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Tenth meeting
Nagoya, Japan, 18–29 October 2010
Item 3 of the provisional agenda*

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

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INTRODUCTION

A. *Background*

1. The second part of the ninth meeting of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing was held in Montreal from 10 to 16 July 2010. The meeting was preceded by informal consultations in Montreal on 8-9 July 2010.

B. *Attendance*

2. The meeting was attended by representatives of the following Parties and other Governments: Algeria; Angola; Antigua and Barbuda; Argentina; Armenia; Australia; Austria; Bangladesh; Belarus; Belgium; Benin; Bhutan; Bolivia; Botswana; Brazil; Burkina Faso; Burundi; Cambodia; Cameroon; Canada; Cape Verde; Central African Republic; Chad; Chile; China; Colombia; Cook Islands; Costa Rica; Côte d'Ivoire; Croatia; Cuba; Democratic Republic of the Congo; Denmark; Djibouti; Dominica; Dominican Republic; Ecuador; Egypt; Ethiopia; European Union; Finland; France; Gabon; Georgia; Germany; Grenada; Guatemala; Guinea; Guinea-Bissau; Haiti; Hungary; India; Indonesia; Iran (Islamic Republic of); Iraq; Italy; Jamaica; Japan; Jordan; Kenya; Kiribati; Lesotho; Liberia; Madagascar; Malawi; Malaysia; Mali; Mauritania; Mexico; Micronesia (Federated States of); Morocco; Mozambique; Namibia; Nauru; Nepal; Netherlands; New Zealand; Niger; Nigeria; Norway; Pakistan; Panama; Peru; Philippines; Portugal; Republic of Korea; Republic of Moldova; Saint Lucia; Samoa; Sao Tome and Principe; Saudi Arabia; Senegal; Serbia; Seychelles; Solomon Islands; South Africa; Spain; Sudan; Swaziland; Sweden; Switzerland; Syrian Arab Republic; Tajikistan; Thailand; Togo; Turkmenistan; Ukraine; United Kingdom of Great Britain and Northern Ireland; Uruguay; Venezuela; Viet Nam; Yemen; Zambia and the United States of America.

3. Observers from the following United Nations bodies, specialized agencies and other bodies also attended: Food and Agriculture Organization of the United Nations; Global Environment Facility; International Treaty on Plant Genetic Resources for Food and Agriculture, Food and Agriculture Organization of the United Nations; United Nations Environment Programme; United Nations Permanent Forum on Indigenous Issues; United Nations University - Institute of Advanced Studies; World Health Organization; World Intellectual Property Organization; International Union for Conservation of Nature (IUCN).

4. The following organizations were also represented by observers:

A SEED Japan (Youth NGO)	Centre for International Sustainable Development Law
African Indigenous Women Organisation	Centro de Estudios Multidisciplinarios Aymara
ALMACIGA-Grupo de Trabajo Intercultural	Centro Internacional de Mejoramiento de Maíz y Trigo (CIMMYT)
Andes Chinchasyo	Chibememe Earth Healing Association
Assembly of First Nations	Commission des Forêts d'Afrique Centrale (COMIFAC)
BayhDole 25 Inc.	COMPASS JAPAN
BC Indian Chiefs and BC First Nations Summit and Dena Kayeh Institute (UBCIC and BCFNS and DKI)	Consejo Autonomo Aymara
Berne Declaration	Consejo Regional Otomí del Alto Lerma
Biotechnology Industry Organization	Conservation International - Japan
Bioversity International	Coordinadora de las Organizaciones Indígenas de la Cuenca Amazonica (COICA)
Botanic Gardens Conservation International	
Call of the Earth Llamado de la Tierra	

CropLife International	Maritime Aboriginal Peoples Council
ESRC Centre for Social and Economic Aspects of Genomics (Cesagen)	Meiji Gakuin University
ETC Group	National Aboriginal Health Organization
Femmes Autochtones du Québec Inc. (FAQ)	National Association of Friendship Centres
First Nations Confederacy of Cultural Education Centres	Natural Justice (Lawyers for Communities and the Environment)
Foundation for Aboriginal and Islander Research Action	Nepal Indigenous Nationalities Preservation Association (NINPA)
Fridtjof Nansen Institute	Netherlands Center for Indigenous Peoples
Fuerza de Mujeres Wayuu (FMW) - Sutsuin Jiyeyu Wayuu	Personal Care Products Council
Global Biodiversity Information Facility	Protect Our Water and Environmental Resources
Grand Council of the Crees (Eeyou Istchee)	Quaker International Affairs Programme
Indigenous Peoples Council on Biocolonialism	Red de Cooperacion Amazonica
Institut du développement durable et des relations internationales	Red de Mujeres Indigenas sobre biodiversidad
Institute for European Studies	Red de Mujeres Indígenas y Biodiversidad de Guatemala
Instituto Indígena Brasileño para Propiedad Intelectual	Regional Center of Expertise on Education for Sustainable Development
International Centre for Trade and Sustainable Development	State University of New York (SUNY Plattsburgh)
International Chamber of Commerce	Swiss Academy of Sciences
Irish Center for Human Rights	Tebtebba Indigenous Peoples' International Centre for Policy Research & Education
IUCN - International Union for Conservation of Nature	Third World Network
Japan Bioindustry Association	Tulalip Tribes
Japan Civil Network for Convention on Biological Diversity	University of Lund
Las Cuatro Flechas de Mexico A.C. Rethinking Tourism Project	University of Rome Sapienza
L'Unissons-nous pour la Promotion des Batwa	Wick Communications
Malaysian Biotechnology Corporation	WWF - Japan
	WWF Germany

ITEM 1. OPENING OF THE MEETING

5. The second part of the ninth meeting of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing was opened at 10.25 a.m. on Saturday, 10 July 2010 by the Co-Chairs of the Working Group, Mr. Timothy Hodges and Mr. Fernando Casas. They welcomed participants to the meeting and hoped that the participants were ready to finalize the draft protocol to the Convention on Biological Diversity on access to genetic resources and the fair and equitable sharing of benefits from their utilization. They expressed their gratitude to the Government of Japan, which had made possible the organization of the second part of the ninth meeting of the Working Group, as well as the Governments of Canada, Japan, Spain and Switzerland, which had provided the financial support to enable the participation of delegates from developing countries. They also acknowledged the pivotal role that the Government of Norway had played in ensuring that a team from the *Earth Negotiations Bulletin* would be present at the meeting to report on the deliberations.

6. Co-Chair Hodges reminded the participants that only one hundred days remained until the tenth meeting of the Conference of the Parties and that the Working Group had only seven days to complete its work, which was to produce the final text of the Protocol. The current year marked the end of an era in the life of the Convention on Biological Diversity, and the discussions at the current meeting would write its next chapter. Much of the future of the Convention on Biological Diversity depended on the outcome of the current negotiations. The time had come to demonstrate good will and to show that the participants wanted a concise, effective and fair protocol that would also be implemented. The outcome of the current meeting would send a message to the high-level plenary meeting of the General Assembly of the United Nations that was to take place in New York in September 2010 and would be key to the success of the tenth meeting of the Conference of the Parties.

7. Co-Chair Hodges then introduced a video of the message of Mr. Edward Norton, the United Nations Goodwill Ambassador for Biodiversity.

8. His Excellency Ambassador Kiyoshi Araki, Ambassador of Japan for the tenth meeting of the Conference of the Parties, said that he had attended the resumed activities of the Working Group to re-emphasize the value of the present meeting and to ensure the smooth continuation of negotiations. He reminded the Working Group that, at the end of the first part of the ninth meeting of the Working Group, held in Cali, Colombia, the Government of Japan had taken the urgent decision to fund the resumed meeting in light of the strong interest expressed by many participants to conduct text-based negotiations in an open-ended manner. Given that, it was reasonable to expect that the present meeting would end with an improved text for the Protocol, although it might remain difficult to find a common position for some of its proposed articles. However, even if some issues remained unresolved, it was necessary to send a clear guidance to the Conference of the Parties so that an attempt to find a solution through political discussions could be made.

9. The representative of Brazil, speaking on behalf of the Like-minded Megadiverse Countries, said that the successful conclusion of the text-based negotiations should lead to a protocol that was effective in implementing the objectives of the Convention, and would contribute to both the eradication of poverty and the promotion of human well-being. The issues faced by the Working Group were fundamentally interrelated, and a balance had to be achieved in addressing them. The protocol would need to rectify the imbalance caused by biopiracy and the use of genetic resources without the consent of the countries of origin. That balance was needed in each article of the Protocol and for each issue being discussed. The ongoing negotiations toward the protocol constituted the main element of the ways and means of an indivisible whole to secure the effective implementation of the Convention's threefold objectives, in accordance with the principle of common and differentiated responsibility. The tenth meeting of the Conference of the Parties needed to address that challenge as a package, including the new Strategic Plan for the post-2010 period and the Convention's strategy for resource mobilization.

10. The representative of Malawi, speaking on behalf of the African Group, said that during the thirteenth session of the African Ministerial Conference on the Environment, held in Bamako from 20 to 25 June 2010, the African Ministers of Environment had renewed their commitment to finalize the negotiations for the protocol on access and benefit-sharing at the resumed ninth meeting of the Working Group and in time for signature at the tenth meeting of the Conference of the Parties. He reminded participants that Africa was a megadiverse continent with a rich heritage of biological diversity and that biological diversity and associated traditional knowledge were the major natural capital for sustainable development, food security, poverty alleviation as well as for climate adaptation and mitigation. The Protocol would benefit both providers and users of biological diversity, and those benefits offered great incentives for maintaining the health of biological diversity through the two other objectives of the Convention as well. He called upon the Parties and other stakeholders to remember their mandates and interpret Article 15 of the Convention in a holistic manner so that the protocol would provide a level playing field for all actors and he requested clear rules of engagement from the Co-Chairs for the negotiations. Finally, he thanked the Governments of Japan, Canada, Switzerland and Spain for funding

the meeting and enabling the participation of developing countries, as well as the Government of Canada for the efficient visa arrangements.

11. The representative of the Republic of Korea reminded participants that 2010 was the International Year of Biodiversity and that the resumed meeting of the Working Group was the last opportunity to finalize the mandate given to it. No effort should be spared to reach a fruitful outcome. He also reminded participants of the words of the Secretary-General Ban Ki-moon who had said that no one would get everything they wanted in negotiations. But if they worked together and got a deal, everyone would get what they needed.

12. The representative of Mexico, speaking on behalf of the Group of Latin America and Caribbean countries, said that the report from the first part on the meeting had laid out their position. He urged the participants to make progress in the negotiation of the Protocol which was expected to be legally binding, and to finally address the third objective of the Convention on Biological Diversity.

13. The representative of Serbia, speaking on behalf of the Group of Central and Eastern European countries, reaffirmed the group's willingness to have a legally-binding instrument on access and benefit-sharing which would provide a balance between the obligations and rights of the providers and users of genetic resources and their derivatives. She stressed the importance for a final draft of the Protocol of the issues of: the utilization of genetic resources and their derivatives, compliance, capacity-building and fair and equitable benefit-sharing, as well as the need to take into account conservation and sustainable use of biodiversity. To be effective, such a legally-binding instrument needed to be in harmony with other processes at other international forums and bodies. The Group of Central and Eastern European Countries had the strong intention to finalize both the draft of the Protocol and the draft decision in cooperation with other delegations; successful work would lead to the deletion of the footnotes from the annexes.

14. The representative of Saudi Arabia said that there had to be a balance between those providing access to genetic resources and those seeking such access. To that end, the Protocol also had to include provision for technology transfer and other related issues.

15. The representative of New Zealand, speaking on behalf of the Like-minded in Spirit Group of Women, acknowledged the support of the cross-regional Group, as well as the efforts and achievements of the women in whose footsteps her group was now following. The group sought to ensure that the international regime reflected, at relevant points in the text, the gender perspective in recognition of the vital role that women played in the conservation and sustainable use of biodiversity and their effective participation in the processes of the negotiations of the Working Group on Access and Benefit-sharing in the overall work of Convention on Biological Diversity.

16. The representative of Malaysia, speaking on behalf of the Like-minded Asian and the Pacific Countries said that there was solidarity in the positions of developing countries during the current critical stage in the negotiation of the Protocol. The Protocol would have to add value to the effective implementation of the Convention and would need to ensure that there was no leakage in the benefits flowing to provider countries. Compliance was at the heart of the Protocol, its "cornerstone", and without it there would be no added value to the Convention. If the Protocol could not capture benefit-sharing then it was useless and only an empty gesture. However, once the issue of compliance had been resolved there would be the necessary flexibility for the resolution of the remaining issues.

17. The representative of the European Union said that the European Union continued to strongly support working towards a Protocol to the Convention on Biological Diversity which would be balanced in respect of the rights and obligations of Parties within the instrument, balanced with other international instruments: that it would be workable as well as implementable. The Protocol had to provide legal certainty and transparency to both providers and users of genetic resources. It had to address, in a

balanced way, both access to genetic resources and the measures taken by Parties for users under their jurisdiction as well as reflect the link that existed between decision-making regarding access and the ability of Parties to implement user measures. The European Union supported Brazil's opinion that such a result could only be achieved if the Working Group tried to reach a balance for each of the articles under negotiation, and then proceeded in an inclusive and transparent way so that all Parties had the opportunity to identify their issues and propose text that would, in their view, facilitate a compromise and contribute to achieving the overall success of the meeting.

ITEM 2. ORGANIZATIONAL MATTERS

2.1. *Officers*

18. In keeping with established practice, the Bureau of the Conference of the Parties acted as the Bureau of the meeting. As decided by the Conference of the Parties at its eighth meeting, Mr. Fernando Casas and Mr. Timothy Hodges served as Co-Chairs of the Working Group. Ms. Somaly Chan, Vice-President of the Conference of the Parties from Cambodia continued to serve as Rapporteur.

2.2. *Adoption of the agenda*

19. At the 1st session of the resumed meeting, on 10 July 2010, the Working Group adopted the following agenda, on the basis of the provisional agenda (UNEP/CBD/WG-ABS/9/1/Rev.1).

1. Opening of the meeting.
2. Organizational matters.
3. Finalization of the international regime on access and benefit-sharing.
4. Other matters.
5. Adoption of the report.
6. Closure of the meeting.

2.3. *Organization of work*

20. At the 1st session of the resumed meeting, on 10 July 2010, the Working Group agreed on the proposal of the Co-Chairs, to convene an Interregional Negotiating Group to finalize the draft Protocol. The Interregional Negotiating Group would consist of no more than five representatives from each of the United Nations regional groups and two representatives each from indigenous and local communities, civil society, industry and public research groups, as well as the representatives of the President of the Conference of the Parties and the incoming President of the Conference of Parties. The representatives at the Interregional Negotiating Group could be changed during its sessions, as necessary, and all interested members of the Working Group would be able to attend its meetings. Co-Chair Hodges reminded the Working Group that while the representatives of indigenous and local communities were welcome to provide guidance, the Parties retained the sole prerogative to propose text and determine the final draft of the Protocol. The Parties also retained the right to take the floor during the Interregional Negotiating Group when they desired to do so. The Interregional Negotiating Group would negotiate based on the Co-Chairs' text of the revised draft Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization to the Convention on Biological Diversity, which was contained in annex I to the report of the first part of the ninth meeting of the Ad Hoc Working Group on Access and Benefit-sharing (UNEP/CBD/WG-ABS/9/3) (the "Cali Annex").

21. Co-Chair Hodges said that, based on informal consultations, a consensus had emerged among the participants that the Co-Chairs of the Working Group should act as the Co-Chairs of the Interregional Negotiating Group. He also said that the meetings of the Interregional Negotiating Group would take place at the Palais de Congrès in Montreal and that the Co-Chairs would report back on its deliberations to the Working Group.

22. Co-Chair Casas said that in order to facilitate its work, the Interregional Negotiating Group would begin by considering the substantive articles of the Cali Annex (articles 1 to 19) on an article-by-article basis, with the exception of article 2 (“Use of terms”). The Co-Chairs would ask the Interregional Negotiating Group whether the text of each article was acceptable, as drafted. In the absence of an objection, the article would be considered accepted, on the understanding that no article had been agreed until all the text had been agreed in its entirety. He asked the participants to exercise a maximum restraint when suggesting revisions to an article and that they put forward a text that accommodated the views of the other members of the Interregional Negotiating Group. Co-Chair Casas reminded the Working Group that the Interregional Negotiating Group only had six working days to complete its task and he suggested that it therefore begin by addressing article 1 and articles 3 through 19 before returning to the Working Group to report on its progress. Article 2, articles 20 through 31 and the preamble could be considered subsequently.

23. The representative of Canada asked whether new text could be proposed for articles that appeared to be missing from the Cali Annex.

24. The representative of the European Union expressed his concern that too many suggestions of new text might lead to a new document that would resemble annex I to the report of the eighth meeting of the Working Group (UNEP/CBD/WG-ABS/8/8) (“the Montreal Annex”). However, he also reminded the Working Group that the Cali Annex was not a negotiated text and that the Parties could introduce brackets into the text of the Cali Annex if that proved necessary.

25. The representative of Brazil urged all the members of the Interregional Negotiating Group to be concise when suggesting new text.

26. Co-Chair Casas said that new text could be introduced to improve the Cali Annex and that if the Interregional Negotiating Group was unable to agree on the text of an article of the Cali Annex, that text could then be bracketed. However, the participants were urged to exercise maximum restraint when proposing text, or suggesting modifications to the Cali Annex, and to avoid insertions that only reflected their own positions. Real negotiations meant putting forward text that also accommodated the interests of others.

27. At the end of the 1st plenary session of the resumed meeting, on Monday 10 July 2010, Co-Chair Hodges informed the participants that the Interregional Negotiating Group would meet immediately after the lunch break to consider agenda item 3.

28. At the 2nd plenary session of the resumed meeting, on 13 July 2010, the Working Group heard a report by the Co-Chairs on the progress that had been made during the deliberations of the Interregional Negotiating Group, which is more fully described under agenda item 3 (see paragraphs. 34 below).

ITEM 3. FINALIZATION OF THE INTERNATIONAL REGIME ON ACCESS AND BENEFIT-SHARING

29. In considering the item, the Working Group had before it a scenario note from the Co-Chairs for the resumed Meeting and the report of the first part of the ninth meeting of the Working Group (UNEP/CBD/WG-ABS/9/3), which contained, as annex I, the revised draft Protocol on Access to Genetic Resources and the fair and equitable sharing of Benefits arising from their utilization to the Convention

on Biological Diversity (the “Cali Annex”) and, as annex II, a draft decision for the consideration of the Conference of the Parties.

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

31. The Working Group also had before it, as information documents, a review paper on the history of the concept of “genetic resources” (UNEP/CBD/WG-ABS/9/INF/1); the report of the regional consultations for Asia (UNEP/CBD/WG-ABS/9/INF/2); the report of the regional consultations for Latin America and Caribbean Countries (UNEP/CBD/WG-ABS/9/INF/3); the report of the regional consultations for Central and Eastern European countries (UNEP/CBD/WG-ABS/9/INF/4); the report of the regional consultations for Pacific countries (UNEP/CBD/WG-ABS/9/INF/5); and the recommendations arising from the ninth session of the United Nations Permanent Forum on Indigenous Issues (UNPFII) relevant to the negotiation of the International Regime on Access and Benefit-Sharing (UNEP/CBD/WG-ABS/9/INF/6); Report of the “Informal Experts Consultation on ABS and the Strategic Plan”(UNEP/CBD/WG-ABS/9/INF/7); Resolution 18/2009 on “policies and arrangements for access and benefit-sharing for genetic resources for food and agriculture” adopted by the Conference of the Food and Agriculture Organization of the United Nations Conference at its Thirty-Sixth Session, on 23 November 2009 (UNEP/CBD/WG-ABS/9/INF/8); submissions by the Food and Agriculture Organization of the United Nations (FAO) on: a framework study on food security and access and benefit-sharing for genetic resources for food and agriculture (UNEP/CBD/WG-ABS/9/INF/9); the use and exchange of animal genetic resources for food and agriculture (UNEP/CBD/WG-ABS/9/INF/10); the use and exchange of forest genetic resources for food and agriculture (UNEP/CBD/WG-ABS/9/INF/11); the use and exchange of aquatic genetic resources for food and agriculture (UNEP/CBD/WG-ABS/9/INF/12); the use and exchange of microbial genetic resources for food and agriculture (UNEP/CBD/WG-ABS/9/INF/13); the use and exchange of biological control agents for food and agriculture (UNEP/CBD/WG-ABS/9/INF/14); the proceedings of the seminar “Barcoding of Life: Society and Technology Dynamics - Global and National Perspectives”, Submitted by the International Development Research Centre of Canada (UNEP/CBD/WG-ABS/9/INF/15); a position paper submitted by the Swiss Academy of Sciences (UNEP/CBD/WG-ABS/9/INF/16); a contribution of the Coordinating Mechanism of the Global Taxonomy Initiative (UNEP/CBD/WG-ABS/9/INF/17); a policy brief on the importance of recognizing the International Treaty in the Protocol on Access and Benefit-sharing (UNEP/CBD/WG-ABS/9/INF18); and a policy brief on leaving room in the Protocol on Access and Benefit-sharing for the future development of specialized access and benefit-sharing arrangements (UNEP/CBD/WG-ABS/9/INF19).

32. It also had before it a report of the International and Local Community Consultation on Access and Benefit-sharing and the Development of an International Regime (UNEP/CBD/WG-ABS/5/INF/9), originally circulated as an information document to the fifth meeting of the Working Group, as well as the following information documents originally circulated for the seventh meeting of the Working Group: a study on the identification, tracking and monitoring of genetic resources (UNEP/CBD/WG-ABS/7/INF/2); study papers on the relationship between the international regime and other international instruments that govern the use of genetic resources (UNEP/CBD/WG-ABS/7/INF/3/Parts 1-3); a comparative study of the real and transactional costs involved in the process of access to justice across jurisdictions (UNEP/CBD/WG-ABS/7/INF/4) and a study on compliance in relation to the customary law of indigenous peoples and local communities, national law, across jurisdictions, and international law (UNEP/CBD/WG-ABS/7/INF/5).

33. As the Working Group had agreed under agenda item 2.3 (Organization of work), the Interregional Negotiating Group took up agenda item 3 at its 1st session, on 10 July 2010.

Second plenary session

34. At the 2nd plenary session of the resumed meeting, on 13 July 2010, Co-Chair Hodges introduced an informal document that contained the results of the first reading of the Cali annex by the Interregional Negotiating Group. He reviewed the progress that had been made and asked representatives of the regional groups for their views.

35. The representative of Mexico, on behalf of the Group of Latin American and Caribbean countries, expressed his group's satisfaction with the progress that had made by the Interregional Negotiating Group, and asked that the Working Group return to its negotiations in that setting. He reminded the participants of the clear guidelines that the Co-Chairs had established for those who wished to propose new text and said that it was important that they abstain from proposing text that only represented their positions.

36. The representative of the European Union agreed that there was a need to return to the deliberations in the Interregional Negotiating Group as that approach was working well and was facilitating, among the participants, a common understanding and a common approach to the protocol.

37. The representative of Brazil, speaking on behalf of the Group of Like-minded Megadiverse Countries, agreed that it was important to return to discussions under the Interregional Negotiating Group.

38. The representative of Ukraine, speaking on behalf of the Group of Central and Eastern European Countries, agreed that it was important that those who proposed new text did not make the draft Protocol more complicated. He reminded the Working Group that it also needed to find the time to review the draft decision contained in annex II to the report of the first part of the ninth meeting of the Working Group (UNEP/CBD/WG-ABS/9/3).

39. The representative of the Republic of Korea said that the Working Group needed to look at the closely interlinked articles of the Protocol especially when considering the issues of access, benefit-sharing and compliance. Without tackling the issue of that inter-linkage it would not be possible to finalize the protocol.

40. The representative of Australia also supported the continued use of the Interregional Negotiating Group.

41. The representative of Namibia, speaking on behalf of the African Group, said that although there had been 18 years of effort and the expenditure of hundreds of millions of dollars under the Convention, biodiversity and ecosystem loss continued. The 2010 biodiversity target had failed, and biodiversity's contribution to poverty reduction had remained a dream. Instead, at the present meeting, the question of whether benefit-sharing was one of the objectives of the Convention had been reopened. That was a betrayal of the facts and could no longer be accepted. The African Group called for a comprehensive Protocol that left no loopholes: no other access and benefit-sharing regime should be allowed to undermine its effective implementation. To do otherwise would only cater to the special interests that wished to maintain "business-as-usual" and did not wish to see biodiversity placed on the global agenda. A skeletal Protocol would serve no purpose except putting the interests of intellectual property rights above the planet's biological future. In attempting to reach a consensus, the African Group had accepted the narrow concept of genetic resources in place of the larger concept of biological resources; it had accepted a watered down definition of derivatives; it had accepted minimum standards for access that infringed on national sovereignty; and it had agreed to water down the notions of compliance and the enforcement of judgements. The African Group had nothing left to compromise on and asked other

participants to make an effort at serious compromise as well. The tenth meeting of the Conference of the Parties had only two major tasks before it: the approval of a protocol on access and benefit-sharing and the Strategic Plan. If it failed at that, there would be no point in producing more decisions on other issues.

42. In reply to a question from Co-Chair Hodges, the representative of Namibia quoted the President of Namibia by saying that the best gift during the 2010 International Year of Biodiversity would be to finalize the protocol on access and benefit-sharing.

43. The representative of Japan said that although the Cali Annex had been improved during the deliberations of the Interregional Negotiating Group, the Working Group would have to quickly make further progress during the limited time that remained for its work. However, it remained a reality that there were several difficult issues to be addressed, and that it might not be possible to resolve all of them before the end of the Meeting. That being the case, it was also important to identify those unresolved issues in order to make the positions of the participants clear to the tenth meeting of the Conference of the Parties.

44. Mr. Ahmed Djoghlaif, the Executive Secretary, complimented the Working Group on its progress and expressed his thanks to the Co-Chairs for their dedication to ensuring the success of the present meeting.

45. Co-Chair Casas said that there appeared to be a desire in the Working Group to return to negotiating the draft Protocol in the Interregional Negotiating Group as soon as possible. He also said that, as there had already been a first reading of articles 1 and 3 to 19, the Interregional Negotiating Group would consider, in priority, the core issues of access, benefit-sharing and compliance in order to finalize those articles. He also reminded the Working Group that the Interregional Negotiating Group still had to discuss articles 20 to 31, article 2, and the preamble of the draft Protocol.

46. The representative of the Islamic Republic of Iran informed the Working Group that a member of his delegation had been unable to attend the meeting because of the late issuance of a Canadian visa.

Third plenary session

47. At the 3rd plenary session of the resumed meeting, on 16 July 2010, the Co-Chairs introduced a draft Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity (UNEP/CBD/WG-ABS/9/L.1/Rev.1), which was then orally amended and adopted by the Working Group. The text as adopted is contained in annex I to the present report.

48. Co-Chair Hodges thanked participants in the Interregional Negotiating Group for their magnificent efforts in refining the Cali annex, which was no longer a compilation or simply a proposal by the Co-Chairs but was now owned by the participants. He also thanked those participants whose first language was not English, and especially those participants from French speaking African countries, who had gone without the benefit of interpretation during the negotiations. He thanked Montreal International and the Government of Canada for facilitating the meeting at the Palais des Congrès. Although the Working Group's mandate was not yet fulfilled, it was one big step closer to completing its work before the tenth meeting of the Conference of the Parties.

49. Co-Chair Casas reported on the results of the small group that had worked on core issues of utilization of genetic resources, derivatives and pathogens and the relationship of the protocol to other international instruments. They had reached some common understanding for further consideration of those issues.

50. The representative of the Philippines requested that the text that had been proposed by the Philippines at the final session of the Interregional Negotiating Group be inserted at the end of paragraph 1 of Article 4. He said that he was making the request after having consulted with the small island developing States from the Asia Pacific region and it was in their interest as well as those from countries without access and benefit-sharing legislation that their rights to benefit-sharing was not prejudiced.

51. Co-Chair Hodges indicated that the report of the meeting would contain the text of the proposal from the Philippines. The proposal reads as follows:

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

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

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

52. The representative of Canada said that an important step towards compromise had been taken during that week. More work remained to ensure that the Working Group met its goal of adopting an international regime on access and benefit-sharing in Nagoya in October 2010 and Canada stood ready to work with other delegations to complete this important work. With respect to the draft protocol, she recalled that the document had been negotiated by Parties at the resumed ninth meeting of the Working Group and was no longer a product of the Co-Chairs. Parties had diligently worked towards achieving a balance within the document and Canada was looking forward to continuing to negotiate on this basis. Finally, Canada was confident that collectively the Working Group would find a balance, but until then emphasized that, as had been repeated several times during the week, nothing was agreed until everything was agreed.

53. The representative of Peru expressed her satisfaction with the progress made during the week and noted that several important pending issues remained. It was of the outmost importance to include in the protocol an express reference to derivatives, either directly or through a common understanding of that issue. Derivatives had important implications for the issues of scope, benefit-sharing and compliance and it needed to be recognized that a protocol that did not address derivatives was meaningless for most developing countries. In that regard, Peru asked delegates to continue their efforts to address that issue. She also said that traditional knowledge needed to be maintained in the text of the Protocol and that there was a fundamental relationship between traditional knowledge and derivatives and a failure to consider those issues would make the international regime incomplete. The issue of scope also required further work and in the interest of legal clarity, a comprehensive but simple and straightforward outcome was desirable. Peru also considered that an emerging consensus on the issue of the relationship of the protocol to other treaties was an encouraging move towards the right direction.

54. Co-Chair Hodges said there was a general consensus that the interregional negotiating group format had worked well but the time available had been insufficient for it to complete its task. There also seemed to be agreement that an additional step would be of use before the tenth meeting of the Parties. He asked participants for their views.

55. The representative of Malaysia said that the Interregional Negotiating Group had achieved good momentum that should be maintained. It was desirable to have another meeting of the Interregional Negotiating Group on the way to Nagoya that would be as inclusive as possible. He suggested that it would be desirable to hold such a meeting in Thailand.

56. The representative of Thailand thanked the representative of Malaysia for proposing Thailand as a venue for the next meeting of the Interregional Negotiating Group. Thailand appreciated the hard work that had taken place at the current meeting and would like to facilitate the negotiations of the Protocol. He said that he would take the proposal for hosting the proposed meeting to the Government of Thailand and would inform the Secretariat of the Convention on Biological Diversity of its decision as soon as possible.

57. Co-Chair Hodges said that a resumed meeting of the Interregional Negotiating Group would be a useful way forward but would need to be as inclusive as possible to ensure the credibility of the results. There would also need to be a one-day resumption of the ninth meeting of the Working Group on Access and Benefit-sharing to receive and approve the results of the Interregional Negotiating Group and to forward those results to the tenth meeting of the Conference of the Parties.

58. The representative of Japan said that the present meeting had met the expectations of the Government of Japan and that the funds that Japan had provided for the present meeting had been well invested. He said that he would report on the good progress that had been made and the view of the Working Group that further progress would be best achieved by holding a resumed session of the Interregional Negotiating Group. Although he had not yet consulted with the Government of Japan, he said that he was confident that Japan would look favourably on supporting such a meeting.

59. The representative of Mexico, speaking on behalf of the Group of Latin American and Caribbean countries (GRULAC), thanked the representative of Malaysia for his proposal and supported the continuation of the work of the Interregional Negotiating Group. However, while GRULAC was willing to work with others to achieve further progress, there had to be full transparency and broad participation in any further negotiation. All representatives would have to be able to present their proposals and they would have to be an equal playing field for all who participated. There would also have to be an opportunity for all delegates to speak in a plenary session and there would have to be a record of the progress made each day in order to ensure transparency.

60. The representative of Namibia said that he had listened carefully to the proposal by Malaysia and the statement from Mexico. Namibia could accept the meeting being proposed in Thailand but noted that there would have to be real progress made at that meeting. He asked all the participants to return to their capitals and to consult and request they be given sufficient flexibility to ensure successful negotiations and deliver on the mandate of the Working Group during 2010, International Year of Biodiversity. He hoped that he would not have to repeat the statement that he had made during the second plenary session.

61. Co-Chair Hodges said that there appeared to be sufficient willingness among the participants to hold a resumed session of the Interregional Negotiating Group in a Cali-like setting that included as many participants as possible from among the regions, indigenous and local communities and other stakeholders. The venue was not yet determined but if funding was available such a meeting would take place between the present meeting and the tenth meeting of the Conference of the Parties. It would also require a resumed session of the ninth meeting of the Working Group, immediately before the tenth meeting of the Conference of the Parties, to receive the results that had been achieved. The Co-Chairs would consult with the Secretariat and the Bureau and send out a notification before the end of July 2010.

ITEM 4. OTHER MATTERS

62. At the 3rd plenary session of the resumed meeting, on 16 July 2010, the representative of Canada said that she regretted the news that one participant had been unable to receive a Canadian visa in time to participate in the present meeting. She informed the Working Group that Canada had made a concerted effort to ensure that every participant who had applied in a timely manner would be issued a Canadian visa so that they would be able to participate in the meeting in Montreal and she assured the Working Group that Canada would continue to work to ensure that such cases did not occur in the future.

ITEM 5. ADOPTION OF THE REPORT

63. The present report was adopted, as orally amended at the 3rd plenary session of the meeting, on 16 July 2010, on the basis of the draft report prepared by the Rapporteur (UNEP/CBD/WG-ABS/9/L.1/Add.1).

64. During the adoption of the report, statements were made by the representatives of regional groups.

65. The representative of Brazil, speaking on behalf of the Like-minded Megadiverse Countries, reminded the group that at the opening session of the resumed meeting, he had reminded the Working Group of the importance of balance and it was the objective of the protocol to rectify an imbalance in order to reaffirm the sovereignty of States over their genetic resources. Biopiracy was a crime and there was no international instrument that could be used to prevent that. It was a major achievement of the present negotiations that Parties were in agreement that such a gap existed and were now working on a draft for legally-binding protocol on access and benefit-sharing. He said that the participants were leaving Montreal with a text of a protocol which was owned by the Parties. There had been a first reading of the document and it had been possible to unlock some of the issues during the second reading. Preliminary informal discussions on some of the issues had also taken place and good progress had been made. The participants had engaged in text-based negotiations of the issues in good faith and in good spirits. However they had not engaged in compromise and he urged Parties to do that so in order to ensure that they did not miss the timing for the tenth meeting of the Conference of the Parties. Balance was something that could be achieved at the end if participants had the political will to negotiate and find compromises.

66. The representative of the Republic of Korea expressed his delegation's deep appreciation for the hard work accomplished during the last seven days. He expressed his delegation's confidence that the accelerated pace witnessed in Montreal and the strong leadership of the Co-Chairs would lead to a smooth journey towards Nagoya.

67. The representative of Ukraine, speaking on behalf of Central and Eastern European countries, welcomed the progress that had been made to elaborate a draft international regime on access and benefit-sharing. Although more had been expected of the meeting, there remained sufficient time available to successfully finalize the document and adopt it during the tenth meeting of the Conference of the Parties. He supported a resumed session of a Cali-style meeting in September 2010 and thanked the Co-Chair in their leadership in leading the process and the Government of Japan and other donors for making the present meeting possible.

68. The representative of Malawi, speaking on behalf of the African Group, said that Africa realized that the economic, social and political interests of many stakeholders had created many red lines or walls in many capitals or sectors. Those issues could be resolved with good political will and commitment to the Convention on Biological Diversity. The African Group returned home with great hope that all negotiators would find solutions to the pending issues before the tenth meeting of the Conference of the Parties. He recalled the African Group's desire to generate benefits from its biological resources that could be shared in a fair and equitable manner by those who owned them. Biological diversity was the natural capital that sustained their livelihoods. Africa had conserved these resources from time immemorial and wanted to benefit from their utilization. That was an important incentive for conservation and sustainable use. The hope of Africa and others for sustainable development laid with the Convention on Biological Diversity and a comprehensive international regime on access and benefit-sharing. The issue of capacity-building was also key for Africa and for the effective implementation of the Convention on Biological Diversity and the protocol. Africa had been lucky to benefit from the various capacity-building and capacity-development programmes and activities under the ABS Capacity-Development Initiative. The appreciation of the African Group went out to the Initiative and he looked forward to

further assistance from the Initiative and other potential partners in supporting African countries in the implementation of the national access and benefit-sharing measures following the tenth meeting of the Parties to the Convention on Biological Diversity. In closing he thanked the Government of Canada for the excellent arrangements made for the timely issuance of visas, as well the Governments of Japan, Canada, Switzerland and Spain for funding the meeting and the city of Montreal and people of Canada for their kind hospitality.

69. The representative of Cook Islands, speaking on behalf of the Asian and Pacific countries, thanked the host country and the donors who made this meeting possible. She said that there needed to be a balanced protocol. She thanked Malaysia for the proposal to hold the Interregional Negotiating Group meeting in Thailand and looked forward to the resumed meeting.

70. The representative of Haiti, speaking on behalf of Group of Latin American and Caribbean countries (GRULAC), praised the Working Group for the good spirit that had been displayed by participants. He said that GRULAC wanted to reiterate its will to continue the negotiations in order to find a satisfactory solution to important questions still bracketed, in particular equitable benefit-sharing, compliance, derivatives and other pending questions. The question of capacity-building was also crucial for the success of the instrument. The protocol would be an important step in the life of the Convention on Biological Diversity and would be an essential contribution to the process of sustainable development in the framework of the evaluation of the Millennium Development Goals in 2015. In closing, he thanked the Governments of Japan, Switzerland, Spain and other donor countries for facilitating participation.

71. The representative of the European Union said his delegation was encouraged by the progress achieved during that week. The negotiations had picked up true momentum and led to Parties owning the draft ABS protocol. This was an indication that all involved were committed to achieving a successful result by the agreed deadline. Compromises still had to be found on a number of open issues and finding these compromises was a challenge to all participants, but he had faith that the Working Group could live up to that challenge and renew its efforts to come to the next meeting with refined instructions and complete the mandate and propose clean text for consideration and adoption in Nagoya.

72. The representative of Japan said that progress had been made during the past week. However those reading the outcomes of the meeting in the L.1 and L.2 documents could not see the efforts that had gone to negotiations and the difficult compromises that had been achieved. Unfortunately, that good progress had not been documented in the report of the meeting and deliberations of the small groups had not been recorded. It was important to stress that those activities had taken place and that important achievements had resulted from that meeting. Recorded or unrecorded, the participants could return home knowing that they had all shown a good spirit of compromise.

73. The representative of the International Indigenous Forum on Biodiversity expressed the group's concerns over the current outcomes of the discussions of the protocol on access and benefit-sharing and reminded Parties that they should respect the international principles of the United Nations Declaration on the Rights of Indigenous Peoples. She also affirmed the need for recognition of indigenous collective rights over genetic resources and associated traditional knowledge, customary procedures and protocols and prior informed consent from indigenous and local communities for access to genetic resources.

74. The representative of New Zealand, speaking on behalf of the Like-minded-in-Spirit Group of Women acknowledged the support that the group received from all delegates in ensuring due recognition of the importance of ensuring a gender perspective in the negotiations of the protocol. She also noted that the vital role that women played in the conservation and sustainable use of biodiversity and the importance of their effective and full participation in the process of the Convention on Biological Diversity had been appropriately reflected in the draft protocol.

ITEM 6. CLOSURE OF THE MEETING

75. Mr. Ahmed Djoghlaif, Executive Secretary of the Convention on Biological Diversity, complimented the Working Group on its progress and expressed his thanks to the Co-Chairs for their dedication to ensuring the success of the present meeting.

76. The Co-Chairs thanked Mr. Ahmed Djoghlaif and his team for all the help that they had provided in ensuring the successful conclusion of the meeting in Montreal.

77. After the customary exchange of courtesies, the second part of the ninth meeting of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing was declared closed at 7:45 p.m. on Friday, 16 July 2010. The Working Group would resume its ninth meeting in Nagoya, Japan, on 16 October 2010.

Annex

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

The Parties to this Protocol,

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

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

[*Reaffirming* the sovereign rights of the States over their own natural resources and according to the provisions of the Convention and its commitment to meet its three objectives and in particular Articles 8(j), 15, 16, 19, 20 and 21 of the Convention,]

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

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

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

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

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

[*Further recalling* decisions VIII/4 and IX/12 that instructed the Ad Hoc Open-ended Working Group on Access and Benefit-sharing to complete the elaboration and negotiation of the International Regime on Access and Benefit-sharing at the earliest possible time before the tenth meeting of the Conference of the Parties to the Convention,]

[*Noting* the significance of the United Nations Declaration on the Rights of Indigenous Peoples as regards this Protocol,]

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

[*Recognizing* the interdependence of all countries with regard to genetic resources for food and agriculture as well as their special nature and importance for achieving food security worldwide and for sustainable development of agriculture in the context of poverty alleviation and climate change and acknowledging the fundamental role of the International Treaty on Plant Genetic Resources for Food and Agriculture and the FAO Commission on Genetic Resources for Food and Agriculture in this regard,]

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

[*Recognizing* the special nature of agricultural biodiversity, its distinctive features and problems needing distinctive solutions,]

[*Recognizing* that no special characteristics of genetic resources should detract from the obligation of the users of these resources to provide for the fair and equitable sharing of benefits whenever these resources are utilized,]

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

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

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

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

Further recognizing the importance of promoting [equity [and fairness]] [equality] in negotiation of mutually agreed terms between providers and users of genetic resources,

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

[*Recognizing* [and *affirming*] that intellectual property rights play an important role in the fair and equitable sharing of benefits arising from the use of genetic resources, their derivatives and associated traditional knowledge, and that these rights need to be supportive of and not run counter to the three objectives of the Convention,]

[*Affirming* that nothing in this Protocol shall be interpreted as affecting the granting, or the exercise of, intellectual property rights,]

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

[*Acknowledging* ongoing work relating to access and benefit-sharing in various forums, including, *inter alia*, the International Treaty on Plant Genetic Resources for Food and Agriculture, the Commission of Genetic Resources for Food and Agriculture of the Food and Agriculture Organization of the United Nations, the United Nations Ad Hoc Open-ended Informal Working Group on Marine Biological Diversity beyond Areas of National Jurisdiction, and the Working Group on Pandemic Influenza Preparedness of the World Health Organization,]

[*Acknowledging* the ongoing work in the Intergovernmental Committee on Intellectual Property, Genetic Resources, Traditional Knowledge and Folklore of the World Intellectual Property Organization (WIPO), *noting* that this Protocol will be the comprehensive protocol on access and benefit-sharing and that WIPO should use this Protocol as a basis for its ongoing work,]

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

[*Recognizing* also the vital role that women play in access and benefit sharing and affirming the need for the full participation of women at all levels of policy making and implementation for biodiversity conservation,]

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

[*Noting* the interrelationship between genetic resources and traditional knowledge and the inseparable nature of these resources to indigenous and local communities,]

[*Underlining* the importance of the traditional knowledge of indigenous and local communities and the development of this knowledge for the conservation of biodiversity and the sustainable use of its components,]

Recognizing the diversity of circumstances in which traditional knowledge associated with genetic resources is [available as oral or documented which may be] [owned,] held [and developed] by indigenous and local communities [and countries, as applicable],

[*Taking into account*] [*Affirming*] [any established] [the existing] rights [in national law] of [individuals,] indigenous and local communities [and countries] to genetic resources and associated traditional knowledge[, subject to national legislation where applicable [and, where appropriate, the United Nations Declaration of the Rights of Indigenous Peoples]],

Mindful that when traditional knowledge associated with genetic resources is being accessed, [subject to national legislation, [consistent with international obligations,]] it is the right of [individuals,] indigenous and local communities, [and countries,] consistent with [their] [national][laws, customary laws, community protocols and procedures][community level procedures], as applicable, to identify the rightful holders of the knowledge within their indigenous and local communities.

[*Recognizing* that this Protocol and other international agreements relevant to this Protocol should be mutually supportive,]

[*Emphasizing* that this Protocol shall not be interpreted as implying a change in the rights and obligations of a Party under any existing international agreements,]

[*Understanding* that the above recital is not intended to subordinate this Protocol to other international agreements,]

[*Understanding* that none of the above recital is intended to subordinate this Protocol to other international agreements and further *understanding* that this Protocol is the comprehensive instrument for the effective implementation of the access and benefit sharing provisions of the Convention,]

[Nothing in this Protocol shall be construed as diminishing or extinguishing the rights that indigenous and local communities have now or may have in the future,]

Have agreed as follows:

ARTICLE 1

OBJECTIVE

The objective of this Protocol is the fair and equitable sharing of the benefits arising from the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding, thereby contributing to the conservation of biological diversity and the sustainable use of its components

ARTICLE 2¹

USE OF TERMS

For the purposes of this Protocol:

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

ARTICLE 3

SCOPE

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

[This Protocol does not apply to:

- (a) Human genetic resources;
- (b) Genetic resources beyond national jurisdictions;
- (c) Genetic resources [contained in Annex I of the International Treaty on Plant Genetic Resources for Food and Agriculture provided they are used for the purposes of the International Treaty on Plant Genetic Resources for Food and Agriculture][under the Multilateral System of the International Treaty on Plant Genetic Resources for Food and Agriculture, both current and as may be amended by the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture];

¹ This article has not been negotiated.

(d) [Genetic resources when utilized solely as a commodity][Commodities in trade [used solely for final consumption]][when utilized solely as commodities];

(e) Genetic resources and traditional knowledge associated with genetic resources acquired prior to the entry into force of the Protocol;

(f) Human pathogens;

(g) Genetic resources located in the Antarctic Treaty Area, which is the area south of latitude 60° South.]

[The Protocol also applies to:

(a) Benefits arising from the continuing uses of genetic resources and associated traditional knowledge acquired before the entry into force of the Convention;

(b) Benefits arising from new uses of genetic resources and associated traditional knowledge acquired before the entry into force of the Convention;

(c) Genetic resources from the Antarctic Treaty Area, which is the area south of latitude 60° South; and

(d) Genetic resources from marine areas beyond national jurisdiction.

The Conference of the Parties serving as the meeting of the Parties to this Protocol shall adopt modified procedures for benefit-sharing for genetic resources and associated traditional knowledge in paragraph xxx.]

[Parties shall, for new and continuous utilization of genetic resources acquired before the entry into force of the Protocol, encourage users to take all reasonable measures to enter into fair and equitable benefit-sharing arrangements with a provider country where such material is located *in situ*.]

ARTICLE 3 *bis*

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

This paragraph is not intended to subordinate the Protocol to other international instruments.]

2. Nothing in this Protocol shall prevent the Parties from developing and implementing other relevant international agreements, including other specialised access and benefit sharing agreements, provided that they are supportive of and do not run counter to the objectives of the Convention and this Protocol.

3. This Protocol and other international instruments relevant to this Protocol shall be implemented in a mutually supportive manner, [[without prejudice to][bearing in mind] ongoing work or practices under relevant international organizations and conventions.]

4. This Protocol is the instrument for the implementation of the access and benefit sharing provisions of the Convention. Where a specialised international access and benefit sharing instrument applies that is consistent with, and does not run counter to, the objectives of the Convention and of this

Protocol, this Protocol does not apply for the Contracting Party or Parties to the specialised instrument in respect of the specific genetic resource covered by and for the purpose of the specialised instrument.

ARTICLE 4

FAIR AND EQUITABLE BENEFIT-SHARING

1. Benefits [shall be shared with the Party providing genetic resources][arising out of [the][every] utilization of genetic resources² [including[, where mutually agreed between the provider and the user, benefits from] their derivatives] [and associated traditional knowledge][and traditional knowledge associated with genetic resources] shall be shared in a fair and equitable way [with the [Party providing such resources][country of origin of such resources or by the Parties that have acquired the genetic resources in accordance with the Convention] [or, where applicable, with][including] the indigenous and local community holding such resources [or associated traditional knowledge] [, upon mutually agreed terms]. [When a genetic resource or associated traditional knowledge is utilised without mutually agreed terms, the country of origin and/or indigenous and local community involved shall be entitled to one hundred percent of the benefits generated, including any intellectual property, plus punitive damages.]]

2. Parties shall take [legislative, administrative or policy] measures, as appropriate, [in accordance with this Protocol] [with the aim of ensuring the fair and equitable sharing of the benefits][to ensure the fair and equitable sharing of the benefits][with the aim of sharing in a fair and equitable way the benefits] arising from [the][any] utilization of genetic resources [for the purposes of research and development on their genetic and biochemical makeup], including from [derivatives][naturally occurring biochemical compounds] [in accordance with mutually agreed terms] [[produced through techniques such as expression, replication, characterization or digitalization, with the country providing such resources, taking into account the list of typical uses of genetic resources provided in Annex II.] [The Conference of the Parties serving as the meeting of the Parties shall review this list on a regular basis with a view to keeping it in line with scientific and technological progress]].

3. Benefits arising from [the][any] utilization of genetic resources[, their derivatives] [and associated traditional knowledge] shall be shared on mutually agreed terms, including as provided for by the Convention in Articles 8(j), 15, 16 and 19 [as appropriate]. Benefits may include monetary and non-monetary benefits, including but not limited to those listed in Annex I.

4. Parties shall take legislative, administrative or policy measures, as appropriate, [in accordance with the Protocol] [to ensure the fair and equitable sharing of benefits][with the aim of ensuring the fair and equitable sharing of benefits][with the aim of sharing in a fair and equitable way benefits] arising from [the][any] utilization of traditional knowledge associated with genetic resources [or its derivatives] with indigenous and local communities holding such knowledge[, taking into consideration the provisions of Article 9].

[5. Benefits arising from the utilization of traditional knowledge associated with genetic resources shall be shared on mutually agreed terms that may include monetary or non-monetary benefits including, as appropriate, types of benefit-sharing identified in Annex I.]

² The following language is the outcome of discussion by a small group set up by the ING to explore a common understanding on what constitutes “utilization of genetic resources/derivatives” as they appear in the draft protocol. The small group also recognized that the potential use and placement of this language will depend on its context within the draft protocol. The language is to provide an input for the negotiation of the Protocol.

“Utilization of genetic resources includes/means the conduct of research and development, on the genetic and biochemical makeup/composition of genetic material/biological resources, including through the application of biotechnology as defined in Article 2 of the Convention, as well as subsequent applications and commercialization.”

ARTICLE 5

ACCESS TO GENETIC RESOURCES

1. In the exercise of its sovereign rights over its natural resources [and subject to its national legislation], access to its genetic resources, [their derivatives and/or associated traditional knowledge] shall be subject to the prior informed consent of the [Party providing such resources][country of origin], unless otherwise determined by that Party [and in accordance with Article[s 9(d) and] 15 of the Convention].

2. [Parties requiring prior informed consent,][Unless a Party waives its sovereign right through a national decision posted on the Access and Benefit-sharing Clearing-House,] Parties shall take the necessary legislative, administrative or policy measures, as appropriate, [with the aim,] to:

(a) Provide for legal certainty, clarity and transparency of their national access and benefit-sharing requirements;]

[(a *bis*) [Provide for equal treatment in applications for access to genetic resources between similar domestic and foreign applicants and between similar foreign applicants of different Parties][Parties shall avoid application of discriminatory rules in processing access permits except where such rules aim at advancing local, non-commercial biodiversity and ecosystem research and education];]

(b) Provide the information on how to apply for prior informed consent;

(c) Provide for a clear and transparent written decision by a competent national authority, in a cost-effective manner and within a reasonable period of time;

[(c *bis*) Provide a simplified procedure for access to genetic resources for non-commercial use in research in accordance with national law;]

(d) Provide for the issuance [at its discretion] of a permit or [internationally recognized] certificate [of access or equivalent that would be recognized internationally] as evidence of the decision to grant prior informed consent [and of the establishment of mutually agreed terms];]

(e) Where applicable, and subject to national legislation, set out criteria and/or processes for obtaining prior informed consent or approval and involvement of indigenous and local communities for access to genetic resources; and

(f) Establish clear rules and procedures for requiring and establishing mutually agreed terms [at the time of access]. Such terms shall be set out in writing and [may, *inter alia*,] include:

(i) A dispute settlement clause;

(ii) Terms on benefit-sharing, including any [ownership of] intellectual property rights;

(iii) Terms on subsequent third-party use, if any; and

(iv) Terms on changes of intent, where applicable.

[(g) Provide for appropriate administrative or judicial appeals procedures;]

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

4. [In accordance with Article 15(1) of the Convention, each Party shall determine][A Party that determines] which of its genetic resources [and/or its derivatives] will [or will not] [be subject to PIC][be subject to the access requirement of prior informed consent under Article 15(5) of the Convention,] [. It] shall inform the [Access and Benefit-sharing] Clearing-House accordingly, along with any accompanying information.

ARTICLE 5 bis

ACCESS TO TRADITIONAL KNOWLEDGE ASSOCIATED WITH GENETIC RESOURCES

1. Parties shall take legislative, administrative, or policy measures, as appropriate, with the aim of ensuring that traditional knowledge associated with genetic resources [or its derivatives] that is held by indigenous and local communities is accessed with the prior and informed consent or approval and involvement of indigenous and local communities, [[subject to] [in accordance with] their national legislation] and is based on mutually agreed terms.

[2. Parties shall take appropriate, effective and proportionate measures with the aim of ensuring that traditional knowledge utilised within their jurisdiction have been accessed and utilized in accordance with paragraph 1.

3. Parties shall take appropriate, effective and proportionate administrative or legal measures to address situations of non-compliance with measures adopted in accordance with paragraph 1.

4. Parties shall[, subject to and in accordance with national law,] cooperate in cases of alleged violation of paragraph 1.]

ARTICLE 6

[CONSIDERATIONS RELEVANT TO [NON-COMMERCIAL] RESEARCH AND EMERGENCY SITUATIONS

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

(a) Create conditions[, including simplified measures on access for non-commercial research purpose,] to [facilitate,] promote and encourage [non-commercial] biodiversity-related research, considering its importance for the conservation of biological diversity and the sustainable use of its components, taking into account Article 12(b) of the Convention on Biological Diversity; and

(b) [Pay due regard to emergency situations including serious threats to public health, food security or biological diversity, according to national legislation.][Provide immediate access to [pathogens][genetic resources] falling also under the scope of relevant international organizations and conventions, such as the World Health Organization, the International Plant Protection Convention, or the World Animal Health Organization, and which are of particular public concern for the health of humans, animals or plants, in ways and for uses provided for in existing and future rules, procedures or practices on the sharing of pathogens and related benefits established under those international organizations and conventions[, taking into consideration [the legal, structural and/or administrative obstacles to the optimal implementation of] the World Trade Organization paragraph 6 system]];

(c) Consider the importance of genetic resources for food and agriculture and their special role for food security and climate change adaptation and mitigation;

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

[This Protocol shall provide no special consideration for any sector or any use of genetic resources or associated traditional knowledge without adequate provisions for fair and equitable benefit-sharing and compliance;]

[Pay due regard that the domestic access and benefit-sharing laws, policies or measures will not affect biological resources that are traded and used as commodities.]

ARTICLE 7

CONTRIBUTION TO CONSERVATION AND SUSTAINABLE USE

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

ARTICLE 8

TRANSBOUNDARY COOPERATION

1. In instances where the same genetic resources are found in-situ within the territory of more than one Party, those Parties shall endeavour to cooperate, as appropriate, with the involvement of indigenous and local communities concerned, where applicable, with a view to implementing this Protocol.

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

ARTICLE 9

TRADITIONAL KNOWLEDGE ASSOCIATED WITH GENETIC RESOURCES

1. In implementing their obligations under this [Protocol][Article], Parties shall take into consideration the [community level procedures] [indigenous and local community laws, customary laws, community protocols and procedures,] of indigenous and local communities, as applicable, with respect to traditional knowledge associated with genetic resources [or its derivatives].

2. Parties, with the effective participation of the indigenous and local communities concerned, shall establish mechanisms to inform potential users of traditional knowledge associated with genetic resources [or its derivatives] about their obligations[, including measures as made available through the [Access and Benefit-sharing] Clearing-House under Article 11] for access to and fair and equitable sharing of benefits arising from the utilization of such knowledge.

3. Parties shall endeavour to support, as appropriate, the development by indigenous and local

communities, including women within these communities, of:

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

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

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

4. Parties, in their implementation of this Protocol, shall[, as far as possible,] not restrict the customary use and exchange of genetic resources[, their derivatives] and associated traditional knowledge within and amongst indigenous and local communities in accordance with the objectives of the Convention.

[5. Parties shall[, where appropriate,] [encourage][require] the users of [publicly available] traditional knowledge associated with genetic resources [which has been obtained by that user from a source other than an indigenous and local community] to take [all] reasonable measures[, including due diligence,] to enter into fair and equitable benefit-sharing arrangements with the [rightful] holders of [that][such] knowledge [within their indigenous and local communities].]

ARTICLE 10

NATIONAL FOCAL POINTS AND COMPETENT NATIONAL AUTHORITIES

1. Each Party shall designate a national focal point on access and benefit-sharing. The national focal point shall make information available as follows:

(a) For applicants seeking access to genetic resources, including derivatives, information on procedures for obtaining prior informed consent and establishing mutually agreed terms, including benefit-sharing;

(b) For applicants seeking access to traditional knowledge associated with genetic resources, where possible, information on procedures for obtaining prior informed consent or approval and involvement, as appropriate, of indigenous and local communities and establishing mutually agreed terms including benefit-sharing; and

(c) Information on competent national authorities, relevant indigenous and local communities and relevant stakeholders.

The national focal point shall be responsible for liaison with the Secretariat.

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

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

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

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

ARTICLE 11

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

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

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

(a) [All relevant] Legislative, administrative and policy measures on access and benefit-sharing;

(b) Information on the national focal point and competent national authority(ies);

[(b *bis*) Any bilateral, regional or multilateral agreements or arrangements;] and

(c) [When access is granted, decisions related to prior informed consent][Decisions to grant prior informed consent] [for access to genetic resources, as appropriate and where applicable];

[(c *bis*) Details of mutually agreed terms concluded, specifically those concerning benefit-sharing arrangements].

[3. Additional information may include:]

(a) [Indigenous and local community laws, customary laws, community protocols and procedures as applicable, applied][Community-level procedures, as applicable, of indigenous and local communities] within the country with respect to traditional knowledge associated with genetic resources;

[(a *bis*) Relevant competent authorities of indigenous and local communities;]

(b) Model contractual clauses;

(c) Methods and tools developed to monitor genetic resources; and

- (d) Codes of conduct and best practices.

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

ARTICLE 12

COMPLIANCE WITH [INTERNATIONAL AND] NATIONAL LEGISLATION ON ACCESS AND BENEFIT-SHARING

1. Each Party shall take appropriate, effective and proportionate measures to provide that genetic resources[, [their derivatives] and associated traditional knowledge] utilized within its jurisdiction have been accessed in accordance with prior informed consent and that mutually agreed terms have been established, as required by the domestic access and benefit-sharing regulatory requirements of the [other Party][country of origin].

2. Parties shall take appropriate, effective and proportionate [administrative or legal][legislative, administrative or policy] measures to address situations of non-compliance with measures adopted in accordance with paragraph 1. [Parties may refrain from taking such measures if the domestic access and benefit-sharing framework of another Party providing the misappropriated genetic resources at the time of misappropriation was not in conformity with Article 5(2).]

3. Parties shall[, as appropriate,] cooperate in cases of alleged violation of the [national legislation] [, Convention and Protocol] on access and benefit-sharing [of the [[country][Party] providing genetic resources][country of origin]].

ARTICLE 13

MONITORING[, TRACKING] AND REPORTING THE UTILIZATION OF GENETIC RESOURCES [AND ASSOCIATED TRADITIONAL KNOWLEDGE]

1. Parties shall take measures, as appropriate, to monitor[, track and report] the utilization of genetic resources[, its derivatives and associated traditional knowledge] to support[, *inter alia*,] compliance [with prior informed consent requirements and mutually agreed terms] [to support implementation] [under Article 12(1)] [in order to enhance transparency [and build trust between providers and users]]. Such measures [could] include:

(a) The identification and[, where appropriate,] establishment of [appropriate] check points [and [mandatory] [disclosure][information] requirements [including] [any [permit,] certificate [or equivalent] that was granted in accordance with Article 5, paragraph 2(d)] [at[, for example]:

- (i) Competent national authority (CNA) in the user country;
- (ii) Research institutions subject to public funding;
- (iii) Entities publishing research results relating to the utilization of genetic resources;
- (iv) [Intellectual property examination][Patent and plant variety] offices; and
- (v) Authorities providing regulatory or marketing approval of products [derived from genetic resources][resulting from the use of genetic resources or its derivatives];

/...

(v *bis*) [Indigenous and local communities, including their relevant competent authorities, that may grant access to traditional associated with genetic resources.]

[The [mandatory] disclosure requirement shall be met by providing [*bona fide*] evidence that a [permit or] certificate was granted [at the time of access] in accordance with [Article 5, paragraph 2 (d)]] [prior informed consent and mutually agreed terms as provided by national legislation];]

(b) [Requiring][Encouraging] users and providers of genetic resources to include provisions in mutually agreed terms to share information on the implementation of such terms, including through reporting requirements; and

(c) Encouraging the use of cost-effective communication tools and systems for monitoring [, tracking and reporting] the utilization of genetic resources.

[(d) [Where appropriate,] [establishing] Databases containing information about genetic resources [that have been or [may][can] be provided].]

2. [The][Any] [permit[, or]] certificate [or equivalent] issued [at the time of access] in accordance with Article 5, paragraph 2 (d) and [registered with][made available to] the [Access and Benefit-sharing] Clearing-House, [in accordance with [Article 5 paragraph 3][Article 11, paragraph 2(c)]] shall constitute an internationally recognized certificate of compliance [with national law].

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

[4. The internationally recognized certificate of compliance [or equivalent] [shall][may] contain the following minimum information [when it is not confidential]:

- (a) Issuing national authority;
- (b) Details of the provider;
- (c) [A codified unique alphanumeric identifier]
- (d) [Details of the [relevant indigenous and local communities who are] [rights holders][rightful holder] of associated traditional knowledge [within indigenous and local communities], as appropriate;]
- (e) Details of the user;
- (f) [Subject-matter][Genetic resources and/or derivatives] covered by the certificate [or equivalent];
- (g) [Geographic location [and/or georeference] of the access activity;]
- (h) [Link to][Confirmation that] mutually agreed terms [were entered into];
- (h *bis*) [Confirmation that prior informed consent was obtained, where applicable;]
- (i) Uses permitted and restrictions of use[, where applicable];

- (j) Conditions of transfer to third parties;
- (k) Date of issuance.]

[5. The [first] Conference of the Parties serving as the meeting of the Parties to this Protocol [after the entry into force of this Protocol] shall [decide on the minimum content][consider additional modalities] of the internationally recognized certificate of compliance [system], taking into account the need to minimize transaction costs and to ensure feasibility, practicality and flexibility.]

[**ARTICLE 13 bis**

NON-COMPLIANCE WITH MANDATORY DISCLOSURE REQUIREMENTS

If the user fails or refuses to disclose pertinent information on the country of origin or source in cases and where the claim is directly based on genetic resources and associated traditional knowledge:

- (a) A user should be given the possibility to remedy the omission within a specific time fixed under the relevant law;
- (b) If the user continues to fail to make any declaration then the application shall not be further processed.]

ARTICLE 14

COMPLIANCE WITH MUTUALLY AGREED TERMS

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

- (a) The jurisdiction to which they will subject any dispute resolution processes;
- (b) The applicable law; and/or
- (c) Options for alternative dispute resolution, such as mediation or arbitration.

2. Parties shall ensure that an opportunity to seek recourse is available under their legal systems, consistent with applicable jurisdictional requirements, in cases of disputes arising from mutually agreed terms.

[3. Parties shall take effective measures, as appropriate, regarding non-compliance with mutually agreed terms including measures to:

- (a) [Facilitate] access to justice [including assistance to those seeking legal redress];
- (b) Promote the utilization of mechanisms regarding mutual recognition and enforcement of foreign judgments and arbitral awards; and
- [(c) Facilitate cooperation between Parties;]]

[4. The effectiveness of this article shall be reviewed by the Conference of the Parties [serving as the meeting of the Parties to this Protocol] in accordance with Article 26 of this Protocol.]

[ARTICLE 14 bis

INTERNATIONAL ACCESS AND BENEFIT-SHARING OMBUDSPERSON

An office of an access and benefit-sharing ombudsperson shall be established to support developing countries and indigenous and local communities to identify breaches of rights and to provide technical and legal support in ensuring effective redress of such breaches. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall implement this provision no later than two years after entry into force of this Protocol.]

ARTICLE 15

MODEL CONTRACTUAL CLAUSES

1. [Each Party][Parties] shall encourage, as appropriate, the development, update and use of [voluntary] sectoral and cross-sectoral model contractual clauses for mutually agreed terms [in collaboration with international and regional organizations and] [in consultation with][by] users and providers from [key][relevant] sectors.
2. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall periodically take stock of the use of sectoral and cross-sectoral model contractual clauses.

ARTICLE 16

CODES OF CONDUCT, GUIDELINES AND BEST PRACTICES AND/OR STANDARDS

1. [Each Party][Parties] shall encourage, as appropriate, the development, update and use of voluntary codes of conduct, guidelines and best practices and/or standards in relation to access and benefit-sharing [in collaboration with international and regional organizations and] [in consultation with][by] users and providers from [key][relevant] sectors.
2. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall periodically take stock of the use of voluntary codes of conduct, guidelines and best practices and/or standards and consider[, in collaboration with international and regional organizations,] the adoption of specific codes of conduct, guidelines and best practices and/or standards.

ARTICLE 17

AWARENESS-RAISING

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

- (a) Promotion of this Protocol and its objective;
- (b) Organization of indigenous and local communities' and relevant stakeholders' meetings;
- (c) Establishment and maintenance of a help desk for indigenous and local communities and relevant stakeholders;

- (d) Information dissemination through a national-level clearing-house;
- (e) Promotion of voluntary codes of conduct, guidelines and best practices and/or standards in consultation with indigenous and local communities and relevant stakeholders; and
- (f) Promotion of[, where appropriate, national,] regional [and international] exchange of experiences.
- (g) Education and training of users and providers of genetic resources [and associated traditional knowledge] about their access and benefit-sharing obligations;
- (h) Involvement of indigenous and local communities and relevant stakeholders in the further implementation of this Protocol.
- (i) Awareness raising of protocols and guidelines of indigenous and local communities.

ARTICLE 18

CAPACITY

1. Parties shall cooperate in the capacity-building, capacity development and strengthening of human resources and institutional capacities to effectively implement this Protocol in developing country Parties, in particular the least developed countries and small islands developing States among them, and Parties with economies in transition, including through existing global, regional, subregional and national institutions and organizations [and through other relevant stakeholders, including the private sector].
2. The needs of Parties referenced in paragraph 1 for financial resources in accordance with the relevant provisions of the Convention, shall be taken fully into account for capacity-building to implement this Protocol.
3. As a basis for appropriate measures in relation to the implementation of this Protocol, Parties should identify their national capacity needs and priorities, through national capacity self-assessments. In doing so, Parties should support the capacity needs and priorities of indigenous and local communities and relevant stakeholders, as identified by them, and emphasizing the needs and priorities of women.
4. In support of the implementation of this Protocol, capacity-building and capacity development may address, *inter alia*, the following key areas: (a) capacity to [implement][comply with the obligations of] this Protocol; (b) capacity to negotiate mutually agreed terms; (c) capacity to develop, implement and enforce national legislative, administrative or policy measures on access and benefit-sharing; and (d) capacity of countries [providing][of origin of] genetic resources to develop their endogenous research capabilities to add value to their own genetic resources.
5. Measures in accordance with paragraphs 1 to 4 may include *inter alia*:
 - (a) Legal and institutional development;
 - (b) Promoting equality in negotiations, such as training to negotiate mutually agreed terms;
 - (c) Monitoring and enforcing compliance;
 - (d) Employment of best available communication tools and Internet-based systems for access and benefit-sharing activities;

- (e) Development and use of valuation methods;
 - (f) Bioprospecting, associated research and taxonomic studies;
 - (g) Technology transfer, and infrastructure and technical capacity to make such technology transfer sustainable;
 - (h) Enhancing the contribution of access and benefit-sharing activities to the conservation and sustainable use of biodiversity;
 - (i) Special measures to increase the capacity of access and benefit-sharing stakeholders; and
 - (j) Special measures to increase the capacity of indigenous and local communities with emphasis on enhancing the capacity of women within those communities in relation to access to [traditional knowledge associated with genetic resources][genetic resources and associated traditional knowledge].
6. Information on [capacity-building initiatives at national, regional and international levels, undertaken in accordance with paragraphs 1 to 4,][model contractual clauses, codes of conduct and best practice standards] should be provided to the [Access and Benefit-sharing] Clearing-House with a view to promote synergy and coordination on capacity-building for access and benefit-sharing.

ARTICLE 18 bis

TECHNOLOGY TRANSFER AND COOPERATION

In accordance with Articles 15, 16, 18 and 19 of the Convention, Parties shall collaborate and cooperate in technical and scientific research and development programmes, including biotechnological research activities, as a means to achieve the objective of this Protocol. [This collaboration and cooperation [shall][should] include, *inter alia*, measures by developed country Parties that provide incentives, to companies and institutions within their jurisdiction,][Parties undertake] to promote and encourage access to technology by, and transfer of technology to, developing country Parties, including the least developed and small island developing states among them and Parties with economies in transition, in order to enable the development and strengthening of a sound and viable technological and scientific base for the attainment of the objectives of the Convention and of this Protocol. Where possible, [such] collaborative activities [shall][should] take place [with][in] the [[countries][country] providing][country of origin of] genetic resources.

ARTICLE 18 ter

NON-PARTIES

1. The Parties shall encourage non-Parties to adhere to this Protocol and to contribute appropriate information to the [Access and Benefit-sharing] Clearing-House [on activities and transactions regarding access and benefit-sharing related to genetic resources and derivatives within their jurisdiction.
2. Activities and transactions regarding access and benefit-sharing related to genetic resources and derivatives between Parties and non-Parties shall be consistent with this Protocol and the Convention.]

ARTICLE 19

FINANCIAL MECHANISM AND RESOURCES

1. In considering financial resources for the implementation of this Protocol, the Parties shall take into account the provisions of Article 20 of the Convention.
2. The financial mechanism [established in Article 21] of the Convention shall be the financial mechanism for this Protocol.
3. Regarding the capacity-building referred to in Article 18, the Conference of the Parties serving as the meeting of the Parties to this Protocol, in providing guidance with respect to the financial mechanism referred to in paragraph 2, for consideration by the Conference of the Parties, shall take into account the need for [adequate, predictable and timely flow of new and additional] financial resources by developing country Parties, in particular the least developed and the small island developing States [including Parties with economies in transition] among them [as well as the specific needs and requirements of indigenous and local communities, including women within these communities].
4. In the context of paragraph 1, the Parties shall also take into account the needs of the developing country Parties, in particular the least developed and the small island developing States among them, and of the Parties with economies in transition, [for adequate, predictable and timely flow of new and additional financial resources] in their efforts to identify and implement their capacity-building requirements for the purposes of the implementation of this Protocol.
5. The guidance to the financial mechanism of the Convention in relevant decisions of the Conference of the Parties, including those agreed before the adoption of this Protocol, shall apply, *mutatis mutandis*, to the provisions of this Article.
6. The developed country Parties may also provide, and the developing country Parties and the Parties with economies in transition avail themselves of, financial and other resources for the implementation of the provisions of this Protocol through bilateral, regional and multilateral channels.

ARTICLE 20

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

1. [Subject to paragraph 2 of Article 32 of the Convention,] The Conference of the Parties [to the Convention] shall serve as the meeting of the Parties to this Protocol.

[1*bis* The Conference of the Parties shall keep under review the implementation of this Protocol and shall make, within its mandate, the decisions necessary to promote its effective implementation.]
- [2. Parties to the Convention that are not Parties to this Protocol may participate as observers in the proceedings of any meeting of the Conference of the Parties serving as the meeting of the Parties to this Protocol. When the Conference of the Parties serves as the meeting of the Parties to this Protocol, decisions under this Protocol shall be taken only by those that are Parties to it.]
- [3. When the Conference of the Parties serves as the meeting of the Parties to this Protocol, any member of the Bureau of the Conference of the Parties representing a Party to the Convention but, at that time, not a Party to this Protocol, shall be substituted by a member to be elected by and from among the Parties to this Protocol.]

4. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall keep under regular review the implementation of this Protocol and shall make, within its mandate, the decisions necessary to promote its effective implementation. It shall perform the functions assigned to it by this Protocol and shall:

(a) Make recommendations on any matters necessary for the implementation of this Protocol;

(b) Establish such subsidiary bodies as are deemed necessary for the implementation of this Protocol;

(c) Seek and utilize, where appropriate, the services and cooperation of, and information provided by, competent international organizations and intergovernmental and non-governmental bodies;

(d) Establish the form and the intervals for transmitting the information to be submitted in accordance with Article 24 and consider such information as well as reports submitted by any subsidiary body;

(e) Consider and adopt, as required, amendments to this Protocol and its annex, as well as any annexes to this Protocol, that are deemed necessary for the implementation of this Protocol; and

(f) [Exercise such other functions as may be required for the implementation of this Protocol.]

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

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

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

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

[ARTICLE 21

SUBSIDIARY BODIES

1. Any subsidiary body established by or under the Convention may, upon a decision by the Conference of the Parties serving as the meeting of the Parties to this Protocol, serve the Protocol, in which case the meeting of the Parties shall specify which functions that body shall exercise.
2. Parties to the Convention that are not Parties to this Protocol may participate as observers in the proceedings of any meeting of any such subsidiary bodies. When a subsidiary body of the Convention serves as a subsidiary body to this Protocol, decisions under the Protocol shall be taken only by the Parties to the Protocol.
3. When a subsidiary body of the Convention exercises its functions with regard to matters concerning this Protocol, any member of the bureau of that subsidiary body representing a Party to the Convention but, at that time, not a Party to the Protocol, shall be substituted by a member to be elected by and from among the Parties to the Protocol.]

ARTICLE 22

SECRETARIAT

1. The Secretariat established by Article 24 of the Convention shall serve as the Secretariat to this Protocol.
- [2. Article 24, paragraph 1, of the Convention on the functions of the Secretariat shall apply, *mutatis mutandis*, to this Protocol.]
3. To the extent that they are distinct, the costs of the secretariat services for this Protocol shall be met by the Parties hereto. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first meeting, decide on the necessary budgetary arrangements to this end.

ARTICLE 23

RELATIONSHIP WITH THE CONVENTION

Except as otherwise provided in this Protocol, the provisions of the Convention [relating to its protocols] shall apply[, *mutatis mutandis*,] to this Protocol.

ARTICLE 24

MONITORING AND REPORTING

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

ARTICLE 25

[COMPLIANCE WITH][FACILITATIVE MECHANISM TO PROMOTE IMPLEMENTATION OF] THE PROTOCOL

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

ARTICLE 26

ASSESSMENT AND REVIEW

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

ARTICLE 27

SIGNATURE

This Protocol shall be open for signature at {...}, on 4 June 2011 by Parties to the Convention, and at United Nations Headquarters in New York from 11 June 2011 to 10 June 2012.

ARTICLE 28

ENTRY INTO FORCE

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

ARTICLE 29

RESERVATIONS

No reservations may be made to this Protocol.

ARTICLE 30

WITHDRAWAL

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

ARTICLE 31

AUTHENTIC TEXTS

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

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

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

Annex I

MONETARY AND NON-MONETARY BENEFITS

1. Monetary benefits may include, but not be limited to:
 - (a) Access fees/fee per sample collected or otherwise acquired;
 - (b) Up-front payments;
 - (c) Milestone payments;
 - (d) Payment of royalties;
 - (e) Licence fees in case of commercialization;
 - (f) Special fees to be paid to trust funds supporting conservation and sustainable use of biodiversity;
 - (g) Salaries and preferential terms where mutually agreed;
 - (h) Research funding;
 - (i) Joint ventures;
 - (j) Joint ownership of relevant intellectual property rights.

2. Non-monetary benefits may include, but not be limited to:
 - (a) Sharing of research and development results;
 - (b) Collaboration, cooperation and contribution in scientific research and development programmes, particularly biotechnological research activities, where possible in the country providing genetic resources;
 - (c) Participation in product development;
 - (d) Collaboration, cooperation and contribution in education and training;
 - (e) Admittance to ex situ facilities of genetic resources and to databases;
 - (f) Transfer to the provider of the genetic resources of knowledge and technology under fair and most favourable terms, including on concessional and preferential terms where agreed, in particular, knowledge and technology that make use of genetic resources, including biotechnology, or that are relevant to the conservation and sustainable utilization of biological diversity;
 - (g) Strengthening capacities for technology transfer;
 - (h) Institutional capacity-building;
 - (i) Human and material resources to strengthen the capacities for the administration and enforcement of access regulations;
 - (j) Training related to genetic resources with the full participation of countries providing genetic resources, and where possible, in such countries;

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

Annex II

LIST OF TYPICAL USES OF GENETIC RESOURCES

This list may include, but is not limited to:

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