



# Overview of the CBD's International Regime on Access and Benefit-Sharing

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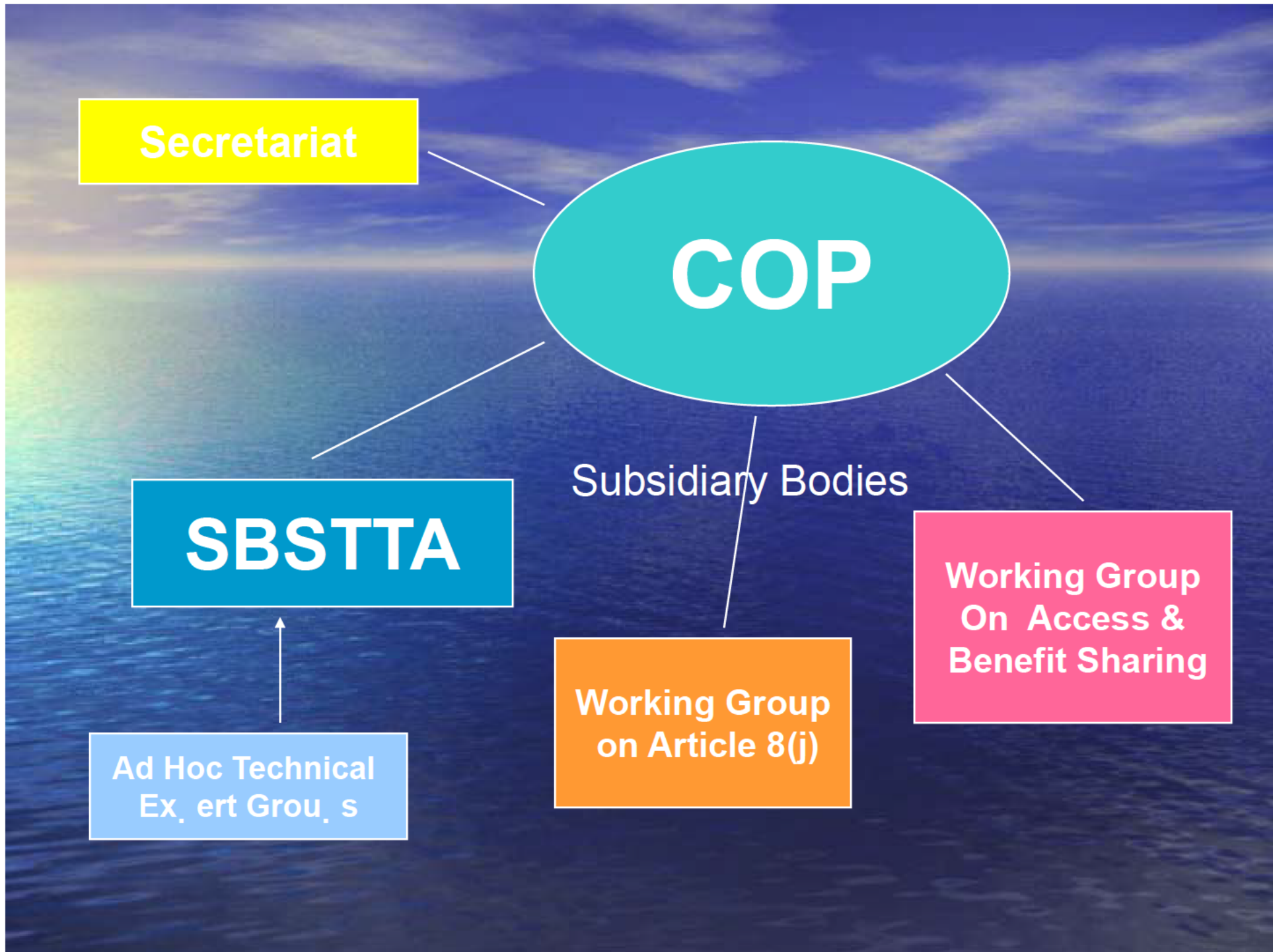
# Overview

- **CBD WGABS** - Elaborating and Negotiating an International Regime on ABS related to genetic resources and traditional knowledge (TK)
- **CBD WG8j** - Development of Sui Generis Systems for Protection of TK
- **WIPO-IGC** - Draft Provisions, Policy Objectives and Core Principles



# Access (to Genetic Resources) and Benefit Sharing (ABS)

- 3rd objective of the CBD (Article 1)
  - “Fair and equitable sharing of the benefits arising out of the utilization of genetic resources”
- Article 15
  - “Recognizing the sovereign rights of States over their natural resources, **the authority to determine access to genetic resources rests with the national governments** and is subject to national legislation.”
  - “access to genetic resources **shall be subject to prior informed consent of the Contracting Party providing such resources**”



**Secretariat**

**COP**

**SBSTTA**

Subsidiary Bodies

**Working Group  
On Access &  
Benefit Sharing**

**Working Group  
on Article 8(j)**

**Ad Hoc Technical  
Expert Groups**



# History of ABS in CBD: Bonn Guidelines

- **COPV** decided to establish an **Ad Hoc Open-Ended Working Group on ABS**
- Oct. 2001 - **WG-ABS-1** developed the **draft Bonn Guidelines on ABS**
- 2002 - **COPVI** adopted the voluntary **Bonn Guidelines on ABS**
  - Assist Parties, Governments, and stakeholders in establishing legislative, administrative or policy measures on ABS and/or when negotiating contractual agreements for ABS
- 2002 - **World Summit on Sustainable Development** - developing countries call for negotiation w/in CBD of international regime on ABS

# Differing Positions

- **“South” - “Provider countries/Countries of Origin” (G-77 & China; Like-Minded Mega-Diverse Countries; GRULAC & African Group)**
  - Want a new binding treaty/protocol on ABS asap
  - Want derivatives covered
  - Want new disclosure requirements in patents
  - Want a certificate of origin system as key component
- **“North” - “User countries” (JUSCANZ & EU)**
  - Want consistency with WTO and WIPO treaties
  - Do not want derivatives covered
- **Biotech Industry - “Users”**
  - Want IPRs secured and prefer bi-lateral contracts with provider country



# International Regime on ABS

- **2004 - COPVII (Kuala Lumpur) Decision VII/19D**
  - adopted terms of reference for negotiation for process, nature, scope and elements for consideration ... h\_ elaboration of an international regime on ABS
  - mandated WGABS to meet twice before COPVIII (2006) and the WG8j to work in collaboration
- **Feb. 2005 - WGABS-3 (Bangkok)**
  - Compiled views and proposals from different country blocs
  - Develop matrix of gap analysis in CBD and existing law

# International Regime on ABS

- **Jan/Feb 2006 - WGABS-4 (Granada)** - further elaborate and negotiate possible nature, scope, objectives and elements in bracketed text to reflect disparate views of negotiating blocs



# Current status - COP8

(Mar. 20-31, 2006)

- Reconvene the WG to meet twice before COP9 to continue elaboration and negotiation and to “complete its work at the earliest possible time before COP10” based on:
  - Gap analysis and matrix (WG-3)
  - WG-4 Annex reflecting different perspectives on nature, scope, objectives and elements
  - Outcomes of group of technical experts on certificate of origin/source/legal provenance

# COP8 - Future Work on ABS

- Experts group on Certificate of Origin/Source/Legal Provenance
  - Explore and elaborate possible options for the form, intent and functioning of an internationally recognised certificate
  - Analyse practicality, feasibility, costs & benefits with a view to achieving the objectives of Art. 15 & 8j
- Invite Parties to submit info on legal status of genetic resources in national law for WG-5



# Key issues for future negotiation

**Nature:** Binding? 1 or more instruments?

**Scope:** Access to GR & TK & BS

Will the regime cover derivatives?

**Objectives:** Facilitate access to GR; Ensure BS

**Possible Elements:**

- Measures to “facilitate” access or “regulate” access?
- Measures to ensure compliance with prior informed consent (PIC) of provider country and to ensure benefit sharing according to mutually agreed terms (MAT) (such as “certificate of origin”)
- User measures (such as “disclosure of origin” in patent applications)
- Measures to ensure benefit sharing when traditional knowledge is used

# Elements re: IPs

## (VII/19D annex)

- (x) Measures to ensure compliance with prior informed consent of indigenous and local communities holding traditional knowledge associated with genetic resources, in accordance with Article 8(j).
- (xiv) Disclosure of origin/source/legal provenance of genetic resources and associated traditional knowledge in applications for intellectual property rights.
- (xv) Recognition and protection of the rights of indigenous and local communities over their traditional knowledge associated to genetic resources subject to the national legislation of the countries where these communities are located.
- (xvi) Customary law and traditional cultural practices of indigenous and local communities.
- (xviii) Code of ethics/code of conduct/models of prior informed consent or other instruments in order to ensure fair and equitable sharing of benefits with indigenous and local communities.



# Considerations for Indigenous peoples

- Accept patents and commodification of lifeforms and knowledge
- ABS, as conceptualized, protects rights of states and industry, not IPs
- Uneven playing field in favor of industry and governments in negotiations
- Culturally-based decision-making