

## ABS 8 HIGHLIGHTS: WEDNESDAY, 11 NOVEMBER 2009

The Working Group met in a morning plenary to hear progress reports from the contact groups on traditional knowledge and capacity building, and to address procedural issues. The contact group on capacity building met briefly in the morning. Contact groups on compliance and traditional knowledge met in the afternoon and into the evening.

### PLENARY

The Co-Chairs of the contact groups on capacity building and traditional knowledge reported on progress and requested more time to complete their work. Working Group Co-Chair Hodges then proposed establishing a contact group on compliance, to be co-chaired by René Lefeber (the Netherlands) and Ricardo Torres (Colombia), with the task of integrating additional operative text on compliance into the Paris Annex. The EU suggested that the party who had submitted the text would indicate where it should be placed. Recalling the three-stage approach agreed to in Paris, BRAZIL reiterated that the Paris Annex (UNEP/CBD/WG-ABS/7/8) had benefited from two stages of negotiation already and, that at this final stage, the group was to decide whether and where new operational text should be included. He requested a ruling that text that does not fit in the framework of the Paris Annex not be included. The AFRICAN GROUP requested clear procedures and underscored that a number of submissions were missing from the non-paper on compliance circulated.

Following informal consultations, Working Group Co-Chair Hodges stated that the Paris Annex provides the structure, its integrity must be maintained and any new proposals should build upon it. As for procedure, he suggested that parties: identify which submission serve as the basis for further work, including bracketing text or introducing new elements into it; streamline text and remove overlap with existing text in the Paris Annex; and finally, build an updated version of the Paris Annex to form the basis of further negotiations.

Co-Chair Hodges further announced that all interventions on the nature of the regime will be included in the report of the meeting, along with wording drafted by the Co-Chairs on the basis of informal consultations, to reflect common understanding.

### CONTACT GROUPS

**CAPACITY BUILDING:** The contact group discussed a conference room paper (UNEP/CBD/WG-ABS/CRP.1). Co-Chair Sutera recalled that the African Group would provide reworded text on lists of capacity-building measures for governments, academia and the private sector. The EU said the headings of the Annex to Decision IX/12 should be included. Co-Chair Sutera confirmed that a revised CRP would include such headings, as well as the revised African text. The EU expressed concern that provisions on special capacity-building measures for indigenous and local communities go beyond the contact group mandate.

**COMPLIANCE:** The contact group conducted a first reading of additional proposals on compliance included in a non-paper, to decide whether they add value to the text of the Paris Annex and should be retained, rather than deleted. They also focused on identifying which proposal, in the case of multiple submissions, should serve as the basis for further work. COLOMBIA withdrew its submissions in favour of the LMMC proposals. A submission by the Economic and Social Research Council Centre for Economic and Social Aspects of Genomics (CESAGEN) with regard to awareness-raising activities was sponsored by the African Group and retained.

On an international understanding of misappropriation/misuse, the EU requested retaining its proposal as the basis for negotiations. Recalling a ruling not to address definitions at this stage, the LMMC proposed “parking” submitted proposals for consideration in plenary, including an IIFB proposal sponsored by the African Group. The EU, supported by JAPAN, AUSTRALIA, CANADA and NORWAY, noted that the Paris Annex includes a heading on “international understanding of misappropriation/misuse” and stressed that the contact group had the mandate to address the element. Following a lengthy debate, delegates decided to proceed with consideration of remaining elements and return to the issue at a later stage.

On sectoral menus of model clauses for material transfer agreements, delegates retained a CESAGEN proposal sponsored by the African Group. On an element requiring research funding agencies to oblige users receiving research funds to comply with specific ABS requirements, delegates debated at length whether an additional proposal submitted by the EU should be retained. The LMMC and others stressed that the EU proposal is similar to the text in the Paris Annex, while the EU insisted that their proposal remain as a second option. Delegates eventually agreed to take note of the elements of the EU proposal which should later be added to the text in the Paris Annex.

The group retained a CESAGEN proposal on a unilateral declaration by users, sponsored by the African Group. With regard to mechanisms for information exchange, delegates discussed, and eventually retained, an LMMC proposal regarding additional items on the minimum information to be contained in a certificate of compliance, including: a unique identifier assigned by the competent national authorities; confirmation of compliance with domestic access requirements, including prior informed consent (PIC) and mutually agreed terms (MAT); evidence that PIC and MAT have been fulfilled when access to traditional knowledge associated to genetic resources has been accessed; and excluding confidential information. CANADA requested retaining a proposal by BIO and PhRMA stating that parties shall ensure that confidential information is fully protected according to national laws consistent with international agreements. The AFRICAN GROUP supported a CESAGEN proposal on facilitating exchange of experiences in the use of ABS licenses, and making available through the Clearing-House Mechanism customary laws, community protocols and ABS licenses. Discussions continued into the evening.

**TRADITIONAL KNOWLEDGE:** The contact group addressed a revised non-paper paragraph by paragraph, indicating whether each should be considered as preambular or operative text. Delegates marked as preambular a reference to the international regime upholding the rights of indigenous peoples and local communities to benefit-sharing, and CANADA bracketed it. CANADA also requested bracketing all references to PIC and to “genetic resources and/or” associated traditional knowledge throughout the text. Delegates then agreed to focus on removing duplication and integrating different options before proceeding with bracketing.

Delegates agreed with the EU and MEXICO to work on the basis of an operative paragraph on parties taking legislative, administrative or policy measures to ensure sharing with indigenous and local communities benefits arising from commercial utilization. They further added references that: these measures include PIC and MAT; the development or the use of genetic resources is integrally linked to the traditional knowledge of specific indigenous and local communities; and a clarification that the provision applies whether or not communities own the genetic resources. The AFRICAN GROUP proposed to delete, but delegates eventually retained, an alternative option that parties take measures to encourage holders of traditional knowledge and those seeking access to provide for benefit-sharing in MAT.

Delegates agreed that the following paragraphs are operative: conditions for benefit-sharing be stipulated in MAT with the active participation of indigenous and local communities; and users and indigenous and local communities define the terms for benefit-sharing. The EU considered that text referring to traditional knowledge accessed prior to entry into force of the CBD related to scope, but agreed to retain it as an operative paragraph. NEW ZEALAND and AUSTRALIA marked as preambular a reference to benefit-sharing being guided by respect for traditional knowledge holders. On measures to address transboundary traditional knowledge, delegates retained a reference to address benefit-sharing through bilateral or multilateral agreements, and an operative paragraph on development of minimum standards for MAT. Delegates also agreed with the IIFB proposal to retain text stating that indigenous peoples and local communities have the right to benefit-sharing also in cases where states are the owners of genetic resources, under national and international law. Delegates

added an operative paragraph on the need to address traditional knowledge accessed *ex situ*. The AFRICAN GROUP proposed and delegates agreed to move: a paragraph on mechanisms for consultation with relevant stakeholders to the section on access in accordance with community-level procedures; and another on ensuring that potential users honor their obligations to the section on avoiding coerced access.

NEW ZEALAND raised the broader question whether traditional knowledge would be a separate element in the regime or addressed under other elements. BRAZIL noted that the two approaches are not mutually exclusive. Delegates agreed to retain a reference to a legal support body, such as an ombudsperson, with a note that the text might be placed under compliance.

The AFRICAN GROUP proposed to move preambular paragraphs on the inseparability of traditional knowledge and genetic resources and a holistic approach to genetic resources to a section on general principles. Further references to the duties of states to protect indigenous rights under the UN Declaration on the Rights of Indigenous Peoples were retained as preambular language.

For a section pertaining to measures to ensure that access to traditional knowledge takes place in accordance with community level procedures, UGANDA with BRAZIL merged text on parties taking necessary measures to recognize traditional forms of organization, and respecting indigenous peoples’ and local communities’ customary laws, norms and protocols. Delegates retained operative text on: parties supporting community protocols regulating access to traditional knowledge; a requirement that MAT be developed at the community level when traditional knowledge associated with genetic resources is accessed; and parties establishing consultation mechanisms to inform users of traditional knowledge of their obligations.

Regarding a section on measures to address the use of traditional knowledge in benefit-sharing arrangements, delegates agreed to retain only wording that benefits be based on MAT agreed with the competent national authority with the participation of indigenous and local communities.

Regarding identification of best practices, the AFRICAN GROUP proposed moving an operative paragraph on ensuring that any documentation of traditional knowledge be subject to indigenous PIC to a section on avoiding coerced access; the EU to a section on access with approval of knowledge holders; and BRAZIL to a section on PIC and MAT. Delegates agreed to retain the text in its current location noting duplication with other sections. Discussions continued into the night.

### IN THE CORRIDORS

Delegates gathered in a morning plenary revving to launch into the third and final stage in the negotiations on compliance, access, and benefit-sharing, as agreed to in Paris. Instead, it seemed that the Working Group had jumped the gun and they had to be called back to the starting line to clarify what the third stage of negotiations really entailed. It became apparent that handling new operative text submitted since Paris posed a problem, with different regions wanting to take different approaches. Throughout the day, a number of delegates wondered how many readings of the text each stage would now require, with one noting “it seems like instead of taking one step forward the Working Group is going two steps back.” Another participant warned that firm decisions on procedure need to be made. A more optimistic delegate noted however that “everybody is in a mood for hard work, and that’s the important thing – the technical glitches will work themselves out.”