



ABS WG-2 HIGHLIGHTS THURSDAY, 4 DECEMBER 2003

Delegates to the second meeting of the *Ad Hoc* Open-ended Working Group on Access and Benefit-sharing of the Convention on Biological Diversity (CBD) met in morning, afternoon and evening sub-working group sessions. Sub-Working Group I (SWG-I) considered a revised Chair's text on an international regime on access and benefit-sharing (ABS), and Chair's texts on: reports on experience with the Bonn Guidelines; use of terms; and other approaches for implementing the CBD ABS provisions. Sub-Working Group II (SWG-II) addressed a Chair's text on capacity building for ABS and a conference room paper (CRP) on compliance measures for prior informed consent (PIC) and mutually agreed terms (MAT). A brief Plenary met in late afternoon to review progress.

SUB-WORKING GROUP I

INTERNATIONAL ABS REGIME: The Secretariat introduced a revised Chair's text on an international ABS regime.

Preamble: Italy, on behalf of the EC Member States and acceding countries (EU), and the EUROPEAN COMMUNITY (EC) supported language on fair and equitable benefit-sharing and sovereign rights over natural resources, provided language on facilitating access was retained. Mexico, on behalf of the LIKE-MINDED MEGADIVERSE COUNTRIES (LMMC), and others suggested deleting wording on facilitating access. The EC, JAPAN, CANADA, AUSTRALIA and PALAU opposed, and wording remains bracketed.

The AFRICAN GROUP and the LMMC, opposed by CANADA, the EU and AUSTRALIA, requested deleting language recognizing that some Parties and stakeholders are both users and providers. The text remains bracketed.

The AFRICAN GROUP, the LMMC, ANTIGUA AND BARBUDA and PALAU opposed specific references to the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGR), with the LMMC suggesting a general reference to relevant international organizations and instruments. The EC, SWITZERLAND, ARGENTINA, URUGUAY and JAMAICA supported reference to the ITPGR. Compromise wording refers to the contribution of biodiversity-related agreements, such as the ITPGR.

The LMMC and TANZANIA proposed, and delegates agreed, deleting wording on ensuring balance between users' and providers' responsibilities. ARGENTINA and the EU, opposed by the LMMC, favored retaining reference to mutual supportiveness. The EU, JAPAN, ANTIGUA AND BARBUDA and PALAU supported reference to "flexibility." The text remains bracketed.

The EU and AUSTRALIA, opposed by the LMMC, supported noting the need for further analysis of existing ABS-related instruments and regimes.

JAMAICA and AUSTRALIA asked to emphasize that the terms of reference do not prejudice the regime's content.

Process for the negotiations: On the negotiation process, the AFRICAN GROUP and the LMMC opposed a recommendation to create an expert group. The AFRICAN GROUP, opposed by AUSTRALIA, supported the aim of adopting a legally binding instrument. CANADA and the COORDINATING BODY OF THE INDIGENOUS ORGANIZATIONS OF THE AMAZON BASIN emphasized indigenous participation. The text remains bracketed.

Terms of reference: The EC, CANADA, CUBA and JAMAICA supported a separate section on the process, proposing an analysis of existing ABS instruments, experience with implementation, and gaps. The section remains bracketed.

Nature: The LMMC and the AFRICAN GROUP supported a legally binding regime and, opposed by the EC and AUSTRALIA, requested deleting the section on the nature of the regime.

Delegates agreed with a US suggestion to reword language for consistency with CBD Article 22 (Relationship with Other International Conventions). The INTERNATIONAL INDIGENOUS FORUM ON BIODIVERSITY (IIFB) stressed the need to refer to customary law and traditional cultural practices.

Scope: The LMMC and the AFRICAN GROUP, opposed by the EC, requested addressing derivatives of genetic resources. JAPAN and the US noted that derivatives and products were excluded from the Bonn Guidelines' scope.

The EC, AUSTRALIA, the AFRICAN GROUP, CHINA, and the REPUBLIC OF KOREA proposed wording based on Article 9 of the Bonn Guidelines (Scope), and stating that the regime should facilitate access and promote and safeguard fair and equitable benefit-sharing. The LMMC and the AFRICAN GROUP agreed, provided reference be made to derivatives. The paragraph remains bracketed.

AUSTRALIA noted that genetic resources beyond national jurisdiction fall outside the CBD's scope. The LMMC opposed references to facilitating research, implementation of the CBD objectives, the functioning of the regime, and stakeholder participation. Those references remain bracketed. The IIFB said the regime should not only focus on commercialization of genetic resources.

Elements: The EC favored stating that the elements of the regime be included based on a gap-analysis. The EC and the IIFB supported, and the LMMC and the AFRICAN GROUP opposed, listing existing ABS-related instruments and processes. COLOMBIA, supported by the LMMC and opposed by the EC, proposed wording on the need to ensure fair and equitable benefit-sharing of research results. These references remain bracketed.

The LMMC supported, and the EC opposed, reference to the use of genetic resources, derivatives and associated traditional knowledge for biosprospecting beyond the jurisdiction of coun-



tries of origin. Delegates agreed to include measures for benefit-sharing and disagreed on references to monitoring, compliance, enforcement, and dispute settlement mechanisms.

Modalities: The EC opposed including the type of instruments among the modalities to be decided by COP-7. While delegates did not reach agreement on timeframe and providing full support for indigenous participation, they agreed to promote participation of all relevant stakeholders.

SWG-I agreed to forward the amended bracketed text on the ABS regime to Plenary.

REPORTS: Delegates approved a Chair's text on experience with the Bonn Guidelines following amendments including: a proposal by the AFRICAN GROUP to recognize constraints encountered by some developing countries to fully utilize the Guidelines; and an invitation to Parties, governments, indigenous and local communities and other stakeholders to continue promoting implementation of the voluntary Bonn Guidelines.

USE OF TERMS: Delegates approved a Chair's text on use of terms, definitions and/or glossary, following amendments proposed by the AFRICAN GROUP to note the need to examine other relevant terms not defined in the CBD, and the GAMBIA to note difficulties faced by some developing countries regarding information technologies. Delegates agreed on a request to the ABS Working Group to further examine the use of terms not defined by the CBD and report to the COP.

OTHER APPROACHES: Delegates approved a Chair's text on other approaches as set out in decision VI/24 B (Other approaches for implementing the CBD ABS provisions), with the understanding that reference to an international certificate of origin be consistent with wording adopted by SWG-II. Options as to whether submissions on additional approaches go to the Clearing-house Mechanism or to the ABS Working Group remain bracketed.

Delegates then adopted SWG-I's report (UNEP/CBD/WG-ABS/2/WG.I/L.1) with minor amendments.

SUB-WORKING GROUP II

CAPACITY BUILDING: SWG-II Chair Desh Deepak Verma (India) presented a Chair's text on capacity-building needs for the Bonn Guidelines' implementation. BRAZIL requested a preambular reference to the CBD's objective of fair and equitable benefit-sharing. The IIFB, supported by BRAZIL, SAMOA and SAINT LUCIA, requested involving indigenous and local communities in international and regional cooperation. Delegates agreed that implementing an international ABS regime could require additional capacity building.

On elements to be considered when reviewing the draft action plan, BRAZIL suggested language on taking into consideration national legislation. The EU stressed identification of responsibilities, and needs and contributions of the various key actors.

On the involvement of, and approval from, indigenous and local communities regarding capacity-building activities and inventories of traditional knowledge, BRAZIL, opposed by SAMOA, suggested reference to concerns of Parties in addition to those of indigenous and local communities. The EU stressed the need for capacity building for the transfer and adaptation of relevant technologies and cooperation.

Delegates debated referring to the linkages between benefit-sharing and the CBD's other two objectives, and the group agreed with AUSTRALIA's suggestion to add a paragraph on capacity building to identify opportunities for benefits that promote conservation and the development of new and existing sustainable uses of biodiversity. Delegates also included a preambular reference to SBSTTA-9's work programme on technology transfer, as suggested by the EU.

On language regarding assistance from the Global Environment Facility (GEF) with the Action Plan's implementation, the GEF clarified that projects should be country-driven and based on national priorities. Egypt, on behalf of the AFRICAN GROUP, opposed by the EU, proposed referring to the transfer of biotechnologies when granting access permits. Following consultations,

delegates agreed to refer to capacity building regarding technology transfer to enable provider countries to participate in benefit-sharing arrangements when granting access permits.

SWG-II approved the text as amended.

COMPLIANCE MEASURES FOR PIC AND MAT: SWG-II Chair Verma introduced a CRP on measures to support compliance with PIC and MAT. He drew attention to several bracketed paragraphs referring to the relation with ongoing work under the World Intellectual Property Organization (WIPO). MEXICO presented a proposal resulting from informal consultations, on: cooperation with WIPO; an international certificate of origin/source/legal provenance; and disclosure of origin. BRAZIL stressed that addressing IPRs related to biodiversity lies within the CBD's mandate. Chair Verma suggested, and delegates agreed, referring to COP decision VI/20 (Cooperation with other organizations, initiatives and conventions), which recognizes the CBD's leading role in biodiversity issues.

Delegates discussed bracketed references to the PIC of, or benefit-sharing with, Contracting Parties providing genetic resources. BRAZIL insisted that reference be made to countries of origin, while COLOMBIA suggested referring to both countries of origin and Parties providing genetic resources. The EC, CANADA and AUSTRALIA objected, highlighting relevant CBD language and definitions. Delegates agreed on compromise language referring to the PIC of Contracting Parties, including countries of origin, in accordance with CBD Articles 2 (Definitions) and 15.3 (genetic resources provided by a Contracting Party), and indigenous and local communities providing associated traditional knowledge.

On incentive measures to encourage users to comply with national legislation, delegates agreed to reference voluntary certification schemes. Delegates agreed on language inviting Parties to recognize that written or oral traditional knowledge be considered as prior art. Delegates debated, without reaching consensus, language regarding efforts by indigenous and local communities to develop mechanisms to obtain the approval of holders of traditional knowledge for access to traditional knowledge. Brackets also remain regarding: the ABS Working Group addressing issues related to an international certificate of origin/source/legal provenance, and to disclosure of origin in IPR applications; and inviting WIPO to address the interrelation between access and disclosure requirements.

The CRP was approved as amended and bracketed.

PLENARY

Working Group Chair Hans Hoogeveen (the Netherlands) proposed, and delegates approved, Diann Black Layne (Antigua and Barbuda) as the meeting Rapporteur. SWG-I Chair Verleye and SWG-II Chair Verma reported on progress.

The UN PERMANENT FORUM ON INDIGENOUS ISSUES drew attention to its recommendation to develop a code of ethics and establish a task force.

IN THE CORRIDORS

The heavily bracketed Chair's text on an international ABS regime that greeted SWG-I delegates did not alter the committed spirit that has prevailed so far, and delegates ploughed through the text throughout the day. In spite of explicit proposals for trade-offs, stalemates remained regarding derivatives, certificates of origin/provenance and facilitating access, and warranted a late night session.

In the less tormented realm of SWG-II, delegates applauded the constructive spirit that led to the approval of the Chair's text on capacity building. Afternoon squabbling on compliance measures revealed unresolved controversies over cooperation with WIPO, disclosure of origin and references to countries of origin, and led one delegate to point out attempts to renegotiate the CBD.

THINGS TO LOOK FOR TODAY

PLENARY: Plenary will convene at 10:00 am in Room I to consider draft recommendations and the reports of the sub-working groups, and adopt the meeting's report.