

ABS 6 HIGHLIGHTS: TUESDAY, 22 JANUARY 2008

On Tuesday morning, the Working Group on Access and Benefit-sharing (ABS) met in plenary to continue consideration of the scope of the international regime on ABS and address its nature. A non-paper regarding a structure for the international regime was tabled during lunch time. Following a lengthy discussion on process and a break to allow for regional consultations, a contact group on the objective met in the afternoon and in the evening. A non-paper containing possible elements of a draft decision to be considered by the ninth Conference of the Parties (COP 9) was tabled in the afternoon.

PLENARY

INTERNATIONAL REGIME ON ABS: Scope: In continuation of Monday's discussion, PERU suggested that scope be divided into concept terms referring to time, scope and geography, and noted that inclusion of derivatives would not undermine the global intellectual property regime. EGYPT opposed introducing an artificial distinction between derivatives and other elements of genetic resources. MEXICO and CHINA called for a clear definition of derivatives.

COLOMBIA and PERU stressed the complementarity between the international regime and the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGR). BRAZIL said that the regime would not preclude the ITPGR provisions. ITPGR Secretary Shakeel Bhatti provided an overview of the ITPGR's nature, scope and objectives, stressing that its scope covers all plant genetic resources for food and agriculture. The UN FOOD AND AGRICULTURE ORGANIZATION (FAO) asked delegates to take into account the Multi-year Programme of Work of its Commission on Genetic Resources for Food and Agriculture covering all genetic resources for food and agriculture and paying special attention to food security and poverty eradication.

ECUADOR and the DOMINICAN REPUBLIC requested that marine genetic resources be included. ARGENTINA noted that marine genetic resources should be dealt with from the perspective of other international forums. GUINEA BISSAU stated that the regime should not apply to genetic material

transferred before the CBD's entry into force. INDONESIA emphasized that information contained within genetic resources should also be considered.

The CONSULTATIVE GROUP ON INTERNATIONAL AGRICULTURAL RESEARCH called for a transparent international regime that facilitates access and creates legal certainty. CROPLIFE INTERNATIONAL stated the regime should support national implementation based on the Bonn Guidelines with a view to increasing global biotrade. The INTELLECTUAL PROPERTY OWNERS ASSOCIATION cautioned against extending the scope of the regime beyond the scope of the CBD and argued against a single definition of derivatives. The ASIAN, ARCTIC and AFRICAN INDIGENOUS PEOPLES CAUCUSES called for recognizing the human rights of indigenous peoples as enshrined in the UN Declaration on the Rights of Indigenous Peoples. Other indigenous representatives reaffirmed indigenous peoples' ownership of their traditional knowledge, underscoring their right to opt out of the provisions of the regime.

Nature: Egypt, for the AFRICAN GROUP, supported a legally binding regime, based on cooperative enforcement between user and provider countries. Malaysia, for the LIKE-MINDED MEGADIVERSE COUNTRIES (LMMC), supported by many developing countries, favored a single legally binding regime, in line with the mandate agreed at the World Summit on Sustainable Development and decisions of the UN General Assembly, in order to promote legal certainty and transparency, include user measures and prevent misappropriation. Many argued that the regime must strengthen the capacity of providers to negotiate ABS contracts, protect their rights and provide access to justice. BRAZIL added that the regime should include technology transfer and information sharing. ETHIOPIA stressed the need for an international body on compliance, and ALGERIA and EL SALVADOR emphasized the need to strengthen the principle of national sovereignty. GABON said that voluntary measures are not sufficient to implement benefit-sharing and that the use of several instruments will create confusion and uncertainty. MALAWI said ABS contracts have serious limitations in countries where contracts cannot be enforced.

NORWAY said some elements should be legally binding, and called for a protocol under the CBD. Slovenia, for the EU, drew attention to its submission regarding a range of binding and voluntary measures, mechanisms and tools and, with CANADA, SWITZERLAND and NEW ZEALAND, called for progress on substance before discussing the regime's nature. AUSTRALIA, CANADA and NEW ZEALAND said the regime could comprise both legally binding and non-binding measures, in line with Decision VII/19D on the terms of reference for the elaboration of the regime, including reference to the Bonn Guidelines, model contracts, and a new element on traditional knowledge. SWITZERLAND supported a framework or umbrella regime, in harmony with other international instruments and, with CANADA, said it should build on existing approaches. Supporting a contract-based approach, JAPAN called for developing domestic ABS laws on the basis of the Bonn Guidelines and model contracts on the basis of national law.

CONTACT GROUP ON THE OBJECTIVE

The contact group was co-chaired by René Lefeber (the Netherlands) and Pierre du Plessis (Namibia). Lefeber emphasized that the contact group would be open-ended, and would aim to agree on a single objective for the regime, which should be simple, focused and concise. He drew attention to the proposed objective included in a non-paper tabled during the lunch break, which states that the regime should "effectively implement the provisions in Article 15 and Article 8(j) of the Convention and its three objectives, specifically by facilitating access to genetic resources and ensuring the fair and equitable sharing of benefits arising out of their utilization."

Malaysia presented a proposal agreed upon by the LMMC and the Group of Latin America and the Caribbean (GRULAC): "to ensure the effective, fair and equitable sharing of monetary and non-monetary benefits arising from the use of genetic resources, derivatives and associated traditional knowledge, by preventing their misappropriation and misuse, and by securing compliance in user countries with national laws and requirements, including prior informed consent and mutually agreed terms, of the country of origin providing such resources, or of the party that has acquired such resources in accordance with the CBD." Chile, for GRULAC, noted reservations by some delegations with regard to the need to define specific terms.

Uganda, for the AFRICAN GROUP, proposed that the regime should: "effectively implement the provisions in Article 15, 8(j), 1, 16, and 19.2 of the Convention and its three objectives, specifically by regulating transparent access to genetic resources and associated traditional knowledge and derivatives and products, and ensuring the conditions and measures for the fair and equitable sharing of benefits arising out of their utilization, and prevent their misappropriation and misuse."

The EU and CANADA supported the text proposed in the non-paper, with the EU noting that it reflects an overarching objective and provides a sufficient link to the CBD objectives. Noting that the text on the objective should be without prejudice to parties' positions on specific elements of the regime, CANADA recommended having a brief objective providing strategic direction, rather than trying to fit specific elements under the heading of objective.

In the evening, negotiations resumed with countries adding their qualified support for the different options. NORWAY, SWITZERLAND, AUSTRALIA, JAPAN and NEW ZEALAND

supported using the text of the non-paper. While supporting the LMMC/GRULAC proposal, MEXICO reserved its position on the terms "derivatives," "misappropriation" and "misuse." Egypt, for the AFRICAN GROUP, and Malaysia, for the LMMC, underscored the rationale for their respective proposals, noting that these texts provide more specificity and focus than the text included in the non-paper. The INTERNATIONAL INDIGENOUS FORUM ON BIODIVERSITY (IIFB) proposed an alternative text: "to effectively implement the provisions of Article 15 and Article 8(j) and related provisions of the Convention and its three objectives, specifically by ensuring the fair and equitable sharing of the benefits arising out of the utilization of genetic resources and associated traditional knowledge and their derivatives, taking into account all rights over those resources, including the rights of indigenous and local communities, and ensuring compliance with prior informed consent." The PHILIPPINES supported the proposal tabled by the IIFB, following advice that the text can only be considered if supported by a party.

Delegates agreed to consolidate all options into one bracketed text. Following a proposal by the contact group co-chairs, delegates first discussed and then agreed that the new consolidated text accurately reflected all options. They then attempted to remove brackets around individual elements, without substantive progress. Co-Chair Lefeber noted that the consolidated text will be forwarded to plenary as bracketed, and suggested that agreement on the objective would be difficult without further work on the substantive elements of the regime.

IN THE CORRIDORS

One NGO commentary on the process argued that "there will never be an end without a beginning." With the launching of a contact group to work on the objective, many commented that the day may be remembered as the beginning of real negotiations. However, opinions were mixed regarding the Co-Chairs' approach of tabling a non-paper, including proposed text on the objective of the regime. For many, the Co-Chairs' notion of a "skeleton text," as they called it, evoked the expectation that now would be the time to "add some flesh," while a few expressed concern that negotiations may stall before they begin in earnest.

As the non-paper was tabled, one delegate expressed a feeling of *déjà vu*: "I see mountains, I see snow, we must be in Granada" he said, referring to the venue and outcome of ABS 4 back in 2006. However, not all delegates shared the concern that the ABS Working Group might be reliving the past. Several key players said that they feel much more confident about embarking on serious negotiations than they did before. They explained that intersessional consultations have not only permitted them to coordinate their positions and identify their priorities, but also helped them understand which issues will require more flexibility in order to accommodate other parties' concerns.

A number of delegates later commented that the contact group has shown the hesitance of parties to bridge their differences with regard to fundamental issues. Others pointed to the distribution of a non-paper containing possible elements of a COP 9 draft decision on ABS, noting that agreement on this would at least secure a process forward.