bearing in mind that the list is indicative and may be adapted to national circumstances.]

4) Non-discrimination of access rules

[Each Party, when applying its domestic access and benefit-sharing framework, [shall][should] not [arbitrarily and unjustifiably] discriminate between users from other Contracting Parties [and between national and foreign users][, save when it is in its national interest to do so in accordance with its sovereign right over its resources which gives it authority to determine access compatible with the recognition of this right in Article 15(1) of the Convention].]

5) International access standards (that do not require harmonization of domestic access legislation) to support compliance across jurisdictions

[*Recalling* the sovereign rights of States over their natural resources and that the authority to determine access to genetic resources rests with the national governments and is subject to national legislation {*preambular paragraph*}]

[*Further recalling* that each Contracting Party shall endeavour to create conditions to facilitate access to genetic resources for environmentally sound uses by other Contracting Parties and not impose restrictions that run counter to the objectives of the Convention {*preambular paragraph*}]

[*Recognizing* that each Contracting Party may determine that access to its genetic resources will not be subject to prior informed consent in the context of Article 15 of the Convention on Biological Diversity {*preambular paragraph*}]

[*Further recognizing* that the fair and equitable sharing of benefits can only be realized after access to genetic resources has been granted {*preambular paragraph*}]

[1. To create conditions to [facilitate][ensure the sovereign rights of States over their natural resources and their authority to determine] access to [genetic resources][biological resources][, their derivatives][and products] and to support compliance with access and benefit-sharing related obligations across jurisdictions, Parties requiring prior informed consent [shall][should] take [such][the] [necessary] legislative, policy or administrative measures[, as they may determine,] to provide for legal certainty, clarity and transparency of their domestic access and benefit-sharing frameworks. These [shall][should][may] include[, where possible]:]

(General issues)

[(a) [Clear] rules on accessing [genetic resources][biological resources][, their derivatives][and products] existing in in situ and ex situ conditions [that do not [arbitrarily and unjustifiably] discriminate between users from other Contracting Parties] [and between national and foreign users][, save when it is in its national interest to do so in accordance with its sovereign right over its resources which gives it authority to determine access compatible with the recognition of this right in Article 15(1) of the Convention];]

[(b) A [clear] procedure for applying for prior informed consent [from a competent national authority and, where applicable, from indigenous and local communities];]

[(c) A simplified procedure for access to [genetic resources][biological resources][, their derivatives][and products] for non-commercial research in accordance with [*{...}*][national law];]

[(d) Making available and easily accessible information on their domestic access and benefit-sharing frameworks, in particular on how to apply for prior informed consent;]

[(e) Providing and regularly updating the information generated under subparagraph (d) to the clearing house mechanism of the Convention, including information on access and benefit-sharing focal points;]

[(f) Requiring the competent national authority to [provide periodically to][register its decision to grant prior informed consent in] the clearing house mechanism of the Convention [up to date information on the number of requests processed];]

[(g) [Appropriate] administrative or judicial appeals procedures in respect of prior informed consent[, including for failure to act and [arbitrary and unjustifiably] discriminatory access practices];]

(Specific aspects for obtaining decisions on prior informed consent from the competent [national] authority)

[(h) Requiring that decisions by competent national authorities granting or refusing prior informed consent are reasoned, set out in writing, and notified to the applicant;]

[(i) Identifying in the domestic access and benefit-sharing framework the grounds upon which prior informed consent may be denied;]

[(j) Requiring competent national authorities to take decisions on prior informed consent within a reasonable period of time as specified in the domestic access and benefit-sharing framework;]

[(k) Ensuring that the costs for obtaining decisions on prior informed consent do not exceed the actual costs of processing the application;]

[(l) Requiring the competent national authority to include in its decision to grant prior informed consent available passport data as well as a reference code of the [genetic resources][biological resources][, their derivatives][and products] covered by this decision;]

(*Specific aspects related to mutually agreed terms (normally set out in contracts)*

[(m) [Clear] rules, in domestic access and benefit-sharing frameworks, for establishing mutually agreed terms;]

[(n) Requiring the establishment of mutually agreed terms;]

[(o) Requiring that mutually agreed terms be set out in writing;]

[(p) Requiring that mutually agreed terms include a clause on the settlement of disputes;]

[(q) Requiring that mutually agreed terms reflect that consideration has been given to benefit-sharing;]

[(r) Reference to the [model] clauses and inventories/catalogues of utilizations of [genetic resources][biological resources][, their derivatives][and products] and related benefits developed in accordance with *{...}*.]

[2. The additional measures set out in *{...}* to support compliance in cases of misappropriation will [have no relationship whatsoever with][be applicable if] the domestic access and benefit-sharing framework of a Contracting Party providing a genetic resource [is in conformity with paragraph 1].]

6) Internationally developed model domestic legislation

[*Recalling* that Article 15(1) of the Convention provides that states have sovereign rights over their resources, and that the authority to determine access to genetic resources rests with the national governments and is subject to national legislation {*preambular paragraph*}]

[*Recalling* that Article 15(5) of the Convention provides that access to genetic resources shall be subject to prior informed consent of the Contracting Party providing genetic resources, unless otherwise determined by that Contracting Party {*preambular paragraph*}]

[*Noting* that Parties have differing legal systems, and accordingly have chosen to implement the access and benefit-sharing provisions of the Convention according to their national conditions {*preambular paragraph*}]

1. Parties [are encouraged to][shall][should] provide examples of [model] provisions for domestic legislation to the Secretariat, and the Secretariat to provide these to [P][p]arties on request, in order to assist and support those [P][p]arties in their domestic implementation of the access and benefit-sharing provisions of the Convention.

[2. The Parties [collectively] [shall][should][, as soon as practicable,] [adopt][compile] examples of [model] provisions for domestic legislation [and exemplary frameworks for administrative decision making that are consistent with the international access standards set out in *{...}*][and distribute them through the clearing house mechanism].]

7) Minimization of administration and transaction costs

8) Simplified access rules for non-commercial research

Option 1

[1. Parties requiring prior informed consent [shall][should] provide for a simplified administrative procedure for access to [genetic resources][biological resources][, their derivatives][and products] for non-commercial research.]

[2. The classification of research as "non-commercial" [may][shall][should] be determined based on its nature, form and objective, particularly on the non-commercial intent at the time of access.]

[3. To preserve the integrity of the simplified procedure, Contracting Parties [shall][should] take measures aimed at:

(a) Ensuring that obligations in relation to access and benefit-sharing are passed on to subsequent users;

(b) Addressing potential changes in intent by non-commercial users, including through identification of clear reference points for such changes;

(c) Ensuring the renegotiation of mutually agreed terms with the provider of the [genetic resources][biological resources][, their derivatives][and products] in cases of changes in intent by non-commercial users where appropriate;

(d) Avoiding that users of [genetic resources][biological resources][, their derivatives][and products] without obligations vis-à-vis the provider make use of generated information if such use is restricted, for example, through publication policies;

(e) Giving recognition to the commitment of users of [genetic resources][biological resources][, their derivatives][and products] to access and benefit-sharing best practice codes of conduct applicable to the research community.]

[4. Parties [shall][should] take measures to encourage providers and users of [genetic resources][biological resources][, their derivatives][and products], when establishing mutually agreed terms, to consider including in these terms [model] clauses [and relevant inventories/catalogues of typical utilizations of [genetic resources][biological resources][, their derivatives][and products] developed in accordance with *{…}*].]

5. Parties [shall][should] collaborate in the exchange of experience in the use of and the development of electronic tools for the tracking of [genetic resources][biological resources][, their derivatives][and products].

6. Parties [shall][should] exchange information on best practices[, as appropriate,] in the application of simplified administrative procedures for access [and benefit-sharing] to [genetic resources][biological resources][, their derivatives][and products] for non-commercial research.

Option 2

Contracting Parties which are countries of origin of [genetic resources][biological resources][, their derivatives][and products], or other Parties which have acquired the [genetic resources][biological resources][, their derivatives][and products] in accordance with the Convention, [shall][should]:

(a) Consider simplified access rules [to][for] [genetic resources][biological resources][, their derivatives][and products] to be used for taxonomy [and other non-commercial] purposes;

(b) [Require that [substantially] new or changed uses of a [genetic resource][biological resource] beyond [the scope of] what has been consented to under mutually agreed terms, [shall][should] be subject to new prior informed consent and mutually agreed terms from the providing country and/or the indigenous peoples and local communities concerned.][Parties shall encourage users and providers to consider, when establishing mutually agreed terms, including in these terms obligations to renegotiate mutually agreed terms should the use of the genetic resources change.]

C. COMPLIANCE

1) Development of tools to encourage compliance

(a) Awareness-raising activities

[*Noting* that awareness of domestic access and benefit-sharing regulatory frameworks is important for users and providers to ensure compliance {*preambular paragraph*}]

Parties [shall][should] take [the following] measures to raise awareness of access and benefit-sharing issues [in support of [mandatory][voluntary] compliance measures to [ensure][promote] benefit-sharing]. Such measures could include[, but not be limited to]:

(a) Making available up to date information about their domestic access and benefit-sharing framework, in particular national laws, policies and procedures;

(b) Steps to promote the International Regime on Access and Benefit-sharing[, including the promotion of a wider understanding among the public on the concepts of misappropriation, misuse and biopiracy, as well as for the recognition of the contribution made by indigenous and local communities to biological diversity and the benefits generated by that contribution];

(c) Organization of stakeholder meetings;

(d) Establishment and maintenance of a help desk for stakeholders;

(e) Information dissemination through [a specialized website][an Access and Benefit-sharing Clearing House][, as well as hard copies];

(f) Promotion of codes of conduct [and best practice tools] in consultation with stakeholders;

(g) Promotion of regional exchange of experiences related to access and benefit-sharing.

[2. Parties [shall][should] raise awareness in accordance with Articles 8(j) and 10(c) of the Convention to promote the wider application of indigenous knowledge, innovations and practices by actively involving indigenous and local communities with their consent in the planning and implementation of research and training (Article 12), public education and awareness (Article 13), exchange of information (Article 17.2) and technical and scientific cooperation (Article 18.4).]

(b) International understanding of misappropriation/misuse

[Each Contracting Party [shall][should] take measures aimed at preventing the use of misappropriated [genetic resources][biological resources][, their derivatives][and products] and traditional knowledge.]

(c) Sectoral menus of model clauses for material transfer agreements 13/

[Option 1

Parties [shall][should][may][,in addition to [promoting][ensuring binding] compliance measures]:

a) In consultation with users and providers from key sectors, develop sectoral menus of [model] clauses for contracts;

b) Encourage users and providers to use these sectoral menus of [model] clauses when negotiating mutually agreed terms.]

[Option 2

[*Emphasizing* that both providers and users of genetic resources benefit from the availability of model clauses for potential inclusion in material transfer agreements and inventories/catalogues of typical utilizations of genetic resources since the use of such clauses and inventories will raise legal certainty, may lower transaction costs and will contribute to creating a level playing field between provider and user when negotiating mutually agreed terms. {*preambular paragraph*}]

1. Parties[, in addition to [promoting][ensuring binding] compliance measures,][shall][should] [take measures to] encourage providers and users of [genetic resources][biological resources][, their derivatives][and products], when establishing mutually agreed terms, to consider:

(a) Including in these terms [model] clauses developed in accordance with paragraphs 2 and 3 below[, as appropriate];

(b) Relevant inventories/catalogues of typical utilizations of [genetic resources][biological resources][, their derivatives][and products] and related monetary and non-monetary benefits.

2. [In order to enhance legal certainty, lower transaction costs and promote equality in negotiations of mutually agreed terms, the] Parties [collectively][shall][should][consider to][may wish to][establish[, as appropriate,] a procedure] [at the national level] [for the] develop[ment] [menus] of [sectoral] [model] clauses [and inventories/catalogues] of typical utilizations of [genetic resources][biological resources][, their derivatives][and products] and related monetary or non-monetary benefits. [The procedure [shall][should][may]][In this context, they should]:

[(a) Identify sectors[, *inter alia* those] for which [model] clauses and inventories/catalogues of typical utilizations of [genetic resources][biological resources][, their derivatives][and products] and related benefits should be developed [in cooperation with key international sectoral organizations and relevant users and providers] [and reflect best practices]];

(b) Identify issues that [should][may] be addressed in [model] clauses [taking account of common elements of various sectors and the particularity of each sector];

(c) Include clear and transparent [rules][suggestions] to facilitate the involvement of stakeholders.

3. The Parties [shall][should][may] [collectively] consider and, where appropriate, [adopt [at the national level] recommendations for][submit a compilation to the clearing house mechanism of menus of] [model] clauses [and inventories/catalogues] of typical uses of [genetic resources][biological

13/ There are also sections on sectoral menus of model clauses in section III.A.2.5 and in section III.E.1.5 of annex I to decision IX/12.

resources][, their derivatives][and products]. They [shall][should][may] regularly review and, where appropriate, update such [model] clauses [and inventories/catalogues] of typical uses of [genetic resources][biological resources] [, their derivatives][and products].]

[4. Parties [shall][should] take measures to encourage the use of the [model] clauses of Annex *{...}* of the International Regime on Access and Benefit-sharing to be included into mutually agreed terms between providers and users of [genetic resources][biological resources][, their derivatives][and products] and/or associated traditional knowledge for the following three categories of utilization of [genetic resources][biological resources][, their derivatives][and products]:

(a) Research not aiming at commercialization;

(b) Research and development aiming at commercialization; and

(c) Commercialization.]

[5. Indicators for the identification of these three categories of utilization of [genetic resources][biological resources][, their derivatives][and products] are provided in Annex *{...}* of the International Regime on Access and Benefit-sharing.]

(d) Codes of conduct for important groups of users

[*Recognizing* the existence of a range of national and international, sectoral or company specific codes of conduct and best practice guidelines on access and benefit-sharing and their importance in achieving the fair and equitable sharing of benefits arising out of the the utilization of genetic resources, the third objective of the Convention {*preambular paragraph*}]

Parties [shall][should][may][, in addition to [promoting][ensuring binding] compliance measures]:

(a) Support, as appropriate, the development, review and update of access and benefit-sharing-related [voluntary] codes of conduct[, and best practice standards,] for users of [genetic resources][biological resources][, their derivatives][and products];

(b) Take measures to [encourage][ensure] users [to] adhere to the codes of conduct [and encourage users to adhere to best practice standards;]

[(c) Ensure the communication, education and awareness of these codes of conduct and best practice standards to the relevant user groups].

(e) Identification of best-practice codes of conduct

[*Recognizing* the existence of a range of national and international, sectoral or company specific codes of conduct and best practice guidelines on access and benefit-sharing and their importance in achieving the third objective of the Convention {*preambular paragraph*}]

Parties [shall][should] collectively establish a procedure for identifying and regularly reviewing access and benefit-sharing related codes of conduct and guidelines that constitute best-practice.

(f) Research funding agencies to oblige users receiving research funds to comply with specific access and benefit-sharing requirements

Parties [shall][should] [encourage][ensure that] research, funding and publishing entities [to] ask for [the unique identifier code referred to in the certificate of compliance][evidence of compliance with relevant national law] as part of their application procedures or research results, as appropriate, when [genetic resources][biological resources][, their derivatives][and products] and associated traditional knowledge [is][are] involved.

(g) Unilateral declaration by users

(h) International access standards (that do not require harmonization of domestic access legislation) to support compliance across jurisdictions

[The additional measures set out in *{...}* to support compliance in cases of misappropriation [shall][should] be applicable if the domestic access and benefit-sharing framework of a Contracting Party providing a genetic resource is in conformity with *{...}*.]

2) Development of tools to monitor compliance

[Each Contracting Party [shall][should] take [appropriate legislative, [regulatory,] administrative or policy] measures [aimed at building capacity to develop tools to monitor compliance;]]

(a) Mechanisms for information exchange

1. [Parties [shall][should] collaborate to facilitate information exchange on access and benefit-sharing between Parties, providers and users of [genetic resources][biological resources][, their derivatives][and products] and, where appropriate, between national access and benefit-sharing focal points, including through:][[Parties [shall][should] use] [An Access and Benefit-sharing Clearing-House is hereby established as part of] the clearing-house mechanism [pursuant to] [under] Article 18, paragraph 3, of the Convention, [as well as other means agreed by Parties, including non-internet means,] in order to:]

[(a) [Monitor][Support] compliance with national access and benefit-sharing legislation[, regulation][or community protocols] and with this International Regime on Access and Benefit-sharing [through the exchange of information];]

(b) Facilitate the [equitable] exchange of scientific, technical, environmental and legal information on, and experience with, access and benefit-sharing[, and on best practices in the application of simplified administrative procedures for access to [genetic resources][biological resources][, their derivatives][and products] for non-commercial research];

[(c) Facilitate adequate funding and capacity building for effective participation in the Access and Benefit-sharing Clearing House Mechanism, taking into account the special needs of developing country Parties, in particular the least developed among them and small island developing States, and countries with economies in transition as well as countries that are centres of origin and centres of genetic diversity;]

(d) Assist Parties to implement this International Regime on Access and Benefit-sharing, taking into account the special needs of developing country Parties, in particular the least developed and small island developing States among them, and countries with economies in transition as well as countries that are centres of origin and centres of genetic diversity[, through the provision of information as set out in paragraph 3 below];

[(e) Support potential users of genetic resources in accessing relevant information].

[2. The [Access and Benefit-sharing] Clearing-House [shall][should] serve as a means through which information is made available for the purposes of paragraph 1 above. It [shall][should] provide access to information made available by the Parties relevant to the implementation of [domestic access and benefit-sharing frameworks and] this International Regime on Access and Benefit-sharing.]

3. Without prejudice to the protection of confidential information, each Party [shall][should] make available to the [Access and Benefit-sharing] Clearing-House[, as appropriate,] [any information

required to be made available to the Access and Benefit-sharing Clearing-House under this International Regime on Access and Benefit-sharing,] and:

(a) [Any existing laws, regulations and guidelines for][Mode of] implementation of this International Regime on Access and Benefit-sharing;

[(b) Community protocols;]

(c) Any bilateral, regional and multilateral agreements and arrangements [related to access and benefit-sharing];

(d) Information about national focal point and competent national authority(ies);

[(e) List of defaulters of access and benefit-sharing agreements ("name and shame");]

[(f) Information on [model] domestic access and benefit-sharing legislation and [menus of] model clauses for contracts;]

[(g) Experience in the development of electronic tools for the tracking of genetic resources;]

[(h) Codes of conduct and best practices in access and benefit-sharing].

[4. The [Access and Benefit-sharing] Clearing House [shall][should] include[, if appropriate,] an international [registration][and inquiry point][database of examples] of certificates of compliance with national legislation[, community protocols and relevant customary laws of indigenous peoples and local communities] and requirements on access and benefit-sharing, issued by the competent national authority(ies), in accordance with provisions in *{…}*.]

[5. The modalities of the operation of the [Access and Benefit-sharing] Clearing-House, including reports on its activities, [shall][should] be considered and decided upon by the Governing Body of the International Regime on Access and Benefit-sharing at its [first][next] meeting, and kept under review thereafter.]

(b) Internationally recognized certificate issued by a domestic competent authority

1. Each Party [shall][should] designate one national focal point for access and benefit-sharing [and make [any] information relevant to access and benefit-sharing available through the clearing-house mechanism][, as appropriate]. The national focal point [shall][should] [provide][make available] information [to the [access and benefit-sharing] clearing-house mechanism] [as well as other means agreed by Parties, including non-internet means] on procedures for acquiring prior informed consent and mutually agreed terms, including benefit-sharing, and on competent national authorities[, relevant indigenous and/or local communities and relevant stakeholders].

2. Each Party [shall][should] also designate one or more competent national authorities, which [shall][should] be responsible for and duly authorized to act on its behalf with respect to the following functions:

[(a) Performing the administrative functions [required by][to support the implementation of] this International Regime on Access and Benefit-sharing[, including the [issuance][emission][and transferring inquiry] of certificates of compliance with national legislation and[/or national] requirements on access and benefit-sharing];]

[(b) The receipt, administration and transfer to the financial mechanism of the funds collected through the enforcement of *{…}*;]

[(c) Help providers of genetic resources to obtain relevant information, including in specific cases of alleged infringements of provider country requirements in relation to prior informed consent and mutually agreed terms].

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

3. Each Party [shall][should], no later than the [effective date] [date of entry into force] of this International Regime on Access and Benefit-sharing 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, it [shall][should] convey to the Secretariat, with its notification thereof, relevant information on the respective responsibilities of those authorities. Each Party [shall][should] 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.

4. The Secretariat shall forthwith inform the Parties of the notifications it receives under paragraph 3 above, and shall also make such information available through the [Access and Benefit-sharing] Clearing-House. 14/

Option 1

[[The International Regime on Access and Benefit-sharing [shall][should] establish a system [of an internationally recognized certificate of [origin][source][legal provenance][compliance]][of certification][Each Party shall issue a certificate of compliance with international legal effectiveness and applicability] which [shall][should] [establish the origin of the [genetic resources][biological resources][, their derivatives][and products] and associated traditional knowledge and] [certify the compliance of a user] of [such] [genetic resources][biological resources][, their derivatives][and products] [and/or associated traditional knowledge] with the relevant [requirements and/or] laws [or regulations] of the [provider country][country of origin][countries of origin of such resources or of the Parties that have acquired the [genetic resources][biological resources][, their derivatives][and products] in accordance with the Convention][, community protocols and relevant customary laws of indigenous and local communities]][. [Genetic resources][Biological resources][, their derivatives][and products] being provided by a Contracting Party are only those that are provided by Contracting Parties that are countries of origin of such resources or of the Parties that have acquired the genetic resources in accordance with the Convention.] The certificate [shall][should] be a public document to be issued by a competent national authority appointed in accordance with national law and [shall][should] be required to be presented at specific checkpoints in user and provider countries established to monitor compliance in relation to a range of possible uses.]

[Parties may, on a voluntary basis, make available to users a certificate of compliance with domestic access and benefit-sharing legislation issued by a relevant national authority, allowing users to demonstrate compliance with national access and benefit-sharing legislation.]

(a) The [voluntary] certificate [shall][should][may] include the following [minimum] information:

(i) Issuing national authority;

(ii) Details of the provider;

(iii) A codified unique alpha numeric identifier;

14/ The placement of paragraphs 1 to 4 above must be further considered.

(iv) Details of the rights holders of [genetic resources][biological resources][, their derivatives][and products] and/or] [associated traditional knowledge], as appropriate;

(v) Details of the user;

(vi) Subject matter ([genetic resources][biological resources][, their derivatives][and products] [and/or associated traditional knowledge]) covered by the certificate[, subject to confidential information as identified in national requirements or by indigenous and local communities providing associated traditional knowledge];

[(vii) Geographic location of the [access][collection] activity][Source of [genetic resources][biological resources][, their derivatives][and products]];

[(viii) Prior informed consent granted by [countries of origin][provider countries][or the Parties which have acquired the [genetic resources][biological resources][, their derivatives][and products] in accordance with the Convention] or indigenous and local communities and mutually agreed terms;]

[(ix) Uses permitted and restrictions of use;]

[(x) Conditions of transfer to third parties;]

(xi) Date of issuance;

[(xii) Confirmation of compliance with domestic access requirements].

[(b) Contracting Parties [shall][should] establish checkpoints for the certificate for commercial and non- commercial uses. Checkpoints for commercial uses [may][shall][should] include customs controls, intellectual property offices and registration points for other commercial applications not covered by intellectual property rights. [Checkpoints for non- commercial uses [may][shall][should] include publishing houses of scientific journals, grants making bodies and ex-situ collections.]]

[(c) Contracting Parties [shall][should] facilitate an efficient, easy to use [voluntary] certification process through the use of new technology [and other means agreed to by Parties including capacity building and funding] which [may][shall][should] include:

(i) Cost efficient publicly searchable certificate databases providing evidence of prior informed consent [and mutually agreed terms];

[(ii) Recording of progressive compliance on such databases as conditions of prior informed consent and mutually agreed terms are met;]

[(iii) Searchable patent application [and registration] databases;]

(iv) Integration of genomic and morphological taxonomy [to create species certainty];

(v) Low cost, portable, gene based bar-coding technology to create rapid attack taxonomy;

(vi) Linking unique identifiers to gene-based bar-coding.]

[(d) Contracting Parties where viable [shall][should]:

[(i) Use existing tracking procedures by innovatively reconceptualizing them to track [genetic resources][biological resources][, derivatives and products] and/or associated traditional knowledge;]

(ii) Minimize the creation of new levels of bureaucracy;

(iii) [Where a Party requires prior informed consent,] Promote automatic issuing of certificates upon compliance with specific criteria[, such as completion of material transfer agreements or access and benefit-sharing agreements];

[(iv) Promote consolidation of existing permitting requirements with any new certification system;]

(v) Promote paperless systems;

[(vi) Establish minimum standards for recording of collections, to ensure a link between incoming and outgoing resources, without requiring harmonization of internal recording procedures;]

[(vii) Provide economic support to developing countries[, in particular the least developed among them and small island developing States, and countries with economies in transition,] to develop online systems to support an international documentation system.]]

[(e) Contracting Parties [shall][should] ensure that no intellectual property rights based on the utilization of [genetic resources][biological resources][, derivatives and products] and/or associated traditional knowledge will be granted unless the applications for such intellectual property rights include the disclosure of an Internationally Recognized Certificate of Compliance with the access and benefit-sharing legislation of the provider country.]

Option 2

Contracting Parties [agree to establish hereby][which are countries of origin of [genetic resources][biological resources][, their derivatives][and products], or other Parties which have acquired the [genetic resources][biological resources][, their derivatives][and products] in accordance with the Convention,] [shall][should][may] [require that][as appropriate according to national circumstances, provide that][, through its competent national authority, issue], upon granting access, [an internationally recognized certificate provided to certify the compliance of a user of [genetic resources][biological resources][, their derivatives][and products] with the relevant law of the country of origin], [a certificate of compliance][[(]or documentary evidence[)]] [is issued,][by a national competent authority][allowing users of the [genetic resources][biological resources][, their derivatives][and products] to demonstrate compliance with the providing Party's access and benefit-sharing legislation [or regulation] or framework][with information on the country providing the resources and information on whether national legislation on access and benefit-sharing has been complied with].

(c) Tracking and reporting systems

1. Contracting Parties [shall][should] [develop tracking and monitoring systems that identify breaches of contractual obligations or misappropriation of [genetic resources][biological resources][, their derivatives][and products] and/or associated traditional knowledge and bring such breaches to the attention of the rights holders and stakeholders.][facilitate exchange of information,

including through the clearing house mechanism, related to the development of tracking and monitoring systems of [genetic resources][biological resources][, their derivatives][and products], and encourage the further development of information technologies appropriate to that purpose].

[2. Parties [shall][should] encourage users and providers to include provisions in access and benefit-sharing contracts to cover monitoring and tracking the use of the [genetic resources][biological resources][, their derivatives][and products] accessed, including measures to monitor compliance with mutually agreed terms.]

(d) Information technology for tracking

(e) Disclosure requirements

[1. [Patent] [Intellectual property rights] applications [and product approval applications] whose subject matter concerns, is [directly based on][derived from or makes use of] [genetic resources][biological resources][, their derivatives][and products] and[/or] associated traditional knowledge [shall][should][may] disclose the country [providing [genetic resources][biological resources][, their derivatives][and products]] [of origin] [and/or the country providing the resource] [in accordance with the Convention] [or source of such] [genetic resources][biological resources], [their derivatives] [and products,] and [/or] associated traditional knowledge[.][, as well as [information on prior informed consent and] evidence that provisions regarding prior informed consent, mutually agreed terms and benefit-sharing have been complied with, in accordance with the national legislation[, regulations and/or requirements] of the country providing the resources [in accordance with the Convention].]]

[2. Each Party [shall][should][may] put in place effective enforcement procedures so as to ensure compliance with the obligations set out in the above paragraph. In particular, each Party [shall][should] establish administrative[, civil] and/or criminal measures for non-disclosure of the relevant information and the dissemination of false information to the national authorities, and [shall][should] ensure that administrative and/or judicial authorities have the authority to prevent the further processing of an application and to revoke or render unenforceable an intellectual property right or a product approval when the applicant has, knowingly or with reasonable grounds to know, failed to comply with the obligations in the above paragraph or provided false or fraudulent information.]

[3. [Compliance with national legislation and requirements in user countries [shall][should] be promoted][The obligations above-mentioned in paragraph 1 [may][shall][should] be met] by the presentation of a certificate of compliance with national legislation and requirements on access and benefit-sharing, issued by the country of origin in accordance with *{…}*.]

(f) Identification of check points

[1. Parties [shall][should] establish other effective supporting mechanisms for compliance at [border] check points[, intellectual property rights offices, entities funding research, etc., including by using certificates of compliance with national legislations, so as to prevent misappropriation of resources].]

[2. Contracting Parties [shall][should] establish check points at, *inter alia*, intellectual property rights offices, market approval authorities and entities funding research, to ensure that the use of [genetic resources][biological resources][, their derivatives][and products] is accompanied by, and is in line with, the relevant international recognized certificate.]

[3. The check points established by the Contracting Parties [shall][should] cover all uses of [genetic resources][biological resources][, their derivatives][and products] according to the definition included in the International Regime on Access and Benefit-sharing, in their jurisdiction.]

3) Development of tools to enforce compliance

[1. Each Party [shall][should] ensure that users of [genetic resources][biological resources][, their derivatives][and products] and/or associated traditional knowledge under its jurisdiction comply with the national legislation [or regulation] of the countries of origin of such resources[, their derivatives][and products] and/or traditional knowledge or of the Parties that have acquired the [genetic resources][biological resources][, their derivatives][and products] in accordance with the Convention, when accessing and/or using such resources[, their derivatives][and products] and/or associated traditional knowledge[.][by taking the following measures:]

[(a) Rules requiring that users of [genetic resources][biological resources][, derivatives][and products] and/or associated traditional knowledge comply with national legislation in the country of origin and the mutually agreed terms on which access was granted, including requirements to equitably share the benefits arising out of the utilization of such resources [, derivatives][, and products] and/or associated traditional knowledge;]

[(b) [Introduce][rules requiring that][measures encouraging] the importation of [genetic resources] [biological resources][, their derivatives][and products] and/or associated traditional knowledge] from a country which requires prior informed consent for utilization or for the export of this resource[, only takes][to take] place in compliance with such prior informed consent;]

[(c) [Measures aimed at preventing the use of misappropriated [genetic resources][biological resources][, their derivatives][and products] and/or traditional knowledge;]]

[(e) [Require that [genetic resources][biological resources][, their derivatives][and products][and/or associated traditional knowledge] are only used for purposes consistent with [prior informed consent and mutually agreed terms] [the terms and conditions under which they were acquired];

[(f) Require that when [genetic resources][biological resources][, their derivatives][and products][and/or associated traditional knowledge] are used for research and commercial purposes within its jurisdiction, documentation with regard to the country of origin/providing country/agreed multilateral system providing these resources should accompany the material. If national legislation in the country providing the [genetic resources][biological resources][, their derivatives][and products] requires prior informed consent for access to the material, the documentation [shall][should] also specify whether such consent has been sought. [If the providing country is different from the country of origin, the country of origin or, if applicable, the agreed multilateral system [shall][should] also be disclosed.] If some of the information referred to in this subparagraph does not exist, this [shall][should] be stated in the documentation accompanying the material;]

[(g) [Introduce] rules requiring that when genetic resources covered by the [Multilateral System created under the] International Treaty on Plant Genetic Resources for Food and Agriculture are used for research and commercial purposes, they [shall][should] be accompanied by information confirming that these resources are accessed in accordance with the Standard Material Transfer Agreement under [the Multilateral System of] the Treaty;]

[(h) Other measures requiring users to comply with the provisions in the Convention and this International Regime on Access and Benefit-sharing.]]

[2. Each Party [shall][should] take appropriate, effective and proportionate measures to [establish sanctions and remedies][prevent situations] when users under their jurisdictions [have] violate[d] national access and benefit-sharing legislation of the countries of origin of [genetic resources][biological resources][, their derivatives][and products] and/or traditional knowledge or of the Parties that have acquired the [genetic resources][biological resources][, their derivatives][and products]

in accordance with the Convention. [Among others, the Parties [may][shall][should] establish the following sanctions and remedies:

(a) The cessation of the acts related to the infraction;

(b) Compensation for damages;

(c) The withdrawal from the market of products resulting from the infringement;

(d) The prohibition on the import or export of goods, materials or any means referred to in the previous paragraph;

(e) The necessary action to avoid continuation or repetition of the offence;

(f) Publication of the judgement and notification to interested persons at the expense of the person(s) who made the infraction;

(g) Criminal penalties for use of [genetic resources][biological resources][, their derivatives][and products] and associated traditional knowledge without compliance with conditions of access and benefit-sharing in the country of origin;

(h) Others as appropriate.]]

[3. Each Party [shall][should], at the request of any interested Party, [in accordance with national law and existing agreements or arrangements,][if any,] cooperate in the investigation and follow up of cases of alleged violations of the national access and benefit-sharing legislation of the country of origin of [genetic resources][biological resources][, their derivatives][and products] and/or associated traditional knowledge or of the Party that has acquired the [genetic resources][biological resources][, their derivatives][and products] in accordance with the Convention, including prior informed consent and mutually agreed terms.]

4. Each Party [shall][should] [provide timely guidance and][make available] information on the types of assistance that are available to nationals of other jurisdictions [to assist in the][to ensure that lack of funds and lack of experience with the law of the users are not elements preventing] exercise and enforcement of their rights.

[5. User Parties [shall][should] provide financial assistance for the settlement of legal disputes.] 15/

(a) Measures to ensure access to justice with the aim of enforcing ABS arrangements

[1. Access to justice [shall][should] be in accordance with Principle 10 of the Rio Declaration.]

[2. The Governing Body of the International Regime on Access and Benefit-sharing [shall][should][may] [consider][ensure] such [voluntary] measures or mechanisms as appropriate to support effective implementation of the International Regime on Access and Benefit-sharing, including by providing assistance to Parties[, as well assistance that covers issues related to the financial cost of legal expertise] [and/or indigenous and local communities], upon request, in litigation related to cases of alleged non-compliance [with national access and benefit-sharing laws, regulations and/or requirements and/or breach of access and benefit-sharing agreements]. Such measures/mechanisms

15/ The placement of paragraphs 1 to 5 above must be further considered.

[shall][should][may] be considered by the Governing Body of the International Regime on Access and Benefit-sharing not later than at its [first][next] meeting.]

[3. The International Regime on Access and Benefit-sharing [shall][should] establish an international access and benefit-sharing ombudsman's office. The ombudsman's office [shall][should] be responsible for provider countries[, or, where relevant,] [/] countries of origin and indigenous and local communities to identify breaches of their rights and to provide aid in seeking fair and equitable resolution of disputes. The ombudsman's office [shall][should] be empowered to take action on behalf of [provider] countries [of origin/provider countries] and indigenous and local communities through the binding Dispute Resolution Mechanism. The ombudsman's office [shall][should] also where necessary and when requested represent [provider] countries [of origin/provider countries] [and/or] indigenous and local communities in proceedings in foreign jurisdiction, take depositions from indigenous and local communities and provide evidence of customary law and practice as and where appropriate.]

(b) Dispute settlement mechanisms:

(i) Inter-State

(ii) Private international law

(iii) Alternative dispute resolution

[1.(a) The International Regime on Access and Benefit-sharing [shall][should] establish a Dispute Resolution Mechanism accessible to both countries and also other aggrieved parties who include indigenous and local communities, non-governmental organizations, research and commercial interests, and other providers and users of [genetic resources][biological resources][, their derivatives][and products] and/or associated traditional knowledge.]

[(b) The Dispute Resolution Mechanism [shall][should] also have regional offices that use local languages and have personnel conversant with the cultural, social, economic and environmental realities of the region.]

[(c) The Dispute Resolution Mechanism [shall][should] be guided in its work by principles of equity[, impartiality and independence] drawn from a wide range of legal sources including customary law and practices of indigenous and local communities.]

[(d) The International Regime on Access and Benefit-sharing [shall][should] establish mechanisms to provide legal assistance to developing countries and indigenous and local communities.]

[2. Parties to the Convention [shall][should] encourage users and providers to utilize, to the fullest extent possible, existing mechanisms on alternative dispute resolution.]

(c) Enforcement of judgments and arbitral awards across jurisdictions

[*Noting* the importance of compliance with ABS agreements/contracts to the international regime {*preambular paragraph*}]

[Noting also that the existing body of private international law provides a range of options for dispute resolution across national borders {*preambular paragraph*}]

[Noting the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) and the assistance it provides parties in the enforcement of foreign arbitral awards {*preambular paragraph*}]

[1. Contracting Parties [shall][should] ensure that their courts will enforce the decisions of the courts of the country of origin/provider countries against unlawful users under the former's jurisdiction subject to basic principles underlying enforcement of foreign judgments under comity in international law.]

2. Parties [shall][should] encourage access and benefit-sharing users and providers to include provisions in access and benefit-sharing contracts to cover international dispute resolution including:

(a) The jurisdiction to which they will subject any dispute resolution processes;

[(b) The applicable law;]

(c) Options for alternative dispute resolution, such as mediation or arbitration, in the event of contractual disputes.

(d) Information exchange procedures between national focal points for access and benefit-sharing to help providers obtain relevant information in specific cases of alleged infringements of prior-informed-consent requirements

[The international ombudsman [shall][should] facilitate, through national focal points and/or competent authorities, the provision of relevant information on infringement of prior informed consent requirements of providers of [genetic resources][biological resources][, their derivatives][and products] and/or associated traditional knowledge.]

(e) Remedies and sanctions

[1. National legislation [shall][should] provide for remedies to sanction lack of compliance with the requirements set out in paragraph *{...}* which must include inter alia revocation of the intellectual property rights in question, as well as co-ownership of the intellectual property rights and its transfer.]

[2. Contracting Parties [shall][should] develop effective, cost efficient systems to initiate and sustain actions to prevent, mitigate or seek redress in cases of breach of contractual obligations or misappropriation and where necessary provide support for claimants in actions for breach of contract or misappropriation.]

[3. Each Contracting Party [shall][should] introduce measures to facilitate cooperation between Contracting Parties to address alleged infringements of access and benefit-sharing agreements and misappropriation of [genetic resources][biological resources], [their derivatives][and products,] and/or associated traditional knowledge, such as access to justice and support for claimants in actions of breach of contract or misappropriation.]

4) Measures to ensure compliance with customary law and local systems of protection

[Noting that customary law provides a sub-set of existing rules related to access and benefit-sharing of [genetic resources][biological resources], and measures to comply with such rules {*preambular paragraph*}]

[Recognizing that customary law functions within a specific belief system, is dynamic and includes mechanisms to preserve its underlying values and principles {*preambular paragraph*}]

[1. Contracting Parties [shall][should]:

(a) Take necessary policy, administrative[, regulatory] and legislative measures to recognize the rights of indigenous peoples and local communities to [genetic resources][biological resources][, their derivatives][and products] and/or associated traditional knowledge. Until, and to the extent such policies,

administrative and legislative measures have not been put in place, the State shall nonetheless uphold obligations with respect to indigenous peoples' and local communities' rights to [genetic resources][biological resources][, their derivatives][and products] and/or traditional knowledge under international law;

(b) With the full and effective participation of the indigenous and local communities concerned support and facilitate local, national and/or regional community protocols regulating access to traditional knowledge taking into consideration the relevant customary laws and ecological values of indigenous and local communities in order to prevent the misappropriation of their associated traditional knowledge and to ensure the fair and equitable sharing of benefits arising from the utilization of such associated traditional knowledge;

(c) Ensure that any acquisition, appropriation or utilization of traditional knowledge in contravention of the relevant community protocols constitutes an act of misappropriation;

(d) Ensure that the application, interpretation and enforcement of protection against misappropriation of traditional knowledge, including determination of equitable sharing and distribution of benefits, [shall][should] be guided, as far as possible and appropriate, by respect for the ecological values, customary norms, laws and understandings of the holders of the knowledge;

(e) Encourage and support the development of community protocols that [shall][should] provide potential users of traditional knowledge with clear and transparent rules for access to traditional knowledge where associated traditional knowledge is shared between: (i) indigenous and local communities spread across national boundaries; and (ii) between indigenous and local communities with different values, customary norms, laws and understandings;

(f) Where such community protocols are developed with the full and effective participation of indigenous and local communities, give effect to such community protocols through an appropriate legal framework;

(g) Community protocols in their efforts to prevent misappropriation of associated traditional knowledge and ensure fair and equitable benefit-sharing must also make efforts to respect, preserve and maintain relations within and between indigenous and local communities that generate and sustain the traditional knowledge by ensuring the continued availability of traditional knowledge for the customary practice, use and transmission;

(h) Consider relevant customary law and its potential application to access and benefit-sharing transactions in taking measures to raise awareness of access and benefit-sharing issues.]

[2. Parties are encouraged to provide information on the indigenous community which has the responsibility to identify the appropriate customary law expert relevant to an access and benefit-sharing transaction.]