



# Earth Negotiations Bulletin

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## HIGHLIGHTS FROM THE EXPERTS' PANEL ON ACCESS AND BENEFIT-SHARING THURSDAY, 7 OCTOBER 1999

Experts met in a morning Plenary to hear reports on the outcomes of the working groups on ABS for scientific and commercial purposes and on review of legislative, administrative and policy measures, regulatory procedures and incentive measures. The latter working group convened for two brief sessions, one in the morning and another in the afternoon, to further consider its report. The open-ended sub-group on IPR also met to finish drafting its report. Experts convened briefly in Plenary in the afternoon and again in an evening session to consider the reports of the working groups.

*Editor's Note: While participating experts are appointed by governments, they speak in their own capacities. For the purpose of brevity, experts' remarks are attributed by country in the following report.*

### PLENARY

Panel Co-Chair Girsberger (Switzerland) invited the Chairs of the working groups to deliver progress reports. Chair Zakri (Malaysia) remarked that the group on ABS arrangements for scientific and commercial purposes had completed its work on MAT and contractual approaches, as well as on benefit-sharing options and mechanisms.

Working group Chair Kalakoutskii (Russian Federation) introduced the draft report of the working group on the review of legislative, administrative and policy measures at national and regional levels, regulatory procedures and incentive measures. He highlighted the group's focus on access legislation and the need for flexibility therein, PIC and the role of national focal points, international measures to support PIC and incentive measures. He reported that outstanding issues still under consideration included: international organizations; functions of focal points; competent national authorities; intermediaries; international measures; and IPR.

Peter Tobias Stoll (Max Planck Institute for International Law) presented the outcomes of the IPR sub-group, highlighting the main issues, which include: interrelationships of IPR with PIC; protection of traditional knowledge; ABS agreements; and scope, "prior art" and

monitoring. He also noted the importance of linkages with Article 8(j) of the CBD (traditional knowledge) and other international organizations such as UNESCO, WIPO and the FAO.

In an afternoon Plenary session, Rapporteur Maureen Wolfson (South Africa) introduced the report of the Panel (UNEP/CBD/EP-ABS/L.1), which recalls the Panel's mandate, summarizes the opening session and organizational matters, and outlines the items addressed by the two working groups. The Plenary adopted the report without amendment.

### WORKING GROUP

#### REVIEW OF LEGISLATIVE, ADMINISTRATIVE AND POLICY MEASURES, REGULATORY PROCEDURES AND INCENTIVE MEASURES:

The group met in an early morning session to review Wednesday's deliberations and identify outstanding issues. A "Friends of the Chair" group was established to finalize the text before presenting it to the Plenary for consideration.

The working group met again in the afternoon to endorse the draft report of the week's deliberations (UNEP/CBD/EP-ABS/L.3) and consider the results of the open-ended sub-group on IPR. Several experts sought clarification on the IPR text. There were some reservations expressed on issues dealing with the use of indicators at the national and international levels and on the definition of derivatives, but there was general acceptance of the document. The draft report of the working group was endorsed and forwarded to the Plenary for consideration.

### CONSIDERATION OF REPORTS

In the evening Plenary, Panel Co-Chair Medaglia (Costa Rica) introduced the report of the working group on ABS arrangements for scientific and commercial purposes (UNEP/CBD/EP-ABS/L.2) for consideration. He reminded the Plenary that the meeting was an expert panel, not a negotiating body. Working group Chair Zakri submitted a corrigendum to the report (UNEP/CBD/EP-ABS/L.2/Corr.1) for consideration. The working group report is comprised of two sections, one on MAT and contractual approaches and the other on benefit-sharing options and mechanisms. The Plenary first considered the text summarizing recommendations on MAT and contractual approaches and initially began to adopt the report paragraph by paragraph until an observer asked for the floor and was refused. SWITZERLAND raised

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as a point of order in the procedure the fact that the Plenary must first discuss the report in a general manner and allow for observer comments. Following a brief discussion on the procedure for considering a working group report, it was agreed that the Plenary would first approve the report paragraph by paragraph prior to its adoption and that observer participation would be allowed. Some delegates noted potential overlap or contradictions with the report of the other working group, and it was agreed that such issues would be considered when discussing the other group's report.

Regarding text noting the need for legal certainty and clarity to facilitate access and stating that governments "must" therefore define roles, ownership and authority to determine access, the UK suggested that "must" was too strong and preferred "should."

On text stressing the importance of balancing the need for confidentiality for commercial purposes with the need for stakeholders to be able to understand market conditions to ensure equitable sharing, CUBA stressed that additional information on market conditions is required and preferred highlighting "the need for access to information by stakeholders in order to guarantee, under market conditions, equitable sharing." Delegates accepted MOROCCO's proposal to delete text limiting needs for confidentiality to "commercial purposes."

With regard to a paragraph noting that many countries are in the early stages of developing ABS regimes, CUBA, supported by BOLIVIA, objected to text stating that, as a consequence, interim solutions "are required" to allow a continuation of access in accordance with the CBD. She noted that such a requirement contradicted other text stating that the provision of guidelines would be premature. ARGENTINA, noting its support for a code of conduct, supported the text. Delegates agreed to PERU's proposal, supported by MEXICO and BRAZIL, to consider the issue of interim solutions with the report of the other working group.

In considering text noting the unique qualities of genetic resources for food and agriculture, SWITZERLAND proposed deleting a list detailing its characteristics. BRAZIL, supported by FINLAND, preferred retaining the list, noting that the Panel should provide technical information to support its recommendations.

On text noting that research and development on genetic resources for academic and commercial purposes frequently involves numerous parties with contributions to the end-product, MOROCCO preferred deleting specific reference to "academic and commercial purposes." Delegates accepted BRAZIL's proposal to replace "academic" with "scientific."

Delegates then considered benefit-sharing options and mechanisms. On text listing examples of monetary benefits arising from the utilization of genetic resources, delegates agreed to DENMARK's proposal to milestone payments. PERU noted that the term "license fees" was more appropriate than "bioprospecting fees."

With regard to text on non-monetary benefits, the EU questioned making available a "complete" set of voucher specimens left in national institutions. The US supported deleting "complete," but noted that providing as complete a set as possible could help to rejuvenate nearly extinct species. With regard to access by countries of origin to all national specimens deposited in international *ex situ* collections, the UK, supported by NORWAY, preferred "reasonable access" to duplicates or, as appropriate, to originals of such specimens. DENMARK stated that free access to technology and products resulting from an ABS agreement would not be acceptable to a large part of the private sector. Delegates agreed to recommend "reasonable access."

On benefits for conservation and sustainable use of biodiversity from biological inventories and taxonomy, CUBA emphasized the need for monitoring of access and environmental impacts of bioprospecting activities. A paragraph stressing the need to place credible monetary values on non-monetary benefits was amended to include appreciation of the value of relative contributions to a collaboration project in order to include stewardship of genetic resources as a contribution that would merit benefits. PERU opposed the intent to make benefit-sharing conditional on contribution instead of ownership of resource or involvement of local and indigenous communities.

SYRIA stated that the regulatory role of States with respect to benefit-sharing should not be confined but encouraged. The UK highlighted the need to broaden the information available to source countries through the development of an international roster of private sector firms utilizing genetic resources and suggested including market research companies and institutions familiar with the risks involved in product discovery and development.

Chair Kalakoutskii (Russian Federation) introduced the draft report of the working group on the review of regulatory and policy measures at national and regional levels and review of regulatory measures and incentive measures (UNEP/CBD/EP-ABS/L.3). The report contains two sections: one on the review of legislative, administrative and policy measures, with sub-sections on aspects of access legislation, PIC and IPR; and another on regulatory procedures and incentive measures.

ARGENTINA noted that the working group's report exceeded the acceptable length and proposed deleting explanatory boxes contained in the draft report. PERU, PAKISTAN and the WORLD RESOURCES INSTITUTE stressed that the boxes were useful and should be made available. FINLAND, the EU and others supported placing the boxes in annexes. SWITZERLAND proposed formulating an executive summary in addition to placing the boxes in annexes and with the UK, asked the Secretariat to propose alternative means of formatting the report. CUBA, with PERU, expressed concern about the limited time remaining to achieve a final result of the meeting. Panel Co-Chair Medaglia announced that the issue of the draft report's boxes would be decided in tomorrow morning's Plenary.

### IN THE CORRIDORS

At the end of the penultimate day of the Panel, most experts expressed general satisfaction with the outcomes of the working groups. Some felt the key issues – flexibility, interim measures, national focal points, clear legislation – had been touched on, but stressed the need to consolidate and better highlight any recommendations in order for them to be "noticed" by the COP, given its already heavily burdened agenda.

### THINGS TO LOOK FOR

**PLENARY:** Plenary will convene at 9:00 am to consider the working groups' reports and adopt the final report of the meeting.