Delegates met in a morning plenary and established contact groups on specific issues. Contact group 3 on derivatives, benefit-sharing and access, and contact group 4 on traditional knowledge (TK) met in the morning and afternoon. Contact group 1 on scope and finance, and contact group 2 on compliance-related issues met in the evening.

PLENARY

Upon Working Group Co-Chair Hodges’ proposal, delegates established four contact groups mandated to provide solutions for specific issues, by either: keeping original draft protocol text; amending existing text; or suggesting additional text. Group 1 was mandated to discuss: relationship with other instruments and processes; temporal and geographical application; flexibility for sectoral approaches; non-parties; and financial mechanism/financial resources. Group 2 will consider: monitoring, reporting and tracking, including disclosure requirements and checkpoints; dispute settlement and access to justice; country of origin; and instances of no PIC or MAT. Group 3 will address: utilization of genetic resources/derivatives/benefit-sharing; benefit-sharing obligation including access to and transfer of technology; as well as biodiversity-related research, access requirements, and parties who determine that access is not subject to PIC. Group 4 was mandated to address TK-related issues, including: the relationship between ABS activities and TK; diversity of national circumstances; and recognition of customary law. The Working Group agreed that: solutions will be reported back to plenary and circulated in isolation, before they are inserted into the draft protocol; and bracketing is not allowed until a later stage.

The Working Group then elected the following contact group Co-Chairs: Johan Bodegård (Sweden) and José Luis Sutera (Argentina) for group 1; René Lefeber (the Netherlands) and Ricardo Torres (Colombia) for group 2; Cosima Hufler (Austria) and Pierre du Plessis (Namibia) for group 3; and Tone Solhaug (Norway) and Damaso Luna (Mexico) for group 4.

CONTACT GROUP 3

Utilization of genetic resources/derivatives/benefit-sharing:

Delegates discussed whether derivatives should be included under the regime’s scope or addressed in other ways. ASIA-PACIFIC suggested that benefits from derivatives be addressed under genetic resource utilization. CANADA suggested further clarifying the concept of utilization rather than amending the scope. AFRICA stressed that including derivatives is a prerequisite to legal certainty. SWITZERLAND said reference to derivatives does not increase legal certainty if understandings differ.

The EU recalled that the Friends of the Co-Chairs meeting had agreed not to define derivatives to avoid excluding future scientific developments and, with CANADA, supported addressing benefit-sharing from derivatives in MAT. GRULAC said obligations should not be left to bilateral negotiations, suggesting including the concept of utilization in the regime’s scope to ensure compliance with national obligations. ASIA-PACIFIC stated that MAT only refer to benefit-sharing modalities, and international guidance is needed on what can legitimately be subject to MAT.

To clarify that utilization of genetic resources also covers benefits from derivatives, ASIA-PACIFIC suggested that derivatives should include substances derived from the metabolism of a genetic resource; synthetic molecules; and molecules expressing the same function as genetic resources. AUSTRALIA suggested referring to expression, replication and characterization of genetic resources instead, noting that these terms cover all potential uses of genetic resources without excluding future technological developments.

CANADA suggested reference to benefits from utilization, including benefits from derivatives “produced through expression, replication or characterization of genetic resources.” GRULAC agreed in principle, but suggested retaining the term derivatives. SWITZERLAND suggested reference to benefits from “technological applications,” to achieve clarity without restricting the range of benefits covered.

Benefit-sharing and technology transfer: ASIA-PACIFIC underscored that technology transfer is essential for benefit-sharing and needs to be addressed in a stand-alone article, adding that the protocol’s language is weaker than the Convention text. GRULAC said that benefit-sharing should be made mandatory for all types of uses, independent of MAT. The PHILIPPINES said the benefit-sharing obligation should be made explicit in the protocol and linked to all genetic resource utilizations, pointing to countries with no ABS legislation or to those not using contracts. IRAN emphasized multilateral or regional arrangements in addition to MAT. AFRICA said that accessed material should be developed jointly by providers and users, in order to bridge the technology gap. The REPUBLIC OF KOREA noted that most technology is owned by the private sector, and that government’s role is to encourage and facilitate technology transfer to the provider. The PHILIPPINES called for a requirement for contracts to provide for technology transfer. AUSTRALIA preferred retaining flexibility to negotiate benefits through MAT.
Contact Group 1

Relationship with other instruments and processes: GRULAC, LMMC, NORWAY, the EU and others stressed ensuring mutual supportive existence through a separate article. IRAN, the EU, NORWAY, AUSTRALIA, CANADA and the REPUBLIC OF KOREA stressed the need to respect existing instruments and processes and provide flexibility for future development of specialized ABS systems. AFRICA expressed concern about “sectoralization” of the ABS regime and subjecting parts of it to other processes. On the relationship with the ITPGR, delegates agreed to base discussions on CBD Articles 4 (Jurisdictional Scope) and 22 (Relationship with other International Conventions).

Temporal/geographical application: Delegates discussed the issue of temporal application without reaching a common understanding. AFRICA suggested informal consultations.

Contact Group 2

Monitoring, reporting and tracking: LMMC proposed that use of genetic resources, derivatives and TK comply with the legislation of countries of origin, whereas CANADA preferred linking compliance to a definition of misappropriation in the protocol. AFRICA called for compliance not only with national legislation, but also with the international regime, and for compliance with TK-related provisions, whereas the EU stressed that compliance obligations should focus exclusively on genetic resources. The IIFB stressed that the provisions on compliance must include reference to TK and the rights of indigenous peoples.

AFRICA proposed that the protocol provide a list of minimum criteria for such a certificate. The REPUBLIC OF KOREA suggested that compliance have PIC and MAT as its basis. AUSTRALIA and NEW ZEALAND stressed that the WIPO IGC was the appropriate body to deal with the connection between genetic resources and TK. AFRICA noted that WIPO IGC has not entered into text-based negotiations and requested that the international regime include a disclosure requirement going beyond the intellectual property rights system.

LMMC and AFRICA requested the establishment of an internationally recognized certificate as part of the protocol, with GRULAC recommending that the protocol provide a list of minimum criteria for such a certificate. The REPUBLIC OF KOREA suggested that compliance have PIC and MAT as its basis. SWITZERLAND expressed concern with broad wording on compliance, opposed checkpoints and supported an internationally recognized compliance certificate. MALAYSIA called for measures to combat misappropriation, including checkpoints and an international certificate with agreed-upon criteria.

In the Breezeways

Tuesday's contact group negotiations turned out to be unexpectedly structured and constructive: some were positively surprised by the swift progress on the list of key concerns. The frank intention to compromise by several regional groups had some delegates note that, for the first time in the negotiations’ history, the solution of controversial matters, such as derivatives, does not seem quite as distant an outlook. The crucial stage of striking deals lies yet ahead, of course, and several expressed concern about the fragility of the current momentum. Their fears seemed justified as confusions over “temporal application” revealed that fundamental differences in views remain in areas where some might not have expected it. The approaching deadline for concluding negotiations will increase the pressure to collaborate but, as some noted, also raises the stakes to be gained through strategic bargaining. Even if the atmosphere of trust can be maintained, many wondered whether time will be sufficient to draft an international regime that will be both legally sound and technically effective.