

ABS 7 HIGHLIGHTS: SATURDAY, 4 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 a brief morning plenary to hear a report about the contact group deliberations on the objective of the international regime. A contact group on compliance met throughout the day, followed by an evening contact group that addressed the scope of the regime.

PLENARY

Working Group Co-Chair Fernando Casas (Colombia) outlined the organization of work for the day and noted circulation of three non-papers compiling proposals on compliance, access, and benefit-sharing under the structure of the annex to COP Decision IX/12.

Contact group Co-Chair Birthe Ivars (Norway) reported that the contact group had engaged in a first reading of the objective of the international regime, and recommended to proceed to a first reading of scope. Delegates agreed to reconvene the contact group on objective and scope in the evening.

Noting that delegates are eager to start working on the components of the regime, Working Group Co-Chair Timothy Hodges (Canada) proposed to establish a contact group on compliance to be co-chaired by Pierre Du Plessis (Namibia) and René Lefeber (the Netherlands). He suggested that the mandate of the contact group be to consolidate and review the operational text contained in the non-paper on compliance. The LMMC stressed the need to negotiate operational text, and consolidate, if not agree on, options.

CONTACT GROUP ON COMPLIANCE

Contact group Co-Chair Lefeber explained the group would base its work on a non-paper compiling submissions made before and during the meeting, suggesting to consolidate proposals first and then negotiate the text, as well as to defer the discussion on preambular text. The AFRICAN GROUP asked to include its proposals on traditional knowledge, including references to customary laws, and to refer to biological resources along with genetic resources throughout the text.

The contact group then began consideration of tools to encourage compliance, already defined as components to be further elaborated with the aim of incorporating them in the international regime (bricks), and considered each brick separately in order to decide on which submission to base the negotiations.

Regarding measures on awareness-raising activities, delegates agreed to base negotiations on text submitted by Japan. The LMMC proposed specifying that awareness raising is “an important supplementary tool which cannot substitute mandatory measures for benefit-sharing.” AUSTRALIA noted that lack of awareness about ABS frameworks is the key source of non-compliance. JAPAN emphasized help-desks for stakeholders and web-portals as key activities for awareness raising.

Delegates then discussed a Norwegian proposal concerning the development of tools to monitor compliance. Many noted its comprehensiveness and, following a suggestion by Malaysia, delegates agreed to take note of the proposal, identify overlap with other provisions, and then decide the most appropriate provision where its elements should be incorporated.

Regarding text on mechanisms for information exchange, following a brief discussion, delegates agreed to work on the basis of the LMMC proposal that makes reference to an ABS clearing-house.

On a paragraph on competent national authorities and national focal points, parties were divided over whether to include it under internationally recognized certificates or to locate it elsewhere in the document. The LMMC, the AFRICAN GROUP, ARGENTINA and the SMALL ISLAND DEVELOPING STATES (SIDS) preferred the former option. AUSTRALIA, the EU, CANADA, JAPAN and NORWAY opted for locating the paragraph elsewhere, arguing that competent national authorities will engage in a broader set of activities than issuing certificates. The issue was set aside, with a footnote explaining the reasons.

Regarding internationally recognized certificates, delegates debated whether to use an African Group or a Norwegian proposal as the basis for further work. The AFRICAN GROUP, the LMMC, SIDS, GRULAC and indigenous representatives preferred the African proposal, on the basis that it provided a comprehensive range of elements that could be reduced during negotiations. The Norwegian proposal was favored by the EU, JAPAN, NORWAY and SWITZERLAND on the basis that it was drafted in a more general manner and could be made more specific. The EU added that certain elements of the African proposal regarding checkpoints, tracking and reporting systems, and disclosure requirements should be discussed at a later stage. The LMMC and the AFRICAN GROUP then suggested merging the two proposals, but the group agreed to retain both options and integrate them during the second reading.

Delegates then initiated discussion on components for further consideration (bullets). CANADA and NEW ZEALAND sought clarification on whether the group would negotiate operational text for these components too, and raised concerns on their

location in the text. Contact group Co-Chair du Plessis said that operational text will be developed for both bricks and bullets, and that bullets will be changed into bricks only if there is consensus. MALAYSIA and PERU confirmed that both are essential components of the international regime.

Delegates discussed whether to retain the attributions to the parties who submitted the texts that will form the basis of negotiations. The EU wanted to keep the attributions, while the AFRICAN GROUP and the LMMC suggested deleting them to ensure the group feels ownership over the text. Delegates agreed to remove all attributions and introduce a footnote in cases where the location of a paragraph in the text requires further consideration.

Delegates then discussed the elements under development of tools to encourage compliance. Regarding an international understanding of misappropriation/misuse, the EU noted that the sole text, submitted by Norway, did not entail a definition but rather stated the goal of preventing misappropriation and said the text might have to be located elsewhere. Regarding sectoral menus of model clauses for material transfer agreements, delegates agreed to work on the basis of the EU proposal, which includes references to inventories/catalogues of typical utilizations and legal procedures for developing model clauses. Regarding codes of conduct for important user groups, they agreed to use the Australian proposal.

On identification of best-practice codes of conduct and on international access standards to support compliance across jurisdictions, delegates decided to negotiate on the basis of the sole EU proposal. On research funding agencies to oblige users to comply with specific ABS requirements, they agreed to use the sole LMMC proposal, and on tracking and reporting systems the sole proposal of the African Group, which provides for monitoring systems that identify breaches of contractual obligations or misappropriation.

On disclosure requirements, NORWAY and INDIA withdrew their submissions, leaving a more elaborate LMMC proposal as the basis for further discussion. JAPAN and ARGENTINA preferred keeping the Norwegian proposal providing for national measures aiming at ensuring disclosure of origin of genetic resources and traditional knowledge in applications for intellectual property rights, which was opposed by the LMMC and the AFRICAN GROUP for procedural reasons. JAPAN eventually agreed to the deletion and said they would reintroduce language similar to the Norwegian proposal during the second reading.

On measures to ensure access to justice, delegates decided to: retain a proposal by the African Group on an international ombudsman; delete a similar but more detailed proposal by the International Indigenous Forum on Biodiversity; and move an LMMC proposal on providing support for litigation to this section. On alternative dispute resolution, delegates agreed to work on the basis of a proposal by the African Group providing for dispute resolution mechanisms to be guided by principles of equity drawn from a wide range of legal sources, including customary law and practices of indigenous and local communities. On enforcement of judgments and remedies and sanctions, delegates agreed to retain all existing proposals since they are complementary. On measures to ensure compliance with customary law and on local systems of protection, delegates agreed to use text submitted by the African Group and New Zealand as basis for further negotiations.

CONTACT GROUP ON SCOPE

The contact group decided to work on the basis of the first option on scope included in the annex to COP Decision IX/12 (consolidated text of submissions made at ABS 6). On process,

delegates decided to avoid negotiation, but to ensure that the consolidated text contains the extent of each party's latest submissions and to resolve any ambiguities.

On a paragraph setting out what the international regime applies to, the LMMC suggested the international regime be referred to as a protocol. After some debate it was decided that a footnote would state that the issue would be revisited following discussion on the nature of the regime. The AFRICAN GROUP added that the regime should apply to all biological resources, derivatives and products for environmentally sound uses.

CANADA said the regime should be subject to other international obligations, while INDIA and SIDS said the regime and other international agreements should be mutually supportive. MEXICO, supported by CANADA, suggested moving this issue to a separate paragraph, but the issue remained undecided.

Noting that a second paragraph on the scope of the international regime was redundant, the EU proposed its deletion, opposed by the AFRICAN GROUP and SIDS, who suggested adding a reference to "access to and transfer of technology."

On the temporal scope of application, CANADA proposed that the international regime shall apply to genetic resources acquired after "the effective date" of the entry into force of the regime and the EU added that any additional obligations under the international regime shall not apply retroactively. These proposals were countered by the AFRICAN GROUP, suggesting that continuing benefits and benefits from new uses arising from commercial and other utilization of genetic resources, biological resources, products, derivatives and associated traditional knowledge, including those previously made available by the country of origin, shall be covered by the regime.

The EU, AUSTRALIA and PERU suggested different formulations of a paragraph concerning plant genetic resources for food and agriculture (PGRFA) covered by the Multilateral System (MLS) under the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGR), with the EU proposing the broadest exclusion comprising not only PGRFA accessed under the MLS, but also other PGRFA which an ITPGR party or an international agricultural research center has subjected to the ITPGR.

Delegates continued to discuss limitations in scope late into the evening.

IN THE CORRIDORS

The famous French sculptor Auguste Rodin was a master of turning formless blocs of marble into sculptures of endless beauty. In close proximity to the Rodin Museum, delegates at UNESCO today began an equally challenging exercise in a contact group on compliance: sculpting the parties' numerous submissions into a manageable text to form the basis of negotiations. Overall the day secured a dramatic reduction of text, with the contact group completing a first reading and deleting many alternative proposals. Yet delegates seemed circumspect about the progress, with one describing proceedings as "cautious." There was much focus on procedure, which one delegate explained was to ensure that no one "falls off the bus," a move considered "essential" at this early stage of the negotiations. While the contact group on compliance achieved the first step of sorting out the building blocks, some felt it is still a long way from creating a solid structure that will ensure compliance with the final ABS arrangement, whichever form it may take. Many commented that the evening's session on scope was less constructive, with delegates "using up the alphabet" as one put it, by adding their different takes on scope and its limitations to an expanding collage of options.