

## ABS 8 HIGHLIGHTS: THURSDAY, 12 NOVEMBER 2009

The Working Group met in a morning plenary to hear progress reports from the contact groups on traditional knowledge, capacity building and compliance, and to address procedural issues. Contact groups on benefit-sharing and access, and on capacity building, met throughout the day. An afternoon plenary reviewed progress. Contact groups on traditional knowledge and compliance met in the evening.

### PLENARY

Contact group Co-Chair Luna noted that the group on traditional knowledge still had outstanding work. Contact group Co-Chair Drews reported that a revised CRP on capacity building (UNEP/CBD/WG-ABS/8/CRP.1/Rev.1) was available. He noted that the subheadings as contained in the Annex to Decision IX/12 had been compiled at the end of the document for the plenary to decide on their retention.

Contact group Co-Chair Lefeber requested guidance on how the compliance contact group should proceed on: definitions, in particular text on the international understanding of misappropriation/misuse; identical text submitted under different components, and in some cases already rephrased by another contact group; and a Mexican proposal to establish a compliance committee, considered to be an institutional provision of relevance to the international regime as a whole.

Working Group Co-Chair Hodges announced establishment of a contact group on benefit-sharing and access, to be co-chaired by Pierre du Plessis (Namibia) and Cosima Hufler (Austria). He announced that regional and inter-regional consultations would be held on Friday morning, which would also involve discussions with the Working Group Co-Chairs on nature and the intersessional process to follow ABS 8. Hodges further noted that the Working Group Co-Chairs would engage in informal discussions on how to deal with definitions.

Setting out rules of engagement, Hodges said that text marked as preambular could be placed in the preambular section of the Paris Annex. Regarding operative text that is found under one main component but fits under another, he said that each contact group could decide to forward such text to the relevant contact group. He proposed to have a section on institutional arrangements, implementation and other operative text, which would not be a new component of the regime but rather a holding area for operative text that does not fit under existing elements. He concluded that there are other provisions that eventually need to be addressed to make the international regime whole, and proposed identifying, through informal consultations, “bridging elements” to ensure a coherent and holistic text.

BRAZIL expressed concern that moving operative text from one component to another could compromise the integrity of the Paris Annex. He further proposed allowing parties to provide submissions for sections that have not been dealt with, such as definitions, and asked for a clear ruling about how outstanding issues would be addressed, including a timeline. The EU noted that new proposals on institutional arrangements, implementation and other operative text should not have the same status as existing components.

In the evening, Working Group Co-Chair Hodges presented the outcome of afternoon informal consultations on how to deal with definitions. He proposed appending a footnote to the element on an international understanding of misappropriation/misuse to allow for further submissions to be made on the definition of misappropriation, including on the need for such a definition. He also suggested that wherever delegates encounter definition-related operative text under other components, they append a footnote stating that: “the discussion on this paragraph was left in abeyance both as regards content and placement and will occur at the next meeting of the Working Group.” He proposed that Friday’s plenary discuss future action on definitions. Plenary accepted the proposals.

The INTERNATIONAL INDIGENOUS FORUM ON BIODIVERSITY (IIFB) said traditional knowledge should be treated as a cross-cutting issue, noting however that an additional section on indigenous peoples and local communities would resolve duplication and simplify negotiations. She said they are drafting such a section, using only existing text. Co-Chair Hodges urged parties to address the issue in their consultations on Friday.

### CONTACT GROUPS

**CAPACITY BUILDING:** Co-Chair Drews called for comments on the revised African text on lists of capacity-building measures for governments, academia and the private sector.

On measures for governments, the EU requested bracketing a clause on conserving and sustainably using genetic resources and associated traditional knowledge, noting it should refer to indigenous and local communities. NORWAY and JAPAN requested bracketing a clause referring to the capacity to protect different forms of intellectual property rights relating to genetic resources. On a clause on promoting the sustainable use of genetic resources and traditional knowledge for socioeconomic development, the PHILIPPINES proposed adding that this be carried out with the participation and involvement of indigenous and local communities. Delegates agreed to a provision on capacity to ensure communication, education and public awareness regarding ABS.

Regarding academia, delegates discussed a clause on capacity to use intellectual property systems and community-public-private partnerships in the commercialization of research results. NORWAY requested bracketing reference to partnerships and the PHILIPPINES inserted text on alternatives to intellectual property, including open source licensing, which was bracketed by the AFRICAN GROUP. The IIFB added a reference to the rights of indigenous and local communities and to their customary laws and practices to a provision on capacity to increase collaboration and understanding between researchers and communities.

The EU requested bracketing the entire provision on capacity-building measures for governments, academia and the private sector. The group then initiated a further reading, focusing on whether this provision should be merged with another one listing capacity-building programmes or measures. The EU supported such merging, but BRAZIL and the AFRICAN GROUP opposed. BRAZIL proposed language that parties undertake special capacity-building measures for technology transfer and cooperation. Delegates also discussed, without reaching agreement, references to several CBD articles related to technology transfer, and implementation of domestic or national laws or legislation.

Delegates left in brackets paragraphs on training of patent examiners and on programmes to support the required institutional developments for implementation. They agreed on references to: bioprospecting, associated research and taxonomic studies; and coordination of capacity-building initiatives. A reference to monitoring and enforcing compliance remained bracketed. The PHILIPPINES introduced language on training in tracking the use of biological resources and genetic resources across sectors, including understanding cases of biopiracy and digitalization of biodiversity, which remained bracketed.

Delegates then addressed a list of capacity-building measures for indigenous and local communities. The EU and JAPAN called for references to traditional knowledge “associated with genetic resources” throughout the text, with BRAZIL adding reference to “derivatives.” These additions remained in brackets. Delegates agreed to a reference to capacity to develop and implement and/or enforce community protocols.

**BENEFIT-SHARING AND ACCESS: Benefit-sharing:** Co-Chair du Plessis drew attention to a non-paper and invited delegates to retain submissions adding value to the Paris Annex.

The LMMC explained that their submission provided additional detail on a financial mechanism for the international regime. The EU, opposed by the LMMC, proposed moving the submission to the component on capacity building. CANADA and the AFRICAN GROUP noted that this is a cross-cutting issue and, with the EU and NORWAY, suggested “parking” the text for consideration under the section on institutional arrangements. The LMMC, supported by the AFRICAN GROUP, added text to the section on effective participation in research activities, stating that foreign researchers and institutions undertake research in collaboration with approved national institutions in the country of origin.

MEXICO withdrew its submissions, but requested specifying that only traditional knowledge associated with genetic resources is covered under provisions on: establishment of trust funds to address transboundary situations; and measures to ensure community involvement in mutually agreed terms (MAT). On linkage of access to fair and equitable sharing of benefits, delegates retained a Swiss submission stating that MAT be established by the time of access to genetic resources.

Delegates also retained proposals by the Centre for Economic and Social Aspects of Genomics (CESAGEN) on: effective participation in research activities; development of international minimum conditions and standards; providing capacity building in the use of tools for tracking and monitoring

compliance; measures to ensure community involvement in MAT; and mechanisms to encourage benefits be directed towards conservation.

**Access:** Co-Chair Hufler drew attention to a non-paper and invited the group to decide which submissions should be retained. Under a section on recognition of the sovereign rights of parties to determine access, delegates discussed an LMMC submission and agreed to add to existing text the concept of “associated traditional knowledge.” They also agreed to retain as alternative text language relating to access to traditional knowledge being subject to prior informed consent (PIC) of indigenous and local communities “through their representatives where applicable.” Delegates also decided to retain the LMMC proposals on access being undertaken only when PIC has been granted, and on a list of the minimum information needed for obtaining PIC. Delegates also retained: a proposal by the EU that parties requiring PIC confirm national arrangements in writing with the CBD Secretariat; and a proposal by Switzerland on accelerated access procedures in emergency situations.

A long procedural debate ensued about the placement of a proposed Mexican annex on subsidiary access procedures. MEXICO explained the annex was related to its proposal on compliance and, supported by BRAZIL, requested that it be “parked” for consideration under the section on institutional arrangements, implementation and other operative text. The EU argued that this “parking” section was limited to institutional arrangements and asked the text be retained under the access element. MEXICO said they would withdraw their text under these circumstances, but other delegates supported retention, and the annex was “parked” for later consideration.

In the evening plenary, contact group Co-Chair Hufler reported that the group had completed consideration of the non-papers on benefit-sharing and on access, and that revised documents would be distributed on Friday morning.

**COMPLIANCE:** Co-Chair Lefeber reiterated plenary’s decision that the group would retain two options with regard to an international understanding of misappropriation: the EU proposal, and the Swiss and IIFB proposals, with the footnotes agreed to in plenary. The group then decided to retain for further consideration an IIFB proposal stating that states shall respect customary laws, norms and protocols. A revised text will be circulated on Friday.

**TRADITIONAL KNOWLEDGE:** Delegates engaged in a third reading of the revised non-paper. A CRP will be circulated on Friday.

### IN THE CORRIDORS

On Thursday, delegates again failed to fast-track negotiations, instead spending considerable time trying to find a place to park issues on compliance and access. Despite the Co-Chairs’ ruling that the parking lot would serve as a safe place to store text that does not fit under existing components of the international regime, delegates were unsure as to whether they were dealing with one or many parking lots, and which operative texts could be parked. Others appeared to question the parking lot’s very existence. The resulting traffic jam had one delegate fuming, “this risks spoiling the positive atmosphere we have worked so hard to build.” Ironically, the parking lot now causing procedural headaches could hold the vehicles necessary for substantive progress later on: some of the parked text represents middle positions specifically engineered to build bridges among delegations. Some delegates expressed hope that Friday morning’s consultations would further assist in building bridges and in reaching clearer agreement on the rules of the game.