

ABS 5 HIGHLIGHTS: MONDAY, 8 OCTOBER 2007

The fifth meeting of the *Ad hoc* Open-ended Working Group on Access and Benefit-sharing (ABS 5) of the Convention on Biological Diversity (CBD) opened on Monday, 8 October 2007 in Montreal, Canada. Delegates convened in plenary throughout the day. In the morning, delegates heard opening statements and reports and addressed organizational matters. In the afternoon they began considering fair and equitable benefit-sharing under the international regime on ABS.

OPENING PLENARY

ABS 5 Co-Chairs Timothy Hodges (Canada) and Fernando Casas (Colombia) opened the meeting, recalling the Working Group's mandate to complete negotiations on an international regime before COP 10. Co-Chair Hodges said adopting a regime is essential for the Convention's further development and implementation. Co-Chair Casas explained that ABS 5 and ABS 6 constitute a single session and that each agenda item will only be considered once. Noting the parties' shared concern about global biodiversity loss, CBD Executive Secretary Ahmed Djoghlaif said the regime will be a powerful tool for achieving sustainable development and the 2010 target to significantly reduce biodiversity loss.

SWITZERLAND reported on the first International Technical Conference on Animal Genetic Resources (AnGR) for Food and Agriculture, which took place in Interlaken, Switzerland in September 2007. He noted the successful conclusion of the meeting, which launched the Report on the State of the World's AnGR and adopted the Global Plan of Action and the Interlaken Declaration on AnGR. He observed that access and benefit-sharing of genetic resources provides an incentive for sustainable use.

CAMEROON presented to the CBD Museum of Nature and Culture a wooden sculpture depicting the country's biological and cultural diversity. Executive Secretary Ahmed Djoghlaif thanked Cameroon and also acknowledged a donation received from India.

ORGANIZATIONAL MATTERS: Delegates then adopted the meeting's agenda and organization of work (UNEP/CBD/WG-ABS/5/1/Add.1/Rev.1) without amendment and elected Mary Fosi (Cameroon) as rapporteur.

STATEMENTS: Portugal for the EU emphasized their commitment to completing negotiations on an international ABS regime on access and benefit sharing before COP 10. She noted that the EU had identified how the negotiations could progress and looked forward to a constructive and focused discussion during the week. Namibia for the AFRICAN GROUP called on delegations to review their negotiating positions in light of current realities, suggesting that some delegations may require a paradigm shift. Micronesia for the PACIFIC SMALL ISLAND DEVELOPING STATES proposed, among others, including non-conventional uses of biodiversity and derivatives in the regime's scope. SWITZERLAND recalled the work of the World Intellectual Property Organization on specifying the origin of genetic resources in patents.

Calling on parties to implement their existing national and regional ABS regimes, IUCN recommended that ABS 5 establish synergies with other international regimes, identify mechanisms for user-friendly information dissemination, and ensure that gender is fully integrated into the international regime. The INTERNATIONAL INDIGENOUS FORUM ON BIODIVERSITY (IIFB) and the INDIGENOUS WOMEN'S BIODIVERSITY NETWORK (IWBN) welcomed the recent adoption of the UN Declaration on the Rights of Indigenous Peoples. The IIFB recalled that Article 18 of the Declaration affirms indigenous peoples' right to participate in decision making in matters that affect them and, along with IWBN, stressed that without recognition of indigenous rights, especially PIC, there can be no access. The IWBN also reaffirmed that women are the holders and transmitters of traditional knowledge between generations and demanded respect, recognition and protection of this knowledge.

The FAO COMMISSION ON GENETIC RESOURCES FOR FOOD AND AGRICULTURE updated delegates on the Commission's work, and the INTERNATIONAL TREATY ON GENETIC RESOURCES FOR FOOD AND AGRICULTURE noted that it has operationalized ABS and offered to share its practical experience and technical lessons learned through this process. The INTERNATIONAL CHAMBER OF COMMERCE encouraged industry participation in all aspects of the process.

INTERNATIONAL REGIME ON ABS

FAIR AND EQUITABLE BENEFIT-SHARING: Co-Chair Hodges noted that the meeting will build upon the Annex to Decision VIII/4 A (international regime on access and benefit-

sharing) that was transmitted to ABS 5 by COP 8 (UNEP/CBD/WG-ABS/5/2) with the aim of transforming the range of views contained in the Annex into convergent proposals and options. He explained that, following the meeting, the Co-Chairs will prepare a text identifying areas of agreement and divergence which will be available for ABS 6 and inform the final report to COP 9.

AUSTRALIA opposed detailed negotiations of text based on the Annex, noting that his delegation could not accept any outcome in this regard. The Co-Chairs explained that proposing specific wording was one among several acceptable ways to develop the regime's elements, encouraging parties to use any means available to communicate their interests and improve mutual understanding. Suggesting that the Annex form the basis for discussing the regime's elements rather than for negotiations of text, BRAZIL stressed that fair and equitable benefit-sharing requires an international regime and suggested it be based upon PIC and MAT.

The EU said that an international ABS regime could build on and maximize the utility of modern communication tools and technology to improve the availability of low cost ABS-related information and enhance transparency. The EU also drew attention to its submission on standardizing choices in material transfer agreements (MTAs) (UNEP/CBD/WG-ABS/5/INF/1), urging the development of standardized MTAs to reduce costs and, with AUSTRALIA, suggested providing draft clauses for use by users and providers. Noting that benefit-sharing will differ on a case-by-case basis, SWITZERLAND preferred a set of standards that allows parties flexibility on a particular agreement.

Malaysia, for the LIKE-MINDED MEGADIVERSE COUNTRIES (LMMC), supported by COLOMBIA and the PHILIPPINES, proposed specifying that national legislation should stipulate the minimum conditions for fair and equitable sharing of benefits arising out of the use of genetic resources and derivatives and/or associated traditional knowledge based on PIC and MAT. ARGENTINA reserved its position regarding the conditions for sharing benefits from derivatives, noting lack of an adequate definition and cautioning against conflicts with international trade law. Noting that national legislation is not always sufficient to prevent dilution of benefits accruing to developing countries the PHILIPPINES emphasized the need for international standards.

COLOMBIA, PERU and the EU suggested defining derivatives as products that naturally stem from the metabolism of a biological resource. MALAYSIA clarified that its proposal aimed to provide a basis for moving forward on negotiations for an international regime because it would provide a common understanding of terms and mechanisms to address compliance issues. He said the inclusion of derivatives intended to capture all the benefits that relate to genetic resources.

COLOMBIA and PERU stressed the importance of benefit-sharing in the form of technology transfer, with PERU adding that benefit-sharing should include benefits stemming from both commercial and scientific uses.

MALAYSIA also proposed language specifying that conditions for the equitable sharing of benefits arising out of the use of traditional knowledge associated with genetic resources and derivatives be stipulated in MAT in accordance with national legislation either between users and indigenous communities or users and a competent national authority. Regarding measures to ensure fair and equitable sharing of the results of research

and development, he suggested language calling on parties to take into account the CBD provisions on: access to and transfer of technology; handling of biotechnology and distribution of benefits; and developed country commitments to provide financial resources and technology transfer.

The AFRICAN GROUP proposed: making access subject to minimum conditions for benefit-sharing; including derivatives; establishing a multilateral benefit-sharing mechanism for transboundary genetic resources; and ensuring the participation of indigenous and local communities in the negotiation of MAT. MEXICO noted the importance of compliance with national level mechanisms for PIC and suggested tax incentives as a possible national level mechanism for promoting benefit-sharing. CUBA stressed that any mechanism must guarantee fair benefit-sharing. ECUADOR recommended clarifying the issues to be addressed by the regime and that PIC for access to genetic resources be enshrined in national law. Requesting incentives for research, THAILAND suggested streamlining procedures to enable scientific research which in turn might lead to cases of benefit-sharing.

On granting access subject to MAT according to national legislation, ARGENTINA proposed referencing legislation in countries of "geographical origin." NEW ZEALAND and AUSTRALIA highlighted the need for any international regime to give countries flexibility when drafting national ABS legislation. CANADA suggested that any regime must be enabling and flexible and asked what capacity and tools would be required by providers and recipients to reach balanced MATs. COSTA RICA called for any regime to take into account existing national and regional instruments.

The ARCTIC INDIGENOUS PEOPLES CAUCUS stressed that discussion on benefit-sharing should follow consideration of agenda items on access to genetic resources, traditional knowledge and the identification of the rights holders under a potential regime on ABS.

The AMERICAN BIOINDUSTRY ALLIANCE underlined that the regime should include measures that generate demonstrable benefits and provide positive incentives to encourage access to genetic resources, and objected to additional conditions for patent applications such as obligations to disclose source and origin of genetic resources.

IN THE CORRIDORS

As delegates arrived in Montreal two-thirds of the way into the intersessional period before COP 9, many reflected on the time pressure to find an efficient *modus operandi* for the substantive negotiations of an international regime on access and benefit-sharing. While the Co-Chairs urged delegates to make focused interventions and develop convergent proposals in plenary, some delegates commented that time would be more efficiently spent in contact groups and even informal discussions. Meanwhile others read the day's interventions as a signal of the Working Group's overall readiness to develop substantive proposals on the international regime. Several delegates expressed hope that this might be the way forward, maintaining a fine balance between simply listing different elements on the one hand and getting bogged down in detailed negotiations of the text as contained in the Annex to Decision VIII/4 A on the other.