

ABS 7 HIGHLIGHTS: SUNDAY, 5 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 reports about contact group deliberations on the scope of the international regime and compliance. A contact group met throughout the day to conduct a first reading of non-papers on benefit-sharing and access.

PLENARY

Contact group Co-Chair David Hafashimana (Uganda) explained that the contact group on the objective and scope had concluded a first reading of the scope of the regime, on the basis of the first option included in the annex to COP Decision IX/12 (consolidated text of submissions made at ABS 6), which had resulted in a consolidated text for further negotiations.

Contact group Co-Chair René Lefeber (the Netherlands) reported on deliberations on compliance. He said the group identified the basis for further work, notwithstanding having set aside proposals on preambular text. He described the undertaking as a “significant step forward.”

Working Group Co-Chair Timothy Hodges (Canada) proposed to mandate the contact group dealing with components of the international regime to address benefit-sharing and access. He suggested that its mandate be to identify the basis for further work, consolidate parties’ views and negotiate text. Following a question by the Like-Minded Megadiverse Countries (LMMC) on the status of non-papers, Co-Chair Hodges confirmed that from now on, documents would be issued as conference room papers (CRP).

CONTACT GROUP

BENEFIT-SHARING: The contact group started discussions on the basis of a non-paper on benefit-sharing, compiling country submissions according to the structure of the annex to COP Decision IX/12. Delegates first addressed components to be further elaborated with the aim of incorporating them in the international regime (bricks).

On linkage of access to the fair and equitable sharing of benefits, delegates considered three proposals by: the LMMC with an emphasis on prior informed consent (PIC); the EU on measures to encourage benefit-sharing in mutually agreed terms (MAT); and Norway focusing on providing information to, and ensure compliance of, users of genetic resources with national legislation in the providing country. Discussions revolved around

whether PIC should be dealt with under benefit-sharing, access, or both, with parties deciding to address the element under both. They also decided that the three proposals are not mutually exclusive, and that they should be kept as separate paragraphs under the brick on linkage of access to benefit-sharing, while deleting country attributions.

On benefits to be shared under MAT, SWITZERLAND supported an EU proposal referring to model clauses and inventories/catalogues of typical utilizations of genetic resources and related benefits when establishing MAT. The LMMC requested retaining its language on national legislative measures and the use of associated traditional knowledge and, with SIDS, suggested merging these proposals, and adding an African proposal making reference to Article 15.7 (measures for benefit-sharing). The LMMC also suggested retaining a Norwegian proposal making reference to the indicative list of MAT contained in the Bonn Guidelines on ABS. Delegates agreed to merge the text of all four proposals.

On monetary and non-monetary benefits, the EU, supported by the LMMC, suggested combining its own proposal stating that MAT may identify the types of monetary and non-monetary benefits to be shared, with an Indian proposal providing for an indicative list of such benefits. JAPAN preferred a proposal by Norway making direct reference to the Bonn Guidelines. The PHILIPPINES, supported by SIDS and AFRICA, asked to retain language of the SIDS proposal stating that benefit-sharing should include, as far as possible, all forms of utilization of genetic resources, their derivatives and associated traditional knowledge. Delegates agreed to merge text from the proposals by the EU, India, SIDS, and Norway, and delete the submissions by the African Group and Thailand.

On access to and transfer of technology, the EU and CANADA supported retaining the EU proposal stating that parties requiring PIC for access should take measures to encourage providers and users to consider access to and transfer of technology making use of those resources. The LMMC, supported by the AFRICAN GROUP, argued that their proposal, calling for facilitating access to, joint development and transfer of technologies to countries of origin, is a reflection of the Convention text. Delegates decided to retain both the EU and the LMMC proposals as two distinct options, and delete a proposal by Thailand.

On sharing of results of research and development on MAT, the LMMC, supported by the AFRICAN GROUP, proposed retaining their more comprehensive proposal, while the EU

and CANADA supported the EU submission stating that parties requiring PIC for access should take measures to encourage providers and users to consider sharing of results of research and development when establishing MAT. Delegates agreed to keep both proposals.

On effective participation in research activities, and/or joint development in research activities, the EU proposed to reintroduce its submission made under the brick on benefits to be shared under MAT, which refers to measures by parties requiring PIC for access to encourage providers and users to consider the effective participation of providers of genetic resources in research activities and/or to facilitate the joint development of research activities. The LMMC opposed this repetition, noting that it creates imbalance in the negotiating text. The AFRICAN GROUP also asked to add text accepted under previous sections with additions. The EU noted that a cross-reference to their previous submission was included in the compilation. Contact group Co-Chair Pierre du Plessis (Namibia) ruled that due to lack of agreement, the section would be left blank and parties could submit text during the second reading.

On mechanisms to promote equality in negotiations, delegates accepted merging an EU proposal regarding supporting the capacity of providers and users to negotiate MAT with a Norwegian proposal on ensuring participation by indigenous peoples and local communities in access procedures. The AFRICAN GROUP observed that their submission included in the collation of operative texts submitted by parties (UNEP/CBD/WG-ABS/7/4) had been omitted from the compilation, and asked that it be included in this section. After some discussion they agreed to resubmit the text under the component for further consideration (bullet) on development of international minimum conditions and standards.

On an EU proposal on awareness raising, the LMMC observed that it duplicated text in the section on compliance, again cautioning this could unbalance the text. CANADA suggested that there could be similar awareness-raising instruments under compliance and benefit-sharing. Delegates agreed to retain the proposal, adding a reference to other sections on awareness raising and noting that more nuanced approaches may be developed.

On measures to ensure participation of indigenous and local communities in MAT, and benefit-sharing with traditional knowledge holders, NEW ZEALAND and the EU asked for flexibility to make further submissions after the meeting of the technical expert group on traditional knowledge. Delegates agreed to merge the existing proposals by the LMMC, the African Group and Norway into a single text.

On mechanisms to encourage benefits to be directed towards conservation and sustainable use of biodiversity, parties agreed to retain the Australian proposal that references Article 1 of the CBD (Objectives).

Delegates then addressed bullet elements. On development of international minimum conditions and standards, a text submitted by India was retained. The AFRICAN GROUP asked to introduce text from the collation of operative texts submitted by parties, with a note that they may decide to move it under mechanisms to promote equality in negotiations. After some discussion, this was accepted.

Regarding multilateral benefit-sharing options when the origin is not clear or in transboundary situations, and establishment of trust funds to address transboundary situations, delegates agreed to use the sole African proposal in both cases. On development of menus of model clauses for potential inclusion in material transfer agreements, the LMMC preferred to have no text, but delegates agreed to maintain the EU and Swiss proposals as

two alternative options. Regarding enhanced utilization of the Bonn Guidelines, AUSTRALIA agreed to remove its proposal and the EU said they would rework its preambular language into operational text during the second reading.

Regarding other proposals put forward, delegates considered a proposal, which the LMMC said had been misplaced, that parties shall establish a financial mechanism for the international regime including a trust fund for benefit-sharing arrangements. Delegates agreed to retain the text and reconsider its appropriate location during the second reading.

ACCESS: Delegates then proceeded to a first reading of the non-paper on access. The INTERNATIONAL INDIGENOUS FORUM ON BIODIVERSITY said their proposal that access to genetic resources and associated traditional knowledge is subject to the free PIC of indigenous peoples and local communities should be included, and the AFRICAN GROUP sponsored it. Regarding brick elements, some delegates said parts of their proposals had been misplaced and asked to relocate them. On recognition of the sovereign rights and the authority of parties to determine access, delegates agreed to work on the basis of the African proposal, and to retain the second part of the Norwegian proposal under the separate heading on domestic competent authority.

On linkage of access to fair and equitable sharing of benefits, delegates agreed to merge proposals by the LMMC, the EU, the African Group and India, noting that similarities in parts of them will have to be streamlined during the second reading. On legal certainty, clarity and transparency of access rules, INDIA withdrew its proposal, and delegates decided to retain proposals by the African Group, the EU and Norway in distinct paragraphs.

Delegates then addressed bullet elements. On non-discrimination of access rules, delegates retained the sole EU proposal. On international access standards to support compliance across jurisdictions, delegates agreed to work on the basis of an EU proposal. On internationally developed domestic legislation, the group decided to merge proposals by the EU and Australia. On simplified access rules for non-commercial research, AUSTRALIA withdrew its proposal, thus leaving proposals by the EU and Norway for further consideration.

Co-Chair Lefebvre announced that CRPs on benefit-sharing and access would be prepared, and that plenary would consider CRPs on the objective and scope on Monday morning.

IN THE CORRIDORS

In many parts of the world Sunday is a day of rest, not so this Sunday in Paris. As over 37,000 participants to the Paris marathon embarked on their 42 kilometer circuit, delegates continued their triathlon of proposing, merging and consolidating operational text to form the basis for the further negotiation of the international ABS regime. Referring to the procedure which will allow countries to re-table in the second reading any proposal lost during the consolidation, one delegate felt that the working group, like marathon participants, is running in a giant circle, "just that the marathon runners go around only once." Others saw symptoms of the "Granada syndrome" as one seasoned delegate put it, alluding to a collective fear that disagreements between parties could lead to the unraveling of the tentative agreement about process, reminiscent of the prolonged procedural debates at COP 8 regarding whether the outcome of the ABS 4 negotiations at Granada would form the basis of further negotiations. Many delegates nevertheless commended the return of the collaborative spirit as the contact group wrapped up discussions on the text on access in merely 35 minutes, with one quipping, "after this sprint we are more than ready for the next lap."