

ABS 8 HIGHLIGHTS: MONDAY, 9 NOVEMBER 2009

Delegates to the eighth 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 to continue negotiations on an international regime on ABS. In the morning, they discussed the legal nature of the regime. In the afternoon, they addressed traditional knowledge, capacity building, and compliance.

PLENARY

OPENING: Working Group Co-Chair Fernando Casas (Colombia) emphasized that the success of the meeting depended on producing timely, high quality results in the form of a comprehensive text. Co-Chair Tim Hodges (Canada) underscored that this is the most important meeting in the history of the Working Group, and that results must be sufficient to allow for finalization of the draft at ABS 9.

Jochen Flasbarth, on behalf of the German Presidency of the Conference of the Parties (COP), urged parties not to fail in their mandate to finalize a regime by 2010. CBD Executive Secretary Ahmed Djoghlahf reminded delegates that progress is essential given the few negotiating days remaining before COP 10.

Bakary Kante, on behalf of UNEP Executive Director Achim Steiner, emphasized UNEP's commitment to ABS and the CBD, stating that UNEP will invest US\$5 million in biodiversity activities over the next biennium. Co-Chair Hodges expressed appreciation to UNEP for supporting a series of regional preparatory meetings to follow ABS 8.

ORGANIZATIONAL MATTERS: Co-Chair Hodges reminded delegates that the COP 9 Bureau serves as the meeting Bureau and nominated Somaly Chan (Cambodia) as rapporteur. Delegates then adopted the meeting's agenda and organization of work (UNEP/CBD/WG-ABS/8/1 and Add.1).

Co-Chair Casas outlined the meeting's mandate, as outlined in Decision IX/12, and workflow, in accordance with the three-step approach agreed upon at ABS 7: compilation of proposed operational text; review of compilation for accuracy; and negotiation in order to reach agreement. He stressed that all new proposals need to be presented in plenary, while no new proposals will be accepted during the later negotiation stage, except compromise text. Several parties and regional groups made statements expressing their commitment to the process and their support for the proposed workflow.

NATURE: Co-Chair Hodges called for short statements on nature, noting that views will be reflected in a Co-Chairs' text to be included in the meeting's report. The AFRICAN GROUP, Mexico, on behalf of LATIN AMERICA AND THE

CARIBBEAN (GRULAC), and Brazil, on behalf of the LIKE-MINDED MEGADIVERSE COUNTRIES (LMMC), supported a single legally-binding instrument, containing, among others, a set of principles, norms, rules, and compliance and enforcement measures. NORWAY said the regime should be composed of, but not limited to, a single legally-binding agreement, namely a protocol, which should build upon and further develop the Bonn Guidelines. She added that compliance is a core legally-binding element of the regime. THAILAND said the regime should be composed of one or more legally-binding and/or non-binding instruments within a set of principles, norms, rules and procedures.

JAPAN stated they do not rule out specific legally-binding provisions, but cannot accept a legally-binding regime unconditionally. NEW ZEALAND said that any legally-binding elements should "make legal sense," and welcomed discussions on which parts of the regime should be binding or not and on how any legally-binding elements could be implemented internationally and domestically. SWITZERLAND called for focus on a legally-binding instrument, containing a set of principles, norms, rules and procedures, legally-binding and/or non-binding, implemented in harmony with other agreements and flexible to allow for adoption of more specialized agreements in harmony with the CBD. Serbia, on behalf of CENTRAL AND EASTERN EUROPE (CEE), preferred one legally-binding instrument or a combination of binding and non-binding instruments.

The EU stated that a regime that includes international access standards linked to compliance support measures could be constituted of a mix of legally-binding and non-binding measures, and that discussion should proceed on which components should be binding, non-binding, or a mix of the two. CANADA noted the need to reach decision on the content of, and on how to implement, each component before deciding on nature, adding that the regime should include existing voluntary instruments and provide for flexibility for implementation of its components, legally-binding or not.

The INTERNATIONAL INDIGENOUS FORUM ON BIODIVERSITY (IIFB) called for legally-binding provisions to protect traditional knowledge and genetic resources of indigenous peoples in accordance with international agreements affirming indigenous peoples' rights. Stressing that voluntary agreements have failed to protect and enforce the rights of provider countries and establish compliance mechanisms in user countries, a representative of CIVIL SOCIETY stressed the need for a single legally-binding instrument as a protocol to the CBD, and urged parties that do not envisage ratifying such a protocol not to block progress.

TRADITIONAL KNOWLEDGE: The AFRICAN GROUP and the LMMC pointed to the importance of the views provided by the sixth meeting of the Article 8(j) Working Group (UNEP/CBD/WG-ABS/8/7). In addition to their submission, the LMMC proposed that: the internationally recognized certificate of compliance require evidence that prior informed consent (PIC) and mutually agreed terms (MAT) are fulfilled when traditional knowledge is accessed; parties ensure that respect for the rights of indigenous and local communities form the basis for PIC; and the regime cover traditional knowledge associated with genetic resources accessed *ex situ*. He further said that traditional knowledge is a cross-cutting issue and should become one of the pillars of the regime.

CANADA said the international regime should be limited to traditional knowledge associated with genetic resources and not in the public domain. NORWAY stressed that provisions related to traditional knowledge should be integrated into the regime as a cross-cutting issue, including in the components on access and on benefit-sharing. The EU stressed that: those seeking access to traditional knowledge would benefit from a system where indigenous and local communities identify the authority to decide the terms for ABS; and MAT can provide the flexibility required. The PHILIPPINES highlighted the rights of states and indigenous and local communities to biological resources and traditional knowledge and, with THAILAND, the inseparability of traditional knowledge and genetic resources. NEW ZEALAND noted the need to accommodate the diversity of procedures and practices with regard to traditional knowledge. The AFRICAN GROUP stressed that World Intellectual Property Organization (WIPO) negotiations on international instrument(s) to ensure the effective protection of genetic resources, traditional knowledge and traditional cultural expressions are without prejudice to the work pursued in other fora, especially the work of the ABS Working Group. The EU and NORWAY welcomed the WIPO decision to undertake such negotiations.

Ukraine, on behalf of CEE, stated that national legislation should incorporate customary laws, and the international regime should protect indigenous and local community rights. IIFB stressed that traditional knowledge is a cross-cutting issue, and should be reflected throughout the regime, including in any definition of misappropriation. The LMMC favoured cross-cutting references to traditional knowledge, as well as specific provisions under one or more articles of the regime. The INTERNATIONAL INSTITUTE FOR ENVIRONMENT AND DEVELOPMENT stressed the importance of benefit-sharing with communities and securing rights to biological resources to provide local incentives for conservation. ECOROPA, on behalf of civil society, supported inclusion of traditional knowledge in all relevant provisions of the regime, and the establishment of a legal support body, such as an ombudsperson, to address knowledge asymmetries. Co-Chair Casas said a compiled text would be available on Tuesday morning.

CAPACITY BUILDING: The AFRICAN GROUP explained that its submission provided for capacity-building requirements for governments, indigenous and local communities, academia and research institutions, and the private sector. The EU called on parties, international organizations, the private sector and NGOs to engage in capacity-building measures responding to needs, including of indigenous and local communities. The LMMC underscored that capacity building cannot replace compliance. JAPAN said capacity building should be undertaken through bilateral cooperation or the Global Environment Facility, and warned against new funding mechanisms. CANADA called for building capacity in better using genetic resources, so as to secure more benefits to be shared.

THAILAND stressed that the CBD Action Plan on Capacity Building for ABS should be the basis for capacity building under the international regime. COSTA RICA stressed,

inter alia: development of institutional capacity, human resources and information and communication technologies; international cooperation; indicators for evaluating parties' capacity; awareness raising; funding mechanisms; and South-South cooperation. The PHILIPPINES drew attention to recommendations of the Association of Southeast Asian Nations (ASEAN) Conference on Biodiversity, on: improving digitalization and tracking to combat biopiracy; capacity building to understand the economics of ecosystem services; and financing the operation of the international regime. CAMEROON stressed capacity building for harmonization of legislation, enforcing compliance, and tracking use of genetic resources.

The UN FOOD AND AGRICULTURE ORGANIZATION (FAO) noted that its Commission on Genetic Resources for Food and Agriculture, at its twelfth session, agreed on a resolution on ABS for genetic resources for food and agriculture, which stresses: willingness to cooperate with the CBD and its ABS Working Group; sectoral approaches; and options to accommodate existing and forthcoming ABS arrangements for genetic resources for food and agriculture. The INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE described progress under its Multilateral System, including current benefit-sharing projects with developing country farmers. NATURAL JUSTICE, on behalf of civil society, called for participatory capacity building that empowers indigenous and local communities to determine their own priorities. IIFB noted the need to enable indigenous peoples to participate effectively in the regime. Co-Chair Hodges said a compiled text will be available on Tuesday morning.

COMPLIANCE: The EU explained its proposal containing provisions on: an international understanding of misappropriation; obligations on parties to take action in case of misappropriation; and effective sanctions.

SWITZERLAND said that a definition of misappropriation, international access standards, disclosure requirements and exchange of information should be core elements of the compliance component of the international regime. IIFB stressed that states should respect customary laws, norms and protocols on traditional knowledge and associated genetic resources, and proposed a broad definition of misappropriation.

IN THE CORRIDORS

Delegates crowded into the opening plenary of ABS 8 on Monday morning, but for many their work in Montreal had begun days before. A number of regional and inter-regional consultations took place over the weekend, in addition to a series of bilateral meetings with the Working Group Co-Chairs and a well-attended informal session setting out procedural issues. It was widely agreed that these consultations, together with the positive mood engendered by the previous week's meeting of the Working Group on Article 8(j), were very helpful in building trust, with one delegate noting that "establishing trust has always been among the most difficult tasks in this process." A participant warned however that "the real negotiations will begin when we start streamlining the document – everyone likes to add text, but no one likes to take it away." With delegates applauding the 20th anniversary of the fall of the Berlin wall, the efficiency of first-day discussions had many wondering whether walls are to fall and bridges to be built in the coming days, with some pointing to potential for agreement on the capacity-building element of the regime and others to the "overwhelming majority" supporting a strong traditional knowledge component.