

## ABS 7 HIGHLIGHTS: THURSDAY, 2 APRIL 2009

Delegates to the seventh meeting of the *Ad Hoc* Open-ended Working Group on Access and Benefit-sharing (ABS) of the Convention on Biological Diversity (CBD) met in plenary throughout the day. In the morning, they heard statements and reports, addressed organizational matters and initiated discussions on operational text on the objective of the international regime. An afternoon plenary addressed scope and compliance. Regional consultations were held in the afternoon and evening.

### PLENARY

**OPENING:** Working Group Co-Chair Timothy Hodges (Canada) welcomed delegates, and underscored that the Working Group has 21 days of negotiations left to complete its mandate, time which is limited but sufficient for the task. He welcomed the specificity of COP Decision IX/12 that sets out the basis for negotiations, milestones, a deadline and precise goals.

Jochen Flasbarth, on behalf of the German COP Presidency, underscored the economic value of ecosystems and biodiversity that forms the background to the incumbent negotiations. He called on delegates to negotiate in line with COP Decision IX/12 and in the spirit of cooperation.

CBD Executive Secretary Ahmed Djoghlaif stressed that this meeting is a pivotal juncture in the negotiations of the international ABS regime. He emphasized that in order to plant seeds of change and peace on the way to Nagoya, significant progress must be achieved in Paris.

Walter Erdelen, Assistant Director-General for Natural Sciences, UNESCO, highlighted the long history of collaboration between UNESCO and the CBD, and that UNESCO is a key partner in the implementation of the Convention, including through UNESCO's Man and the Biosphere Programme.

Bakary Kante, on behalf of UNEP Executive Director Achim Steiner, highlighted UNEP's support for the CBD Secretariat and the Bureau, and said UNEP has committed to contribute US\$1 million to the ABS process. Quoting his personal history, he underscored the importance of ecosystem services for livelihoods.

**ORGANIZATIONAL MATTERS:** Co-Chair Hodges reminded delegates that the COP 9 Bureau serves as the meeting Bureau and nominated Damaso Luna (Mexico) as rapporteur.

Delegates then adopted the meeting's agenda and organization of work (UNEP/CBD/WG-ABS/7/1 and Add.1/Rev.1). Co-Chair Hodges announced that each substantive item would be initially considered in plenary, and contact groups would be established as needed. Delegates agreed to negotiate on the basis of Annex 1 to COP Decision IX/12 (UNEP/CBD/WG-ABS/7/7), also drawing on parties' submissions compiled by the Secretariat (UNEP/CBD/WG-ABS/7/4 and Add.1-3) as well as submissions tabled in plenary.

**REGIONAL STATEMENTS:** All regional groups expressed their commitment towards a productive meeting and finalizing negotiations by COP 10. Mexico, for the LATIN AMERICA AND THE CARIBBEAN GROUP (GRULAC), reiterated its preference for a binding agreement. Namibia, for the AFRICAN GROUP, recalled that benefit-sharing is key for implementing the Convention's other objectives. The Czech Republic, for the EUROPEAN UNION (EU), preferred conducting negotiations in plenary, rather than in contact groups, because many issues are interlinked. Ukraine, for CENTRAL AND EASTERN EUROPE (CEE), expressed full support for the approach outlined by the Co-Chairs. Brazil, for the LIKE-MINDED MEGADIVERSE COUNTRIES (LMMC), underscored their commitment to recognize the rights of indigenous and local communities to their traditional knowledge, and to negotiate a legally binding instrument to implement the CBD objective on benefit-sharing. Cook Islands, for ASIA AND THE PACIFIC, underlined the importance of completing an effective ABS regime in a timely manner.

**EXPERT GROUP REPORTS:** Monica Rosell (Peru) and Hiroji Isozaki (Japan), Co-Chairs of the group of legal and technical experts on compliance, reported on the outcomes of the meeting, held from 27-31 January 2009, in Tokyo, Japan (UNEP/CBD/WG-ABS/7/3). Desmond Mahon (Canada) and Pierre du Plessis (Namibia), Co-Chairs of the group of legal and technical experts on concepts, terms, working definitions and sectoral approaches, reported on the meeting, held from 2-5 December 2008, in Windhoek, Namibia (UNEP/CBD/WG-ABS/7/2).

Working Group Co-Chair Fernando Casas (Colombia) announced that the studies commissioned in accordance with COP Decision IX/12 are circulated as information documents and will be presented during side events.

**OPERATIONAL TEXT: Objective:** The Co-Chairs invited delegates who had not made written submissions to table their proposals or to add to their previous proposals, and announced that all proposals would be collated and distributed before engaging in textual negotiations.

The LMMC proposed to refer to specific articles but not to the three CBD objectives, and pointed to an added element on misuse in their submission. The EU tabled wording, to effectively implement Articles 15 (Access to Genetic Resources) and 8(j) (traditional knowledge), and pursue the CBD objectives by: facilitating access to genetic resources and associated traditional knowledge through a transparent regulatory framework; ensuring the establishment of conditions for fair and equitable sharing of benefits arising out of the utilization of genetic resources and associated traditional knowledge; and supporting compliance with domestic regulatory ABS frameworks, including prior informed consent (PIC) and mutually agreed terms (MAT); and taking into account all rights over those resources, including the rights of indigenous and local communities. THAILAND proposed to refer to: access to genetic resources; ensuring fair and equitable benefit-sharing; and ensuring compliance with national laws, especially with PIC and MAT.

SYRIA asked to refer to genetic resources and/or their derivatives to establish the distinction between the two. ARGENTINA pointed to a lack of common understanding of derivatives and other products. JAPAN proposed to delete references to derivatives and other products.

JAPAN expressed concerns regarding the proposed requirement for user countries to secure compliance with laws in provider countries. The AFRICAN GROUP said that language on securing compliance in user countries should include a reference to existing provisions in international law and refer to providers along with countries of origin. INDONESIA suggested adding a reference to CBD Article 16 (Access to and Transfer of Technology).

**Scope:** The EU said that the scope should apply to access to genetic resources and the promotion of fair and equitable benefit-sharing in accordance with Article 15 as well as traditional knowledge in accordance with Article 8(j). With others, he stated that certain genetic resources should remain outside the scope of the regime, including: human genetic resources; genetic resources acquired before the CBD's entry into force; plant genetic resources covered by the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGR); marine genetic resources outside national jurisdiction; and genetic resources in the Antarctic Treaty area. AUSTRALIA specified that the 1980 Convention on the Conservation of Antarctic Marine Living Resources applies beyond the Antarctic Treaty's 60 degrees South latitude using the Antarctic Convergence as an outer boundary, and should also be excluded from the geographical scope of the regime.

The AFRICAN GROUP argued that the scope of the regime should include: genetic resources; biological resources; and derivatives and products. He proposed excluding exchange and use of traditional knowledge between indigenous and local communities.

The LMMC stated that the regime should apply to genetic resources, derivatives and traditional knowledge. He said a future protocol should be applied in a mutually supportive manner and reinforce the relationship between the CBD and the ITPGR.

SWITZERLAND explained that its tabled proposals are meant to be inclusive and ensure the regime is applied to all genetic resources covered by the Convention, leaving room for existing

international sectoral ABS instruments such as the ITPGR. NORWAY stressed the regime should be without prejudice to the ITPGR and should be implemented in harmony with it, and explained its submitted proposal was based on the provision on scope of the Bonn Guidelines.

JAPAN said that the regime should exclude: derivatives and products; plant genetic resources covered by the ITPGR; and marine genetic resources beyond national jurisdiction. He also called for special consideration of resources addressed under the World Health Organization in relation to the multilateral framework for the sharing of influenza viruses. CANADA pointed to additional language submitted regarding the regime's relationship with existing, current and future agreements.

The EU supported a sectoral approach and suggested that, due to the ambiguity about their definition, derivatives should be addressed in MAT. ARGENTINA said that derivatives can be included in the international regime only if they are clearly defined.

**Compliance:** JAPAN called for considering the options developed by the group of experts on compliance, noting its submission was based on some of these options and included compliance mechanisms related to these options. NEW ZEALAND said it would submit operational text on compliance with customary law. The AFRICAN GROUP explained their submission contains provisions for countries without national legislation, mandatory disclosure requirements and independent third party verification of certificates of compliance. THAILAND noted that the details of certificates of compliance need further clarification. The WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO) drew attention to its work on traditional knowledge, including a traditional knowledge documentation toolkit, and draft objectives and principles for traditional knowledge protection. Discussions will resume on Friday.

### IN THE CORRIDORS

With numerous expressions of commitment and good faith, and the Co-Chairs' declared determination to move swiftly into the negotiation of operational text, in line with the roadmap adopted at COP 9, the meeting seemed off to a good start. This was in contrast to some delegates' worries that the amount of operational text submitted could make the meeting fall into a pattern of compiling rather than streamlining and negotiating text.

Yet as the morning was consumed by presentations of more operational text and revisions to existing submissions, some began talking about a "false start." Since informal consultations held before the meeting had left many with the impression that negotiations should begin as a matter of urgency, some were surprised that they were "recalled to the starting line" to set out the latest versions of their text. While some regretted the missed opportunity to capitalize on the pre-meeting momentum to move straight into negotiations, others appreciated this second chance to submit text and clarify their submissions, hailing the meeting's inclusiveness.

The meeting adjourned early to allow time for regional consultations. Whilst delegates were split on the day's procedure, there was agreement that, for the first time in this process, all parties are ready, able and eager to enter into negotiations. There is also agreement that with 20 days left of the time assigned to the Working Group to complete its mandate, the challenge of concluding its work is becoming increasingly pressing.