

ABS 8 HIGHLIGHTS: FRIDAY, 13 NOVEMBER 2009

Friday morning was dedicated to regional consultations and inter-regional discussions with the Working Group Co-Chairs on nature and the intersessional process to follow ABS 8. An afternoon plenary reviewed progress and addressed procedural issues. Contact groups on capacity building, compliance, and benefit-sharing and access met in the afternoon and evening.

PLENARY

Working Group Co-Chair Tim Hodges (Canada) said that the morning's informal consultations had addressed the legal nature of the regime and the intersessional process to follow ABS 8, noting that the outcome will be reported to plenary on Saturday. Contact group Co-Chair Damaso Luna (Mexico) reported that the contact group on traditional knowledge had completed a third reading of a CRP on traditional knowledge associated with genetic resources. Contact group Co-Chair René Lefeber (the Netherlands) said the contact group on compliance had selected which submissions to retain for further consideration, and a revised document was available. Contact group Co-Chair José Luis Sutura (Argentina) said the contact group on capacity building was conducting a third reading of the text. Contact group Co-Chair Cosima Hufner (Austria) noted discussions in the contact group on benefit-sharing and access as to the handling of operative text left in abeyance for further consideration.

Working Group Co-Chair Hodges explained that parties had confirmed the need to maintain the integrity of the result of this meeting's negotiations on the main components, calling it the "Paris Annex Plus," for inclusion as the first annex of the meeting report. On the other hand, he said there is also operative text on a number of issues that do not belong under a particular main component, but that need to be addressed when finalizing the international regime. He proposed that such operative text would be contained in a second annex to the meeting report, entitled "Proposals for operative text left in abeyance for consideration at the next meeting of the Working Group." The EU highlighted that only items not related to existing components should be put in abeyance, while operative text related to an existing component should be discussed in the context of the Paris Annex. BRAZIL asked for direction on when the issues put in abeyance would be discussed, and clarified his understanding that these would fall in three

categories: definitions; preambular text; and institutional and implementation provisions. He opposed having an additional category for operative text if it was not clear where it belonged in the international regime, noting that such a category would be too vague and threaten the integrity of the Paris Annex. Working Group Co-Chair Hodges requested refraining from debate about the content of different categories, and underscored the intention to provide a holding area for any operative text on institutional, operative and other matters. He announced that a proposal on how to deal with such text would be discussed on Saturday, along with the overall intersessional process to follow ABS 8.

CONTACT GROUPS

COMPLIANCE: Contact group Co-Chair Ricardo Torres (Colombia) introduced a revised non-paper on compliance and invited delegates to confirm the correct placement of proposed operative text within the Paris Annex. On an international understanding of misappropriation/misuse, delegates agreed to amend a footnote on Switzerland's submission to note that it was intended to provide an alternative to the definition of misappropriation/misuse proposed by the EU.

On internationally recognized certificates issued by a domestic competent authority, BRAZIL proposed introducing preambular text from their submission (UNEP/CBD/WG-ABS/8/3/Add.1) on recognizing the importance of legal certainty. On disclosure requirements, BRAZIL introduced preambular text recognizing that intellectual property rights play an important role in benefit-sharing and should not run counter to the CBD objectives. On development of tools to enforce compliance, BRAZIL introduced preambular paragraphs on ensuring compliance with ABS national legislation, regulations and requirements. A CRP will be prepared for consideration by the contact group on Saturday morning.

CAPACITY BUILDING: Delegates continued consideration of a list of capacity-building measures for indigenous and local communities.

The EU requested qualifying references to traditional knowledge as traditional knowledge "associated with genetic resources." BRAZIL then requested adding mention of derivatives along with mentions of genetic resources. All such references remained bracketed awaiting agreement on the scope of the regime.

Delegates discussed a paragraph on supporting capacity to undertake measures to monitor and enforce compliance with the international regime and customary laws. The EU and INDIA noted that monitoring and enforcing compliance with the international regime rests with governments, and the EU requested bracketing the reference, limiting the paragraph to community procedures, customary laws and community protocols with regard to ABS. NORWAY proposed replacing the paragraph with language referring to ABS compliance management. The AFRICAN GROUP opposed, noting that the text deals with community competence and enforcement measures, not just compliance management. Both texts remained bracketed. The EU and JAPAN requested bracketing the entire paragraph on capacity-building measures for indigenous and local communities.

Delegates discussed whether the brackets around specific references to the private sector with regard to stakeholder involvement in capacity building, and to the needs of centers of origin and genetic diversity could be resolved, without reaching agreement.

Delegates agreed with an EU proposal to have a stand-alone paragraph on national capacity self-assessments. CANADA proposed to add elements from a paragraph on developing countries identifying national needs as the basis for capacity-building measures; and the AFRICAN GROUP, opposed by SWITZERLAND and the EU, added that this information should be provided to the financial mechanism of the international regime. The reference to the financial mechanism remained bracketed. The IIFB asked to also allow indigenous peoples and local communities to identify their own capacity needs, but no party sponsored their proposal.

The EU, opposed by BRAZIL and SWITZERLAND, proposed that capacity self-assessments be conducted through established mechanisms. IIFB, supported by NORWAY, stressed that such processes should be carried out with the full and effective participation of indigenous and local communities.

The EU suggested a stand-alone paragraph stating that “parties should take measures to strengthen, where necessary, the capacity of ABS stakeholders.” With regard to stakeholder participation in the development of sectoral model clauses, AUSTRALIA added reference to contracts, arrangements and agreements. The EU and JAPAN opposed establishment of a fund/financial mechanism to support capacity-building programmes, and the provision remained bracketed. Discussions continued into the evening on the basis of a revised document.

BENEFIT-SHARING AND ACCESS: Contact group Co-Chair Pierre du Plessis (Namibia) introduced a revised non-paper on benefit-sharing and invited delegates to confirm the correct placement of proposed operative text within the Paris Annex. He reminded them that proposed operative text from the non-paper would be incorporated into the Paris Annex in brackets, and invited them to indicate whether they required additional brackets within the proposals. Following a request by Brazil, he confirmed that the LMMC submission on issues for further discussion would be included in the second annex of the meeting report. BRAZIL also re-introduced preambular text from the LMMC submission under the heading on benefits to be shared on mutually agreed terms recognizing that benefit-sharing measures are tools for the eradication of poverty and emphasizing the strategic, economic and social value of biodiversity resources.

CANADA asked to specify that references to traditional knowledge be limited to traditional knowledge “associated with genetic resources” or otherwise bracket any reference to it. AUSTRALIA bracketed all references to licenses and customary laws. The AFRICAN GROUP preferred the CBD formulation “indigenous and local communities,” bracketing references to indigenous peoples, and asked to include reference to biological resources where genetic resources are mentioned throughout the text.

Under the heading on effective participation in research activities, CANADA bracketed reference to collaboration with the “country of origin” and added a new bracketed reference to provider countries. He also bracketed a reference to research capability strengthening for “identified research needs of developing countries,” while BRAZIL requested bracketing reference to promotion of research networks for “the generation of mutually agreed public goods.” BRAZIL also bracketed a reference to parties elaborating ABS commons licenses to support participation in research, with CANADA bracketing reference to “commons.” COLOMBIA opposed reference to “promoting” ABS licenses. Delegates agreed that a revised CRP would be produced and comprise the full text on benefit-sharing from the Paris Annex with the inserted provisions highlighted.

The contact group then engaged in the same process with regard to a revised non-paper on access. Discussions continued into the evening.

IN THE CORRIDORS

As delegates spent a busy morning in regional and inter-regional consultations, the Working Group Co-Chairs were engaged in discussions with several regional representatives, aiming at finding agreement on wording on the nature of the regime to be included in the meeting report, as well as on the process for intersessional work leading up to ABS 9. One delegate commented that “the next 24 hours will be critical to determine whether the Working Group has a fighting chance to fulfill its mandate by 2010.”

In the meantime, the “parking lot” or “holding area” for proposed operative text left in abeyance for consideration at the next meeting continued to consume a great deal of the negotiators’ energy, with discussions focusing on which categories of text should be locked up in the holding area and when this text would again see the light of day. While one delegate commented that this debate was unnecessary, others read it as indicating a lack of trust between parties. Despite causing yet another delay during the afternoon plenary, delegates put aside the procedural matter and got back to work in their contact groups in a collegial spirit, determined to remain positive. Few hours are left for negotiations in Montreal, but some successes can already be glimpsed on the horizon, with the components on traditional knowledge and capacity-building well in hand, and ready to take their place within the “Paris Annex Plus,” a complete negotiation text comprising all the main components of the regime.