

ABS 8 HIGHLIGHTS: TUESDAY, 10 NOVEMBER 2009

The Working Group met in a morning plenary to hear text proposals on compliance, benefit-sharing, and access. Delegates then established contact groups on traditional knowledge and capacity building, to engage in consolidating and integrating text to form the basis of later negotiations. The groups met throughout the day and into the evening.

PLENARY

COMPLIANCE: JAPAN expressed appreciation for the EU and Swiss submissions on the definition of misappropriation/misuse and on disclosure. Serbia, on behalf of CENTRAL AND EASTERN EUROPE, supported the EU submission, in particular on the internationally recognized certificate. BURKINA FASO suggested that parties facilitate the exchange of genetic resources and traditional knowledge among indigenous and local communities for traditional purposes.

MALAYSIA announced the formation of a new group, the Like-Minded Asia-Pacific Countries, and aligned with the Like-Minded Megadiverse Countries (LMMC), the African Group and GRULAC on compliance issues. The LMMC introduced a number of new proposals, including on: prior informed consent (PIC) and mutually agreed terms (MAT); providing legal assistance to parties for enforcement; and establishing regulatory frameworks to protect rights over genetic resources, their derivatives and associated traditional knowledge. A representative of CIVIL SOCIETY stressed that a compliance mechanism should cover both misuse and misappropriation, deal with non-parties, and include a certificate and checkpoints as part of a monitoring system.

BENEFIT-SHARING: SWITZERLAND proposed that MAT be established by the time of access to genetic resources, to create legal certainty and promote compliance. The AFRICAN GROUP drew attention to their definition of fair and equitable benefit-sharing.

ACCESS: The EU drew attention to their submission regarding conformity of domestic access frameworks with the international regime. Recognizing the sovereign rights and authority of parties to determine access, SWITZERLAND suggested the international regime provide for emergency access where biodiversity, plant, animal and human life are threatened. IIFB called for provisions on transboundary genetic resources, and *ex situ* genetic resources and associated traditional knowledge. A representative of CIVIL SOCIETY stressed that genetic resources and traditional knowledge are inseparable and that traditional knowledge has to be addressed under access.

CONTACT GROUPS

TRADITIONAL KNOWLEDGE: Co-chaired by Tone Solhaug (Norway) and Damaso Luna (Mexico), the contact group met in the morning to consider a non-paper collating submitted text. Many parties noted that their submissions were missing, with the EU additionally requesting that the revised non-paper revert to the structure as set out in the Annex to Decision IX/12.

In the afternoon, the group addressed a revised non-paper. Under measures to ensure the fair and equitable sharing of benefits with traditional knowledge holders, delegates consolidated five operational texts. The AFRICAN GROUP supported the IIFB proposal, that the international regime shall uphold the rights of indigenous peoples and local communities to benefit-sharing wherever there is use of, or access to, their genetic resources and/or associated traditional knowledge, and delegates integrated it in the African proposal. Delegates further agreed to integrate parts of the Mexican proposal on: stipulating terms for benefit-sharing in national legislation; including terms for benefit-sharing in MAT; and who should determine MAT.

CANADA requested retaining an EU proposal that parties take measures to encourage holders of traditional knowledge associated with genetic resources to provide in their MAT for fair and equitable sharing of benefits. On measures to ensure that access to traditional knowledge takes place in accordance with community-level procedures, MALAYSIA, supported by the AFRICAN GROUP and BRAZIL, suggested working on the basis of submissions from the African Group, LMMC, Mexico and IIFB. MALAYSIA and AUSTRALIA suggested retaining language from Canada's submission that MAT be developed at the community level. Delegates then discussed structure, agreeing *inter alia* to use IIFB's text on the need for states to respect indigenous peoples' and local communities' customary laws as the opening paragraph.

The PHILIPPINES requested accurate reflection of their proposal that the rights of states and indigenous and local communities over resources must be respected whenever these are used, taking into account the corresponding duty of states under the UN Declaration on the Rights of Indigenous Peoples to protect communities' exercise of those rights. The LMMC and CANADA questioned the need for a provision regarding identification of best practices to ensure respect for traditional knowledge in ABS-related research.

On incorporation of traditional knowledge in the development of model clauses for material transfer agreements, delegates agreed to work on the basis of the EU proposal. On identification of the individual or authority to grant access in accordance with community-level procedures, delegates agreed to work on the basis of the African proposal and integrate parts of the IIFB proposal stating that when indigenous and local

communities have well-defined structures and established indigenous authorities, national regulations can directly rely on these. The LMMC proposed to also add wording on providing adequate information about the rights of indigenous and local communities, with MALAYSIA further adding language that communities shall determine appropriate authorities to serve as interlocutors.

Delegates agreed to retain African submissions as the basis for discussion on: addressing access with approval of traditional knowledge holders; no coerced access to traditional knowledge; and PIC and MAT with holders of traditional knowledge. The LMMC asked to replace any reference to knowledge holders with reference to indigenous and local communities, and agreed with NEW ZEALAND to include the compromise language from the Article 8(j) Working Group that where consent or authority of indigenous and local communities is required with respect to traditional knowledge, it is the right of indigenous and local communities, according to their customary laws, to identify relevant knowledge holders. The IIFB, supported by MALAYSIA, specified that measures ensuring PIC by indigenous and local communities be taken when the community has rights to genetic resources under national “and international” law. MALAYSIA suggested that the African proposal on ensuring that use of genetic resources and traditional knowledge does not prevent their traditional use be considered under scope. Discussions continued into the evening.

CAPACITY BUILDING: Co-chaired by José Luis Sutera (Argentina) and Andreas Drews (Germany), the contact group addressed a non-paper compiling submissions. Parties agreed to work on the basis of the LMMC proposal.

On text regarding cooperation among parties, the EU proposed adding references to facilitating private sector involvement and promoting coordination of capacity-development initiatives at all levels. The COOK ISLANDS, CANADA and MEXICO added references to small island developing states, countries with economies in transition and centers of origin, respectively. The AFRICAN GROUP suggested reference to the importance of capacity building for effective implementation. On a paragraph stressing financial needs and access to and transfer of technology, the AFRICAN GROUP stressed that capacity building be in accordance with nationally identified needs.

Following a proposal by the EU, delegates decided to restructure and consolidate the text, to provide for chapeau language and a list of specific areas for capacity building. BRAZIL highlighted differing proposals for the chapeau and delegates agreed to retain alternative language, that parties shall cooperate through capacity-building programmes for, or that measures may focus on, a list of issue areas. With regard to such a list, delegates worked on the basis of the EU submission. MEXICO inserted an element on capacity building for monitoring and enforcing compliance. The AFRICAN GROUP requested retaining their submitted lists on capacity requirements for governments, indigenous and local communities, academia and the private sector. COLOMBIA requested retaining language on: training for national competent authorities and patent examiners; and support for the required institutional developments in each country.

NORWAY proposed developing and enhancing synergies and coordinating capacity-building initiatives at all levels. NORWAY and CANADA, opposed by SWITZERLAND, proposed that parties take measures to contribute to the fulfillment of the CBD Action Plan on Capacity-Building for ABS.

With regard to capacity-building measures for indigenous and local communities, BRAZIL and the IIFB suggested they be based on the elements and necessities identified by communities, with the AFRICAN GROUP adding language on the need to increase understanding of the economics of biodiversity and ecosystem services.

On funding for capacity-building programmes, IIFB, supported by NORWAY, proposed inviting governments and the GEF to provide financial resources to indigenous peoples

and local communities to implement their own capacity-building strategies and mechanisms. CANADA proposed that parties identify national needs and priorities, including those of indigenous and local communities, for ABS capacity building, and provide this information through the Clearing-House Mechanism.

A revised non-paper was then circulated. IIFB, supported by HAITI, requested retaining their proposals on supporting utilization of methodologies for valuation, developing human and institutional resources of indigenous peoples and local communities to undertake research, supporting capacity to undertake monitoring and compliance measures, and compiling a list of indigenous experts.

The contact group then proceeded to a second reading of the revised text, paragraph by paragraph. Delegates discussed whether to refer to a protocol, an international regime or both, eventually retaining both references in brackets. With regard to references to capacity building for the effective implementation of the CBD and a future protocol, BRAZIL, the AFRICAN GROUP and COLOMBIA said parties should focus on the obligations that will be assumed under the protocol and proposed deleting reference to the CBD. JAPAN preferred a broader scope for capacity-building activities and asked for retention of the reference.

BRAZIL opposed a specific reference to private sector involvement introduced by the EU, and the reference was bracketed. The EU and JAPAN proposed deleting reference to new and additional funding for capacity building. JAPAN proposed that parties “should” rather than “shall” cooperate in capacity development, opposed by BRAZIL, the AFRICAN GROUP and HAITI.

Delegates discussed a reference to the needs of countries that are centers of origin, and the EU requested bracketing it. Delegates also bracketed alternative chapeau language, that parties shall cooperate through capacity-building programmes for, or that measures may focus on, a list of issue areas.

The EU bracketed elements on training patent examiners and supporting institutional developments. CANADA bracketed language on monitoring and enforcing compliance. BRAZIL bracketed text on developing and enhancing synergies. The EU stressed the need to eliminate duplication and proposed merging two lists of capacity-building measures. On technology transfer and cooperation, BRAZIL preferred deleting a specific reference to CBD Article 16 (Technology Transfer). CANADA proposed stating “in accordance with the relevant provisions of the Convention,” with the AFRICAN GROUP opposing and adding specific references to several other CBD provisions.

BRAZIL requested bracketing language on measures to strengthen the capacity of ABS stakeholders. Delegates further discussed: the usefulness of referencing the Action Plan for Capacity Building for ABS; and how to best reflect that capacity-building needs should be identified by the country receiving assistance. Discussions continued into the evening.

IN THE CORRIDORS

Following a briefer than expected plenary, the Working Group got down to the nitty-gritty work of “stage 2” in the modalities for negotiations, consolidating text on traditional knowledge and capacity building. Delegates painstakingly chose which text to drop, retain or “park” for later consideration, intent on clearing the way for the race ahead. Most seemed focused on getting through this exercise as soon as possible to finally be able to enter “stage 3,” the “real” negotiations, in order to reach consensus. One delegate commented that negotiators have been gearing up for so long now that there will be no holding them back when they finally hear the word “go.” One delegate joked: “We are not sure where we are headed – but we really have to shift into the fast lane now if we want to get there by 2010.”