The Proposed International Regime on Access and Benefit-Sharing

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Outline

• Brief Background
• The Convention on Biological Diversity
• The Working Group on Access and Benefit-Sharing (ABSWG)
• Current State of Negotiations
• The ABS “Roadmap”
• Next Steps
The UN Convention on Biological Diversity

- Opened at 1992 “Earth Summit”
- Came into force in 29 Dec 1993
- 191 countries have ratified
- United States has not ratified Convention
• Conservation of biodiversity
• Sustainable use of its components
• Fair and equitable sharing of benefits arising from the use of genetic resources -> Access and Benefit-Sharing (ABS)
Secondary Objective of the CDB in relation to IPs

- Article 8(j) - to promote the fair and equitable sharing with indigenous and local communities of benefits derived from the use of their traditional knowledge, innovations and practices
Institutions of the Convention

- COP
  - SBSTTA
    - The Secretariat
    - Financial Mechanism
  - Clearing House Mechanism
The Conference of the Parties (COP)

- Decision-making body
- Governments and the European Union who form the “Parties” to the Convention
- Meets every 2 years
- May be attended by governments not a party to the Convention (United States) and other interested organizations (Indigenous)
Key Outcomes of COP 1-9

- COP 1 (1993) – Nassau
- COP2 (1994) – Jakarta
- COP5 (2000) – Nairobi – IIFB Recognition; creation of ABSWG
- COP8 (2006) – Curitiba - Indicators
Article 8(j)

ARTICLE 8 | In-situ Conservation

Each Contracting Party shall, as far as possible and as appropriate:

(j) Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices;
ARTICLE 10|Sustainable Use of Components of Biological Diversity

Each Contracting Party shall, as far as possible and as appropriate:

(c) Protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements;

(d) Support local populations to develop and implement remedial action in degraded areas where biological diversity has been reduced; and
Article 15: Access to Genetic Resources

- Recognizes state sovereignty over natural resources
- “Authority to determine access to genetic resources rests with the national government and is subject to national legislation” (Art. 15 (1))
- Each Party will “facilitate access to genetic resources for environmentally sound uses” and not impose restrictions which are counter to the objectives of the Convention (Art. 15 (2))
- Access to genetic resources should “be on mutually agreed terms”, and “shall be subject to prior informed consent of the Contracting Party providing such resources, unless otherwise determined by that Party” (Art. 15 (4) and 15 (5))
The ABSWG

- Expert Panel on ABS created - COP 4, 1998
- ABSWG created - COP 5, 2000
- Bonn Guidelines - COP 6, 2002
- WSSD in Johannesburg, 2002
- Decision VII/19 - COP 7, 2004
  - Sets out mandate of the WG-ABS
- Decision VIII/7 - COP 8, 2006
  - Sets time frame for adoption of IR on ABS
- “Roadmap from Bonn to Nagoya” - COP 9, 2008
Current State of Negotiations

- Roadmap agreed - deadline is COP10 on Oct 2010
- Text for Negotiations agreed (ANNEX I, COP9 decision on ABS)
  - Objective, Scope, Main Components, Nature
  - Main Components: Fair and Equitable Benefit-Sharing, Access to Genetic Resources, Compliance, TK, Capacity
- 3 ABSWG meetings
  - 2-8 April 2009 (Paris, France)
  - Jul-Sep 2009
  - April 2010
Current State of Negotiations

- Meetings of Groups of Legal and Technical Experts on:
  - Compliance
  - Concepts, Terms, Definitions and Sectoral Approaches
  - TK associated with Genetic Resources
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<thead>
<tr>
<th>Date</th>
<th>Event</th>
<th>Host</th>
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<tbody>
<tr>
<td>30 Sept 2008</td>
<td>Nominations for Expert Group on Concepts</td>
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<td>17 October 2008</td>
<td>Submission of information and views related to issues to be addressed by the Expert Group on Concepts (see Annex II)</td>
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<tr>
<td>2-5 Dec 2008</td>
<td><strong>Expert Group on Concepts, Terms, Working Definition &amp; Sectoral Approaches</strong></td>
<td>Windhoek, Namibia</td>
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<td>1 Nov 2008</td>
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<td>28 Nov 2008</td>
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<td>27-30 Jan 2009</td>
<td><strong>Expert Group on Compliance</strong></td>
<td>Tokyo, Japan</td>
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<td>1 February 2009</td>
<td>Submission of views &amp; proposals including operational text in respect of main components in Annex I</td>
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<td>2-8 April 2009</td>
<td><strong>ABSWG 7</strong></td>
<td>Paris, France</td>
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<td>Feb-Mar 2009</td>
<td>Submission of information and views related to issues to be addressed by EG on TK (see Annex II)</td>
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<td>Apr-Jun 2009</td>
<td><strong>Expert group on TK</strong></td>
<td>Sweden</td>
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<td><strong>TBD</strong></td>
<td>Reports of EGs made available at least 3 months prior to WG8(j) 6</td>
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<td>Jul-Sep 2009</td>
<td><strong>ABSWG 8</strong></td>
<td>Malaysia</td>
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<td>Apr 2010</td>
<td><strong>ABSWG 9</strong></td>
<td>Colombia</td>
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<td>18-29 Oct 2010</td>
<td>COP 10</td>
<td>Nagoya, Aichi Prefecture, Japan</td>
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Agreed Agenda of ABSWG Meetings

- **ABSWG7 (2-8 April 2009, Paris)** - negotiation of operational text on objective, scope, compliance, FEBS, access

- **ABSWG8 (3Q 2009, Malaysia)** - negotiation of operational text on nature, TK associated with GR, capacity-building, compliance, FEBS, access

- **ABSWG9 (April 2010, Colombia)** - consolidation of all operational text from the 7th and 8th meetings
(a) What is the relationship between access and use of genetic resources and associated traditional knowledge?

(b) What practical impacts should the negotiations of the international regime take into account based on the range of community level procedures and customary systems of indigenous and local communities for regulating access to traditional knowledge associated with genetic resources at the community level?

(c) Identify the range of community level procedures and determine to what extent customary laws of indigenous and local communities regulate access to genetic resources and associated traditional knowledge at the community level and its relevance to the international regime;

(d) To what extent measures to ensure compliance with prior informed consent and mutually agreed terms under Article 15 also support the prior informed consent of indigenous and local communities for the use of their associated traditional knowledge?
Expert Group on TK

(e) Identify elements and procedural aspects for the prior informed consent of holders of associated traditional knowledge when traditional knowledge associated with genetic resources is accessed also taking into account potential transboundary contexts of such associated traditional knowledge and identifying best practice examples;

(f) Is there a basis for prior informed consent for indigenous and local communities relative to traditional knowledge associated to genetic resources in international law? If so, how can it be reflected in the international regime?

(g) Assess options, considering the practical difficulties and distinct implementation challenges, for including traditional knowledge associated with genetic resources in a potential internationally recognized certificate issued by the competent domestic authority also by considering the possibility of a declaration on such certificate as to whether there is any associated traditional knowledge and who the relevant holders of traditional knowledge are;

(h) How to define traditional knowledge associated to genetic resources in the context of access and benefit-sharing?
Expert Group on TK

- The group of experts shall be regionally balanced and composed of thirty experts nominated by Parties and fifteen observers, including seven observers from indigenous and local communities nominated by them, and remaining observers from, *inter alia*, international organizations and agreements, industry, research institutions/academia and non-governmental organizations.

- Parties are also encouraged to nominate experts from indigenous and local communities where possible.

- Send nomination letter and CV to secretariat@cbd.int
Next Steps

- 28 Nov 2008 - Submission of information and views related to issues to be addressed by the Expert Group on Compliance
  - (d) How could compliance measures take account of the customary law of indigenous and local communities? (ANNEX II, COP9 decision on ABS)

- 27-30 Jan 2009 - Expert Group on Compliance (Tokyo, Japan)
Next Steps

1. **1 Feb 2009** - Submission of views & proposals including *operational text* in respect of *main components* in Annex I
2. **2-8 April 2009** - ABSWG 7 (Paris, France)
3. **Jul-Sep 2009** - ABSWG 8
4. **April 2010** - ABSWG 9
5. **18-29 Oct 2010** - COP 10 (Nagoya, Japan)
6. **Regional & Inter-regional Consultations**