

ABS-4 HIGHLIGHTS: THURSDAY, 2 FEBRUARY 2006

Delegates to the fourth meeting of the *Ad Hoc* Open-ended Working Group on Access and Benefit-sharing (ABS) of the Convention on Biological Diversity (CBD) met in the Committee of the Whole to address a revised Chair's text on an international regime on ABS. The Committee was adjourned to allow for consultations in a Friends of the Chair group, which continued negotiations throughout the day and into the night. A contact group addressed issues related to the certificate of origin/source/legal provenance and compliance measures with prior informed consent (PIC) and mutually agreed terms (MAT).

COMMITTEE OF THE WHOLE

INTERNATIONAL REGIME ON ABS: Chair Margarita Clemente (Spain) opened discussions on a revised Chair's text. Ethiopia for AFRICA, India for the LIKE-MINDED MEGADIVERSE COUNTRIES and Venezuela for GRULAC welcomed the text, stressing their willingness to advance negotiations on an international ABS regime. The EU, JAPAN, AUSTRALIA, CANADA, NEW ZEALAND and SWITZERLAND expressed their concern, noting that many of their submissions were not reflected in the text and insisting on bracketing it in its entirety. The EU, CANADA and NEW ZEALAND also stressed that the text should not use prescriptive language, with the EU calling for further discussion on the gap analysis. CANADA and SWITZERLAND requested deleting an already bracketed reference stating that the regime is legally binding, with SWITZERLAND suggesting that the regime could be composed of one or several binding or non-binding instruments.

Chair Clemente then established a regionally-balanced Friends of the Chair group to discuss how to proceed with deliberations. In the beginning of the afternoon session, she announced that the Committee of the Whole would be adjourned to allow for further deliberations in the Friends of the Chair group.

CONTACT GROUP

CERTIFICATE OF ORIGIN/SOURCE/LEGAL

PROVENANCE: In the morning, the contact group addressed the potential characteristics of a certificate of origin, based on a presentation on a possible design for a web-based permitting system, including check-points at several stages and a central clearing-house mechanism. Developing countries expressed support for the design, noting internet access constraints faced by many national authorities. Some questioned the workload for authorities due to the high number of permits to be issued per year, with one delegate proposing an exemption for research uses to substantially diminish the workload. Developed countries cautioned against high transaction costs and requested further studies on feasibility and effectiveness. Many said the certificate would work as a permit on the basis of compliance with national legislation. Some also highlighted the possible use of this certificate to disclose origin when requested by national laws on intellectual property rights (IPRs). Non-party and industry observers preferred voluntary certification schemes to an international binding one. Delegates created a list of desirable characteristics on the basis of these discussions.

On future steps, some developed countries called for further study of costs and implications, while other countries suggested convening a technical expert group to develop a package of options on features and costs. Some also highlighted the need for continued discussions on user measures to enforce certificate systems. An observer called for an international technical workshop to examine the applicability of a certificate system to traditional knowledge, with full participation of indigenous communities.

In the evening, the contact group considered a Co-Chairs' text as a basis for a draft recommendation, including an annex on the international certificate of origin/source/legal provenance as a possible element of the international regime on ABS. A group of developed countries proposed deleting references to "international certificates" of origin agreed in ABS-3, considering it a "one-size-fits-all" solution, and suggested

referring instead to “internationally recognized” certificates. This proposal was met with opposition by one developed and several developing countries. After informal consultations, delegates agreed to retain the original wording.

On the establishment of an *ad hoc* technical expert group (AHTEG), participants debated whether the COP should “decide to establish,” or “consider establishing” an AHTEG, whether it should be a regionally-balanced panel of experts. Several delegates stressed the need for setting a clear timeframe for the AHTEG so that it can present its report at ABS-5. Delegates also debated whether the AHTEG should focus on the design of an international certificate, agreeing to study possible options for its form, intent and functioning. One developed country also requested a reference to its “need, practicality, feasibility and costs at national and international levels.” Delegates eventually agreed recommending that COP-8 decide to establish a regionally-balanced AHTEG to elaborate possible options for the form and intent, practicability, feasibility and costs of certificates to achieve the objectives of Articles 15 (Access to Genetic Resources) and 8(j) (traditional knowledge).

On the recommendation to invite further studies to feed into AHTEG’s work, some participants opposed the reference to certificate models, while several others insisted on maintaining it. Delegates also debated references to the private sector. Co-Chair François Pythoud (Switzerland) suggested resolving these issues through informal consultations.

Delegates then addressed the annex on the certificate’s rationale, need and objectives, desirable characteristics/features, practicability, feasibility and costs at national and international levels. Discussions continued into the night.

COMPLIANCE WITH PIC AND MAT: In the afternoon, the contact group addressed national measures for compliance of users with PIC and MAT. Some developed countries highlighted voluntary guidelines and codes of conduct developed to promote compliance with the Bonn Guidelines and PIC, as well as capacity building and awareness raising. Developing countries, however, emphasized that voluntary measures do not ensure compliance or address infringements, and called for international measures to guarantee compliance with PIC, MAT and national legislation on ABS, including sanctions for non-compliance.

On disclosure of origin in IPR applications, several delegations reported on relevant submissions to other forums like the World Intellectual Property Organization (WIPO) and the Council for Trade-related Aspects of Intellectual Property Rights of the World Trade Organization. They highlighted the need to address this issue, for example, through the amendment of WIPO’s Patent Cooperation Treaty, to allow for a requirement on disclosure of source in national legislations on IPRs. Some developed countries and observers opposed any reform of IPR regulations at the international level, while others said they were open to consider this issue. Some developing countries

highlighted the value of disclosure of origin in IPR applications as a means to ensure compliance with PIC and MAT and national regulations on ABS, and to prevent misappropriation. Delegates then discussed, and could not agree on, whether the CBD is the appropriate forum to address this issue.

IN THE CORRIDORS

The establishment of a Friends of the Chair group, comprising two representatives from each region, to advance the consideration of the draft on the international regime was the focus of high-pitched corridor buzz during the whole afternoon and evening. While some delegates pragmatically decided to use the free afternoon and head to Alhambra, others stoically stayed, awaiting news from behind the closed doors. First, rumors had it one regional group insisted that all of its seven members be seated at the table due to their differing positions on substance. The negotiated outcome was to grant five seats to each group. The above-mentioned group, however, managed to have all seven representatives in the room, including a non-party in an advisory capacity. While some complained about the seating arrangement, others maintained that all views must be represented to achieve a consensus outcome and that momentum should not be lost in “who-sits-where” discussions.

Later on, the subject of corridor gossip was the Friends’ discussions on the outcome document’s form. While some preferred a revised Chair’s text on the ABS regime, in the hope that it would speed up negotiations, others supported a revamped and re-balanced text to be adopted by the Working Group, including a new set of options and brackets, which would hopefully be agreeable to all. As the night drew on, delegates who escaped to grab a bite said they were satisfied with the pace of negotiations, as they had already agreed on a smaller list of potential objectives. As the Friends were about to tackle a recommendation to the COP on future steps, their reported suggestions ranged from the establishment of a standing negotiating body with a permanent Chair to formalize negotiations, to a series of drafting-group meetings followed by an intersessional meeting of the ABS Working Group.

Sharing their expectations for the long night ahead, many expressed optimism that all issues would be addressed, leading to a consensus -although bracketed- text. Some expressed concern over creating a “monster”; others, however, pointed out that although “esthetically ugly,” the bracketed consensus text may provide a firm first step towards formal negotiations.

ENB SUMMARY AND ANALYSIS: The *Earth Negotiations Bulletin* summary and analysis of the fourth meeting of the Working Group on Access and Benefit-sharing will be available on Monday, 6 February 2006, online at: <http://www.iisd.ca/biodiv/abs-wg4/>