

ABS 6 HIGHLIGHTS

MONDAY, 21 JANUARY 2008

The sixth meeting of the *Ad Hoc* Open-ended Working Group on Access and Benefit-sharing (ABS) of the Convention on Biological Diversity (CBD) opened on Monday, 21 January 2008, at the Palais des Nations in Geneva, Switzerland. The Working Group met in plenary throughout the day, and addressed elements of an international ABS regime relating to compliance, traditional knowledge and genetic resources, capacity building, and its scope and objectives.

PLENARY

Opening the meeting, Working Group Co-Chair Timothy Hodges (Canada) highlighted that there are now points of intersection from which to move forward. BRAZIL, on behalf of their Environment Minister and President of the eighth meeting of the Conference of the Parties (COP 8) Marina Silva, stressed that negotiation of an ABS regime is a priority for developing countries and requires the collective effort of all countries. CBD Executive Secretary Ahmed Djoghlaif reminded delegates of the pivotal role of this meeting in the process of developing an international ABS regime by COP 10.

ORGANIZATION OF WORK: Delegates adopted the agenda (UNEP/CBD/WG-ABS/6/1) without amendment. Co-Chair Fernando Casas (Colombia) recalled that the COP Bureau would serve as the Bureau for the Working Group and that Mary Fosi (Cameroon) would act as Rapporteur. Commenting on the agenda, Casas encouraged brief discussion on items already discussed at ABS 5 including compliance, traditional knowledge and genetic resources, and capacity building, so that substantive deliberations could focus on the nature, scope and objectives of the international regime.

INTERNATIONAL ABS REGIME: Compliance: BRAZIL stressed its continuing support for the positions of the Group of Like-minded Megadiverse Countries (LMMC) and noted convergence with the positions of the African Group. COLOMBIA said negotiations should focus on binding elements to support compliance. PERU suggested that the report of the meeting of the Group of Technical Experts on an internationally recognized certificate of origin/source/legal provenance constitute a solid basis for the development of such certificates. INDIA highlighted the need for both a legally binding certificate and disclosure requirements in patent applications. INDONESIA added that the international regime should set minimum criteria for obtaining a certificate. COSTA RICA said the certificate must be simple and verifiable. CHINA noted that prior informed consent (PIC) and mutually agreed terms (MAT) are the most vital elements of the regime and could be implemented using both binding and non-binding measures.

Slovenia, for the EU, emphasized: international standards on national access law and practice; and developing an international definition of misappropriation and elements for standard material transfer agreements in specific sectors, to support compliance with PIC and MAT. SWITZERLAND suggested focusing on minimum requirements to ensure compliance, and underscored the utility of an international certificate, disclosure requirements in patent applications and an internationally agreed definition of misappropriation. CHILE urged delegates to consider the nature, characteristics and functionality of a certificate.

NEW ZEALAND urged delegates to address the practicability of compliance measures. CANADA stressed that contracts offer the best balance between flexibility and compliance with MAT, and questioned the ability of mandatory disclosure requirements to ensure compliance with PIC. On the certificate, he called for: a cost-benefit analysis and an impact assessment on financial and human resources; identifying checkpoints and new technologies; and assessing capacity needs. JAPAN emphasized the importance of: identifying the certificate's objectives; measuring the expected benefit; verifying its effectiveness; and implementing a cost-benefit analysis.

IUCN recommended that the Working Group agree on and test a model certificate. The UN CONFERENCE ON TRADE AND DEVELOPMENT presented its report on elements of an international regime for the recognition of national access regulations. The ASIAN INDIGENOUS PEOPLES CAUCUS invited the Working Group to agree on an intersessional process consisting of national, regional and international workshops on the certificate.

Traditional knowledge and genetic resources: The EU identified the protection of the rights of indigenous and local communities to traditional knowledge as one of the objectives of the international regime, and listed issues to be addressed with input by indigenous experts, including: a certificate of compliance; the potential relevance of the UN Declaration on the Rights of Indigenous Peoples and the draft ethical code of conduct; and communities' capacity-building needs.

NEW ZEALAND suggested: using traditional knowledge only with the approval of knowledge holders; identifying individuals or organizations to grant approval on behalf of a community; resolving conflicts between rights holders at the national level; and recognizing existing customary rights. CANADA said access to traditional knowledge should be granted by its holders in accordance with community procedures.

BRAZIL said the regime should recognize and protect communities' rights to their traditional knowledge associated with genetic resources and derivatives. ALGERIA drew attention to complementarity between the CBD, the World

Intellectual Property Organization (WIPO) and the World Trade Organization, while JAPAN noted a number of unresolved technical issues dealt with by WIPO.

Uganda, for the AFRICAN GROUP, underscored the linkages between genetic resources and traditional knowledge, and suggested that the certificate should specify the knowledge associated with the genetic resource, and the knowledge holders. An industry representative suggested that the international regime be constituted of national laws drafted in accordance with the Bonn Guidelines and warned delegates against "inappropriately extending" the mandate of the Working Group. The INTERNATIONAL INDIGENOUS FORUM ON BIODIVERSITY (IIFB) suggested that the meeting establish an intersectoral process to address the relationship between the regime, genetic resources and traditional knowledge. The NORWEGIAN SAMI PARLIAMENT underscored the importance of indigenous participation in the negotiations and stressed that the regime should protect traditional knowledge holders' rights.

Capacity building: Many delegates emphasized capacity building for implementing national ABS frameworks and monitoring ABS activities. ALGERIA called for the provision of sufficient, reliable and sustainable financial resources. The EU, KENYA and the INDIGENOUS WOMEN'S BIODIVERSITY NETWORK (IWBN) stressed building capacity of indigenous and local communities to negotiate ABS agreements. SWITZERLAND called for the development of guidelines for best practices and implementation. The IIFB stressed capacity building for protection of indigenous rights and respect of customary law.

MALAWI pointed to the need for capacity building for users who infringe provider countries' legislation and often claim lack of awareness. PAKISTAN stressed the need for capacity building for local people. TUNISIA requested that capacity building include legal aspects, awareness-raising, technology transfer and a funding mechanism. BURKINA FASO called for capacity-building contributions from the private sector.

COSTA RICA highlighted the need for a financial instrument. PERU suggested a clearing-house mechanism to ensure compliance and knowledge dissemination, and a double-track system for information exchange. Focusing on elements of the CBD Capacity-Building Action Plan, IUCN said information sharing and capacity building should form key elements of the international regime. TIMOR LESTE emphasized formal and non-formal education.

Objectives: Uganda, for the AFRICAN GROUP, proposed three objectives: regulating access to biological and genetic resources, traditional knowledge and their derivatives, and preventing misappropriation in user countries; ensuring fair and equitable sharing of monetary and non-monetary benefits; and supporting compliance with national laws of countries of origin, PIC and MAT.

MALAYSIA, for the LMMC, said the international regime must: promote benefit-sharing; prevent misappropriation of genetic resources; and control and enforce compliance with the CBD. The EU and CANADA supported objectives in accordance with Decision VII/19D on the terms of reference for the elaboration of the regime, namely to implement CBD Articles 15 (Access to genetic resources) and 8(j) (traditional knowledge) and support the Convention's three objectives. AUSTRALIA expressed readiness to work on areas of convergence to set out the components and objectives of the regime, as long as they support national implementation. SWITZERLAND recalled that the overall objective of the regime is to create certainty regarding ABS regulation. NORWAY suggested using the objectives of the Bonn Guidelines as a starting point for developing text.

KENYA, MEXICO, BRAZIL, CHILE, PERU and COSTA RICA said the regime's objectives should contribute to the implementation of the CBD's objectives and address compliance. CUBA prioritized fair and equitable benefit-sharing, and

BRAZIL emphasized preventing misappropriation and ensuring that benefits flow to countries of origin. On misappropriation, PERU said the regime should intervene in all cases, and KENYA called for measures in provider and user countries. MEXICO said the regime should ensure benefit-sharing by respecting national legislation. CHILE said the objectives should include access to financial resources.

ARGENTINA stressed the need to carefully define derivatives. HAITI proposed text stressing the importance of: capacity building and technology transfer; regulation of access, subject to national legislation; and fair and equitable sharing of any monetary and non-monetary benefits. EL SALVADOR suggested maintaining the objective agreed at the World Summit on Sustainable Development. Indigenous representatives expressed concern about the parties' lack of attention to indigenous rights and called for an objective protecting these rights. IWBN and the ARCTIC INDIGENOUS CAUCUS said that the regime should prevent misuse of traditional knowledge, genetic resources and derivatives. The AMERICAN BIOINDUSTRY ALLIANCE said that the objective should be achievable and result in tangible benefits.

Scope: Many agreed that human genetic resources should be excluded. SWITZERLAND stressed the need to agree on an interpretation of the CBD definition of genetic resources, and stressed that the regime should be without prejudice to the work under other bodies. NORWAY suggested applying the regime to genetic resources and traditional knowledge within national jurisdiction, and a flexible definition allowing for future expansion of the scope. GRENADA stressed inclusion of marine genetic resources.

Namibia, for the AFRICAN GROUP, called for biological resources, genetic resources, traditional knowledge and derivatives to be covered and, with NORWAY, CUBA and ETHIOPIA, for the exclusion of species contained in the multilateral system of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGR) only when used for food and agriculture.

The EU, CANADA and AUSTRALIA noted that Decision VII/19D establishes the regime's scope. AUSTRALIA said the scope should not: extend to materials acquired prior to the CBD's entry into force or derivatives; intrude in the mandate of other treaties; and address areas beyond national jurisdiction or the Antarctic Treaty area. The EU added that derivatives and products must be excluded from specific obligations for parties established by the regime. CANADA called for clear definitions of genetic resources and derivatives, and noted that an international regime incorporating binding and non-binding elements could include the ITPGR. The LMMC stressed that the regime would be undermined if derivatives were omitted. THAILAND stated that the regime should apply to all genetic resources and derivatives, so long as derivatives are clearly defined.

The Co-Chairs said they will circulate an informal document to assist delegations to move toward negotiations.

IN THE CORRIDORS

Cautious optimism emerged on the first day of ABS 6 as many delegations made concrete proposals regarding the regime's objectives and, for the first time, no delegation questioned the need for an international regime. Nevertheless, many participants shared the feeling that they will have to agree to the regime's objectives and to a tight schedule in order to complete negotiations by COP 10. While time constraints can be a motivating factor, one delegate cautioned that if the meeting does not break into at least two smaller groups by Tuesday morning, the Working Group may run out of time to find common ground.