

ABS 8 HIGHLIGHTS: SATURDAY, 14 NOVEMBER 2009

Contact groups on traditional knowledge, compliance, and benefit-sharing and access met during the day. An afternoon plenary reviewed progress and discussed the intersessional process to follow ABS 8.

CONTACT GROUPS

COMPLIANCE: Contact group Co-Chairs Lefeber and Torres called for comments on new text integrated in the Paris Annex, circulated as a revised non-paper. Delegates discussed a list of awareness-raising activities under a section on tools to encourage compliance. CANADA requested qualifying references to traditional knowledge as traditional knowledge “associated with genetic resources.” The EU requested bracketing a clause on an online system of ABS licenses, and AUSTRALIA bracketed all references to ABS licenses throughout the text. The AFRICAN GROUP proposed language to merge and streamline text on awareness-raising among indigenous and local communities, the non-commercial research sector, research groups aiming at commercialization, and research and development funding agencies on using ABS licenses. He further proposed streamlining text to provide for: awareness-raising on the possibility of product labeling for certifying ABS compliance; and establishment of an online register of collaborative research networks and scientific publications using ABS licenses.

On an international understanding of misappropriation/misuse, parties discussed paragraphs not related to definitions, which CANADA requested bracketing. Regarding a provision that each party take measures to prevent misappropriation on its territory, NORWAY, opposed by the EU, requested reference to associated traditional knowledge alongside genetic resources. The AFRICAN GROUP specified that misappropriation should refer to violation of the international regime and/or laws and regulations of the country of origin. BRAZIL, opposed by AUSTRALIA, proposed that each party shall apply “legal, administrative and policy measures, including disclosure requirements,” to prevent misappropriation. The IIFB, sponsored by the African Group and Malaysia, requested further reference to customary laws, community level procedures and community protocols.

Regarding a provision specifying in which cases and to whom measures regarding misappropriation shall apply, SWITZERLAND added reference to natural or legal persons with a permanent place of business within a party’s jurisdiction. NORWAY asked to specify that misappropriation apply to instances occurring in the provider country, and BRAZIL requested inclusion of alternative wording referring to the

country of origin or country that has acquired genetic resources in accordance with the Convention throughout the text. NORWAY proposed to delete a sub-paragraph on persons who should have known that the genetic resources had been misappropriated, but the EU asked to retain it.

On a section regarding sectoral menus of model clauses for material transfer agreements, the LMMC requested bracketing language that indicators will be developed using standardized classification schemes.

Regarding information to be included in a compliance certificate, NEW ZEALAND bracketed reference to whether there is associated traditional knowledge and it has been accessed with the free prior informed consent (PIC) of indigenous and local communities. CANADA added reference to “approval and involvement” of indigenous and local communities as an alternative to PIC. BRAZIL proposed bracketing a clause on minimum information to be included in the certificate for tracking access to traditional knowledge. NEW ZEALAND preferred referring to “utilization” rather than “access” to traditional knowledge.

On tracking and reporting systems, the EU requested bracketing a reference to intellectual property offices in relation to the establishment of an information exchange framework.

On disclosure requirements, AUSTRALIA bracketed a provision on the CBD Clearing-House Mechanism being notified of a declaration of source. The AFRICAN GROUP preferred reference to a declaration of legal compliance.

On measures to ensure access to justice with the aim of enforcing ABS arrangements, the EU bracketed a paragraph on establishing appropriate national regulatory frameworks. The EU further requested bracketing two paragraphs on access to justice in the jurisdiction of the users who allegedly breached ABS legislation.

NEW ZEALAND requested bracketing text on parties’ measures to facilitate recognition and enforcement of judgments. With regard to measures to ensure compliance with customary law and local systems of protection, AUSTRALIA bracketed language on: disclosure of evidence of PIC in applications for intellectual property rights; and invalidation of IPRs in case of lack of PIC.

TRADITIONAL KNOWLEDGE: Contact group Co-Chair Solhaug opened discussions on a CRP containing operative text on traditional knowledge associated with genetic resources (UNEP/CBD/WG-ABS/8/CRP.2). She asked delegates to focus on whether the text was reflected correctly and to remove brackets. BRAZIL added mention of derivatives alongside mention of genetic resources, and of a protocol alongside

references to the international regime throughout the text. All references remained bracketed awaiting agreement on scope and nature.

Regarding a section on measures to ensure benefit-sharing with traditional knowledge holders, CHINA noted that local authorities can also negotiate mutually agreed terms (MAT) with the active participation of local communities. BRAZIL asked to include reference to the country of origin as an alternative to “provider country,” which CANADA requested retaining.

Regarding a section on measures to ensure that access to traditional knowledge take place in accordance with community level procedures, CANADA and JAPAN requested bracketing a paragraph relating to community protocols taking into account customary laws and ecological values of indigenous and local communities. On a reference that MAT be developed at the community level, BRAZIL questioned how this level would be determined, with the AFRICAN GROUP suggesting that the term served to distinguish from regional and national levels. The term was bracketed.

On the declaration to be made on the compliance certificate with respect to traditional knowledge, AUSTRALIA bracketed all references to licenses.

BRAZIL requested inserting a previously agreed footnote on every mention of traditional knowledge holders in the text, which states that the language will be reviewed in light of agreement reached during the sixth meeting of the Working Group on Article 8(j). Delegates further agreed to retain the text developed by that Working Group, stating that it is the right of indigenous and local communities to identify relevant holders of their knowledge. Delegates deleted the sub-headings within the text.

BENEFIT-SHARING AND ACCESS: Benefit-sharing: Co-Chair du Plessis introduced a CRP (UNEP/CBD/WG-ABS/8/CRP.3), consisting of the text from the Paris Annex together with insertions, bolded and bracketed in their entirety, and asked if any of the brackets could be lifted. Delegates kept the majority of brackets. Pointing to general support for a special provision for research activities, BRAZIL proposed to remove the brackets around the initial part of the paragraph referring to access for purposes of scientific and technological research, and keep the specifics in brackets. NORWAY opposed, noting that they were still considering whether there should be a special approach. The EU pointed to a proposal on simplified access for non-commercial research put in abeyance.

Access: Co-Chair Huffer introduced a CRP (UNEP/CBD/WG-ABS/8/CRP.4). Delegates agreed that the authority to determine access is subject to national legislation. BRAZIL, opposed by the EU, proposed removing brackets within a bracketed paragraph on necessary measures “to ensure that application for obtaining PIC contain at a minimum” certain information.

PLENARY

Plenary heard reports on progress achieved in the contact groups. Contact group Co-Chair Luna reported that the text on traditional knowledge contained very few brackets, most of which were awaiting decision on scope of the international regime. EGYPT reiterated, and delegates agreed with, its proposal to request the Executive Secretary to prepare a short review paper on the concept of genetic resources, building on the report of the *ad hoc* technical expert group on concepts, terms, working definitions and sectoral approaches, and adding elements related to traditional knowledge.

The Secretariat explained that a single document would be prepared, incorporating the meeting’s outcome into the Paris Annex, to constitute the Montreal Annex. He said Sunday’s plenary will also consider the report of the meeting and a second annex to the report including operative text left in abeyance. Working Group Co-Chair Hodges further explained that the second annex would contain “operative text on institutional, implementing provisions, final clauses and other text relevant

for the consolidation of the international regime,” not included in the Montreal Annex, nor discussed or negotiated here. He stressed that no further submissions on operative text of the main components as contained in the Montreal Annex are requested, although further submissions may be made with respect to preambular paragraphs and definitions, as well as operative text contained in the second annex.

Working Group Co-Chair Casas outlined the intersessional process leading up to ABS 9, consisting of two distinct meetings. The first is a Friends of the Co-Chairs group to convene in late January 2010, bringing together 26 key negotiators and representatives selected by the Co-Chairs, including: 18 members of delegations; two representatives of the COP 9 and COP 10 Presidencies; and two representatives each from indigenous and local communities, civil society organizations, and industry. He said the first meeting will produce a Co-Chairs’ report reflecting possible solutions on key issues in the negotiations. The second meeting is a Co-Chairs’ inter-regional informal consultation to be held from 16-18 March 2010, bringing together: five key speakers from each of the five UN regional groups and selected by the regions; two representatives each from indigenous and local communities, civil society, industry and the COP 9 and 10 Presidencies; and no more than two advisors per region to be allowed in the room. He said the meeting will consult on preambular text, definitions, and provisions relevant to the consolidation of all operative text, including the structure of the regime.

Several parties requested clarifications, and CANADA offered to host the first intersessional meeting. NEW ZEALAND, SWITZERLAND, NORWAY and AUSTRALIA underscored the need to ensure representation of the diversity of views within a region. The AFRICAN GROUP said the second meeting should go beyond consultations and, with HAITI, stressed that it had to help advance negotiations at ABS 9. Stressing the need for transparency, BRAZIL and the EU requested flexibility with regard to advisors. JORDAN and the AFRICAN GROUP expressed concerns regarding regional imbalance.

IN THE CORRIDORS

At last, ABS 8 has an outcome: The Montreal Annex = the Paris Annex + the new consolidated components on traditional knowledge and capacity building + the updates of the Paris components. After taking six days to achieve this compilation, the alarm bells finally went off on Saturday, with delegates realizing they have to switch to warp speed to meet the 2010 deadline. The Co-Chairs put together an intersessional process with not-too-many and not-too-few participants, hopefully just the right number to allow for candid discussions and still ensure transparency. Their proposal was widely welcomed, but a number of questions were swirling in the air. Who will be the “best friends” invited to the first meeting? What about proportional representation of regions? And what to do about regions holding a diversity of views? Furthermore, the Co-Chairs’ announcement that the consultation would not be producing any document was problematic for some, with one delegate exclaiming “enough with talking for talking’s sake!” Another delegate said the purpose of the inter-regional consultations should be to produce a text at the same level of the Montreal Annex, on definitions, preambular text, and provisions for consolidation. As delegates applauded themselves for finalizing most of their ABS 8 work, it was clear that they have the necessary motivation to find ways of improving the pace, quality and atmosphere of the negotiations before ABS 9 begins.

ENB SUMMARY AND ANALYSIS: The *Earth Negotiations Bulletin* summary and analysis of the eighth meeting of the Working Group on Access and Benefit-sharing will be available on Wednesday, 18 November 2009 online at: <http://www.iisd.ca/biodiv/abs8/>