

ABS 6 HIGHLIGHTS: WEDNESDAY, 23 JANUARY 2008

On Wednesday morning, the Working Group on Access and Benefit-sharing (ABS) met in plenary to hear a report from the contact group on the objective and establish a process to move forward. Following a break to allow for regional consultations, a contact group on the objective and main components of the regime met in the afternoon. A contact group on a draft decision to be considered by the Conference of the Parties (COP) met in the evening.

PLENARY

INTERNATIONAL REGIME ON ABS: Working Group Co-Chair Timothy Hodges (Canada) opened the meeting, highlighting progress made in the contact group on the objective, and noting the Co-Chairs' intention to further discuss the main components of the regime as included in a new non-paper on the international regime tabled in the morning, and a draft COP decision on ABS. René Lefeber (the Netherlands), Co-Chair of the contact group on the objective, highlighted the consolidated text on the objective as contained in the non-paper and noted that while the bracketed text indicates divergent opinions in some areas, there is also willingness to compromise. He said that the terms "derivatives," "misuse" and "misappropriation" must be defined in order for the group to reach a compromise.

Co-Chair Hodges suggested that contact group Co-Chairs Lefeber and Pierre du Plessis (Namibia) chair discussions on the regime's main components. Working Group Co-Chair Fernando Casas (Colombia) clarified that the mandate of the contact group would be to discuss the main components of the regime with a view to developing the minimum number of concrete proposals possible, consolidating those options, and if time allows negotiating on the basis of this consolidated text.

Delegates also agreed to establish a contact group, to be chaired by Linus Spencer Thomas (Grenada) and François Pythoud (Switzerland), to work on the basis of the non-paper containing possible elements for a draft COP decision on ABS.

Noting that the contact group has not had sufficient opportunity to discuss the consolidated text on the objective, CANADA, Slovenia for the EU, Malaysia for the LIKE-MINDED MEGADIVERSE COUNTRIES (LMMC), and JAPAN asked that the report of the meeting clarify the current status of the text as contained in the non-paper. Pointing to the large range of elements already contained in the consolidated text on the objective, NORWAY referenced the COP 8 decision calling for the facilitation of indigenous participation in the ABS negotiations and requested that the proposal submitted by the International Indigenous Forum on Biodiversity (IIFB) be retained as long as the rules of procedure allow it.

Following a query by China, the Co-Chairs clarified that the contact group will focus on the objective and main components of the regime, and is expected to prepare a single text with refined and consolidated components for consideration in plenary and to form the basis for discussions at future meetings of the Working Group. HAITI requested adding a heading on technology transfer as a main component of the regime. ALGERIA preferred continuing negotiating the objective before considering the regime's main components.

CONTACT GROUP ON THE COMPONENTS

On a preliminary procedural issue, Co-Chair Lefeber asked whether any party supported the text on the objective proposed in Tuesday evening's contact group by the IIFB, regarding the rights of indigenous and local communities and compliance with prior informed consent (PIC). HAITI supported the text, which was thus retained.

Co-Chair du Plessis called on delegates to make proposals with regard to the list of main components included in the non-paper on the international regime: fair and equitable sharing of benefits; access to genetic resources; compliance; traditional knowledge; and capacity.

BENEFIT-SHARING: The EU suggested a number of measures including: developing model clauses for potential inclusion in material transfer agreements (MTAs); developing information technology tools to create transparency of

obligations and to facilitate transactions; exploring the role of private international law to ensure compliance with mutually agreed terms (MAT) in contracts; involving indigenous and local communities in setting up MAT and in establishing PIC when traditional knowledge associated with genetic resources is accessed; and raising awareness. The AFRICAN GROUP proposed, among others: international minimum standards; stipulating benefit-sharing through MAT; and directing benefits towards genetic resource holders. AUSTRALIA proposed non-binding guidelines on benefit-sharing and referencing the CBD's key provisions and the Bonn Guidelines as primary sources of advice for guiding national implementation.

ACCESS: The EU stated that international access standards would facilitate access, raise transparency and predictability, and should include, *inter alia*: international guidance on national access legislation, for example model legislation; specific rules on PIC requirements or the existence of other norms for obtaining PIC; clear legal status and rules on ownership of genetic resources found *in situ* and *ex situ*; availability and accessibility of information on how to obtain PIC; existence of a procedure for simplified access for non-commercial research; and international commitment to ensure that national access rules apply in a non-discriminatory way. Subject to benefit-sharing and PIC, the AFRICAN GROUP proposed access for environmentally sound uses and called for the protection of traditional knowledge and indigenous practices.

COMPLIANCE: The EU called for, among other things: an international certificate of compliance with national access rules; disclosure of origin or source of genetic resources of traditional knowledge in patent applications to be further discussed in the World Intellectual Property Organization; sectoral work to develop model clauses for potential inclusion in MTAs; and steps to promote codes of conduct for users and to identify/ establish a mechanism for identifying those codes regarded as best practice. The AFRICAN GROUP proposed: enforcement in user countries; disclosure of origin of genetic resources and associated traditional knowledge; certificates of origin and of compliance with national law; and reporting, monitoring and tracking. AUSTRALIA proposed a voluntary certificate of compliance with domestic ABS regulations issued by a domestic authority; and model contracts as the primary mechanism to ensure compliance.

TRADITIONAL KNOWLEDGE: The EU suggested work on best practices to ensure respect for traditional knowledge in ABS-related research and menus of model clauses for potential inclusion in MTAs. NEW ZEALAND proposed principles for traditional knowledge protection, including access only with the approval of knowledge holders, no coercion of access, and taking into account indigenous and local communities' rights over traditional knowledge. The AFRICAN GROUP proposed a certificate identifying the origin and holders of traditional knowledge and recognition of holders' rights to control the future use of their knowledge. AUSTRALIA proposed a set of non-binding guidelines to: encourage equitable sharing of benefits

arising from utilization of traditional knowledge related to the utilization of genetic resources; ensure that access to genetic resources under the ownership or control of indigenous and local communities is undertaken with the approval of the community which owns or controls such resources under domestic law; and ensure the sharing of benefits with indigenous and local communities under such circumstances through MAT.

CAPACITY BUILDING: The EU highlighted the need for targeted capacity-building measures to support provider countries in developing national access frameworks that meet international access standards. The AFRICAN GROUP proposed: an international capacity-building mechanism; building capacity for developing national ABS legislation and preventing biopiracy; and enhancing stakeholders' negotiating capacity.

DISCUSSION ON PROCESS: The LATIN AMERICAN AND CARIBBEAN GROUP and the LMMC requested more time for consultations, and some expressed concerns about the contact group moving away from its terms of reference and the lack of time to develop a concrete outcome that will constitute a step forward. NAMIBIA noted increased convergence in the positions of different delegations and invited the co-chairs to develop a text reflecting this convergence overnight. EGYPT urged the group to look for common ground and compromise. HAITI stressed the need for clarification on methodology and procedures. Co-Chair Lefeber: granted requests for additional time for regional meetings, asking regional groups to consult overnight and present proposed texts that incorporate ideas from the afternoon discussion; and said that the contact group co-chairs would consolidate these texts into a skeleton paper.

CONTACT GROUP ON THE COP DECISION

The contact group on the draft COP decision met briefly in the evening to collect party comments and proposals, for incorporation into a new compilation draft text to be considered on Thursday.

IN THE CORRIDORS

As much of the day was devoted to regional consultations, many participants expressed concern that time was running out for ABS 6 to articulate a roadmap and make substantive progress. Following lengthy discussions on the best way to proceed, one delegate said she was "exasperated by the pace" with another saying that he felt the process was unraveling. Others however showed relief that negotiations are finally starting in earnest, with some noting that allowing ample time for regional and bilateral consultations is an indispensable precondition for reaching consensus.

Looking at the bigger picture, one delegate expressed his disappointment about a certain lack of vision, noting that the International Treaty on Plant Genetic Resources for Food and Agriculture could be used as a source of inspiration. Another pointed with concern to the increasing number of bilateral trade agreements touching upon ABS issues, stressing that the window of opportunity for negotiating an effective international ABS regime is rapidly closing.