ABS 7 HIGHLIGHTS: SATURDAY, 4 APRIL 2009

Delegates to the seventh meeting of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing (ABS) of the Convention on Biological Diversity (CBD) met in a brief morning plenary to hear a report about the contact group deliberations on the objective of the international regime. A contact group on compliance met throughout the day, followed by an evening contact group that addressed the scope of the regime.

PLENARY

Working Group Co-Chair Fernando Casas (Colombia) outlined the organization of work for the day and noted circulation of three non-papers compiling proposals on compliance, access, and benefit-sharing under the structure of the annex to COP Decision IX/12.

Contact group Co-Chair Birthe Ivars (Norway) reported that the contact group had engaged in a first reading of the objective of the international regime, and recommended to proceed to a first reading of scope. Delegates agreed to reconvene the contact group on objective and scope in the evening.

Noting that delegates are eager to start working on the components of the regime, Working Group Co-Chair Timothy Hodges (Canada) proposed to establish a contact group on compliance to be co-chaired by Pierre Du Plessis (Namibia) and René Lefeber (the Netherlands). He suggested that the mandate of the contact group be to consolidate and review the operational text contained in the non-paper on compliance. The LMMC stressed the need to negotiate operational text, and consolidate, if not agree on, options.

CONTACT GROUP ON COMPLIANCE

Contact group Co-Chair Lefeber explained the group would base its work on a non-paper compiling submissions made before and during the meeting, suggesting to consolidate proposals first and then negotiate the text, as well as to defer the discussion on preambular text. The AFRICAN GROUP asked to include its proposals on traditional knowledge, including references to customary laws, and to refer to biological resources along with genetic resources throughout the text.

The contact group then began consideration of tools to encourage compliance, already defined as components to be further elaborated with the aim of incorporating them in the international regime (bricks), and considered each brick separately in order to decide on which submission to base the negotiations.

Regarding measures on awareness-raising activities, delegates agreed to base negotiations on text submitted by Japan. The LMMC proposed specifying that awareness raising is “an important supplementary tool which cannot substitute mandatory measures for benefit-sharing.” AUSTRALIA noted that lack of awareness about ABS frameworks is the key source of non-compliance. JAPAN emphasized help-desks for stakeholders and web-portals as key activities for awareness raising.

Delegates then discussed a Norwegian proposal concerning the development of tools to monitor compliance. Many noted its comprehensiveness and, following a suggestion by Malaysia, delegates agreed to take note of the proposal, identify overlap with other provisions, and then decide the most appropriate provision where its elements should be incorporated.

Regarding text on mechanisms for information exchange, following a brief discussion, delegates agreed to work on the basis of the LMMC proposal that makes reference to an ABS clearing-house.

On a paragraph on competent national authorities and national focal points, parties were divided over whether to include it under internationally recognized certificates or to locate it elsewhere in the document. The LMMC, the AFRICAN GROUP, ARGENTINA and the SMALL ISLAND DEVELOPING STATES (SIDS) preferred the former option. AUSTRALIA, the EU, CANADA, JAPAN and NORWAY opted for locating the paragraph elsewhere, arguing that competent national authorities will engage in a broader set of activities than issuing certificates.

The issue was set aside, with a footnote explaining the reasons.

Regarding internationally recognized certificates, delegates debated whether to use an African Group or a Norwegian proposal as the basis for further work. The AFRICAN GROUP, the LMMC, SIDS, GRULAC and indigenous representatives preferred the African proposal, on the basis that it provided a comprehensive range of elements that could be reduced during negotiations. The Norwegian proposal was favored by the EU, JAPAN, NORWAY and SWITZERLAND on the basis that it was drafted in a more general manner and could be made more specific. The EU added that certain elements of the African proposal regarding checkpoints, tracking and reporting systems, and disclosure requirements should be discussed at a later stage.

The LMMC and the AFRICAN GROUP then suggested merging the two proposals, but the group agreed to retain both options and integrate them during the second reading.

Delegates then initiated discussion on components for further consideration (bullets). CANADA and NEW ZEALAND sought clarification on whether the group would negotiate operational text for these components too, and raised concerns on their
location in the text. Contact group Co-Chair du Plessis said that
operational text will be developed for both bricks and bullets,
and that bullets will be changed into bricks only if there is
consensus. MALAYSIA and PERU confirmed that both are
essential components of the international regime.
Delegates discussed whether to retain the attributions to
the parties who submitted the texts that will form the basis of
negotiations. The EU wanted to keep the attributions, while the
AFRICAN GROUP and the LMMC suggested deleting them to
ensure the group feels ownership over the text. Delegates agreed
to remove all attributions and introduce a footnote in cases
where the location of a paragraph in the text requires further
consideration.
Delegates then discussed the elements under development
of tools to encourage compliance. Regarding an international
understanding of misappropriation/misuse, the EU noted that
the sole text, submitted by Norway, did not entail a definition
but rather stated the goal of preventing misappropriation and
said the text might have to be located elsewhere. Regarding
sectoral menus of model clauses for material transfer agreements,
delegates agreed to work on the basis of the EU proposal,
which includes references to inventories/catalogues of typical
utilizations and legal procedures for developing model clauses.
Regarding codes of conduct for important user groups, they
agreed to use the Australian proposal.
On identification of best-practice codes of conduct and on
international access standards to support compliance across
jurisdictions, delegates decided to negotiate on the basis of
the sole EU proposal. On research funding agencies to oblige
users to comply with specific ABS requirements, they agreed
to use the sole LMMC proposal, and on tracking and reporting
systems the sole proposal of the African Group, which provides
for monitoring systems that identify breaches of contractual
obligations or misappropriation.
On disclosure requirements, NORWAY and INDIA withdrew
their submissions, leaving a more elaborate LMMC proposal
as the basis for further discussion. JAPAN and ARGENTINA
preferred keeping the Norwegian proposal providing for
national measures aiming at ensuring disclosure of origin of
genetic resources and traditional knowledge in applications for
intellectual property rights, which was opposed by the LMMC
and the AFRICAN GROUP for procedural reasons. JAPAN
eventually agreed to the deletion and said they would reintroduce
language similar to the Norwegian proposal during the second
reading.
On measures to ensure access to justice, delegates decided
to: retain a proposal by the African Group on an international
ombudsman; delete a similar but more detailed proposal by
the International Indigenous Forum on Biodiversity; and
move an LMMC proposal on providing support for litigation
to this section. On alternative dispute resolution, delegates
agreed to work on the basis of a proposal by the African Group
providing for dispute resolution mechanisms to be guided by
principles of equity drawn from a wide range of legal sources,
including customary law and practices of indigenous and local
communities. On enforcement of judgments and remedies and
sanctions, delegates agreed to retain all existing proposals since
they are complementary. On measures to ensure compliance with
customary law and on local systems of protection, delegates
agreed to use text submitted by the African Group and New
Zealand as basis for further negotiations.

CONTACT GROUP ON SCOPE
The contact group decided to work on the basis of the first
option on scope included in the annex to COP Decision IX/12
(consolidated text of submissions made at ABS 6). On process,
delegates decided to avoid negotiation, but to ensure that the
consolidated text contains the extent of each party’s latest
submissions and to resolve any ambiguities.
On a paragraph setting out what the international regime
applies to, the LMMC suggested the international regime be
referred to as a protocol. After some debate it was decided that a
footnote would state that the issue would be revisited following
discussion on the nature of the regime. The AFRICAN GROUP
added that the regime should apply to all biological resources,
derivatives and products for environmentally sound uses.
CANADA said the regime should be subject to other
international obligations, while INDIA and SIDS said the
regime and other international agreements should be mutually
supportive. MEXICO, supported by CANADA, suggested
moving this issue to a separate paragraph, but the issue remained
undecided.
Noting that a second paragraph on the scope of the
international regime was redundant, the EU proposed its deletion,
opposed by the AFRICAN GROUP and SIDS, who suggested
adding a reference to “access to and transfer of technology.”
On the temporal scope of application, CANADA proposed
that the international regime shall apply to genetic resources
acquired after “the effective date” of the entry into force of
the regime and the EU added that any additional obligations
under the international regime shall not apply retroactively.
These proposals where countered by the AFRICAN GROUP,
suggesting that continuing benefits and benefits from new
uses arising from commercial and other utilization of genetic
resources, biological resources, products, derivatives and
associated traditional knowledge, including those previously
made available by the country of origin, shall be coven by the
regime.
The EU, AUSTRALIA and PERU suggested different
formulations of a paragraph concerning plant genetic resources
for food and agriculture (PGRFA) covered by the Multilateral
System (MLS) under the International Treaty on Plant Genetic
Resources for Food and Agriculture (ITPGR), with the EU
proposing the broadest exclusion comprising not only PGRFA
accessed under the MLS, but also other PGRFA which an
ITPGR party or an international agricultural research center has
subjected to the ITPGR.
Delegates continued to discuss limitations in scope late into
the evening.

IN THE CORRIDORS
The famous French sculptor Auguste Rodin was a master
of turning formless blocks of marble into sculptures of endless
beauty. In close proximity to the Rodin Museum, delegates at
UNESCO today began an equally challenging exercise in a
contact group on compliance: sculpting the parties’ numerous
submissions into a manageable text to form the basis of
negotiations. Overall the day secured a dramatic reduction
of text, with the contact group completing a first reading and
deleting many alternative proposals. Yet delegates seemed
circumspect about the progress, with one describing proceedings
as “cautious.” There was much focus on procedure, which
one delegate explained was to ensure that no one “falls off the
bus,” a move considered “essential” at this early stage of the
negotiations. While the contact group on compliance achieved
the first step of sorting out the building blocks, some felt it is
still a long way from creating a solid structure that will ensure
compliance with the final ABS arrangement, whichever form it
may take. Many commented that the evening’s session on scope
was less constructive, with delegates “using up the alphabet”
as one put it, by adding their different takes on scope and its
limitations to an expanding collage of options.