

## ABS 9 HIGHLIGHTS: MONDAY, 22 MARCH 2010

Delegates to the ninth 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, all regional groups expressed their willingness to work on the basis of a draft protocol text tabled by the Co-Chairs. In the afternoon, delegates identified specific issues of concern in the text. A celebration of the International Year of Biodiversity was hosted by the Government of Colombia in the evening.

### PLENARY

**OPENING:** Working Group Co-Chair Timothy Hodges (Canada) opened the meeting and expressed his gratitude to the host Government of Colombia. Yadir Salazar, Ministry of Foreign Affairs of Colombia, welcomed delegates and urged them to conclude negotiations, stressing the need for cooperation on monitoring and enforcing compliance with national ABS legislation. Working Group Co-Chair Fernando Casas (Colombia) reported on the intersessional work completed since ABS 8, noting that parties have never been so close to reaching consensus, but cautioning not to underestimate the task ahead. Jochen Flasbarth, on behalf of the German Presidency of the Conference of the Parties (COP), called on delegates to focus on key issues and show flexibility in reaching agreement.

CBD Executive Secretary Ahmed Djoghlaif described how indigenous peoples in Colombia view nature, life and culture as intrinsically related, and urged to finalize the ABS protocol which will contribute to reshaping man's relationship with nature. In a video message, UN Secretary-General Ban Ki-moon stressed the need for joint action to protect biodiversity in the face of ecosystem loss. Carlos Martin-Novella, UN Environment Programme, stressed that there will be no post-Nagoya negotiation process, and that adopting the protocol at COP 10 would be the most appropriate celebration of the International Year of Biodiversity.

**ORGANIZATIONAL MATTERS:** Delegates adopted the provisional agenda (UNEP/CBD/WG-ABS/9/1 and Add.1). On the organization of work, Co-Chair Hodges reported that consultations since ABS 8 clarified that the Montreal Annex (UNEP/CBD/WG-ABS/8/8) was a significant step forward, but unsuitable to finalize negotiations at ABS 9. He explained that, upon a request made during the Co-Chairs Informal Inter-

regional Consultation, the Co-Chairs circulated non-papers containing a draft protocol and a draft COP decision, and a new guidance note. He proposed to use the draft protocol as the basis for negotiations, noting that the Montreal Annex will function as a safety net. He proposed that: delegations aim at improving the draft protocol rather than adding text from the Montreal Annex; the plenary provide views on specific areas of concern that may require improvements in the draft protocol; contact groups be established to identify solutions to these issues as non-bracketed text; and text agreed in plenary be integrated in the draft protocol, using brackets only if absolutely necessary. He encouraged delegates to produce a "meaningful" and "explainable" draft protocol in good faith, and underscored the role of the draft COP decision to address not only procedural but also substantive items.

**STATEMENTS:** All regional groups supported the Co-Chairs' proposal and expressed willingness to work on the basis of the draft protocol text. CANADA noted that the draft COP decision should present a range of options on the instrument/instruments of the ABS regime, without prejudice to its/their nature. Malaysia, on behalf of DEVELOPING COUNTRIES, including Latin America and the Caribbean (GRULAC), the Asia-Pacific Group, the African Group and the Like-Minded Megadiverse Countries (LMMC), noted that the nature of the draft protocol is not up for negotiation, and recalled understanding at the Friends of the Co-Chairs' meeting on ensuring benefit-sharing from derivatives and on placing compliance at the core of the protocol. Spain, for the EU, drew attention to the Conclusions of the Council of Environment Ministers supporting work towards a protocol to the CBD. NEW ZEALAND announced their support for work towards a legally-binding protocol to the CBD on the assumption that its provisions will "make legal sense" and "be able to be implemented." SWITZERLAND expressed confidence that a protocol can be adopted by COP 10. Malawi, on behalf of the AFRICAN GROUP, called for a holistic approach to benefit-sharing that includes all biological resources, and urged the Co-Chairs to reflect the contribution of the Article 8(j) Working Group regarding ABS in the draft protocol. Mexico, on behalf of GRULAC, recalled the common understanding on the protocol's main elements reached during inter-regional consultations.

The INTERNATIONAL INDIGENOUS FORUM ON BIODIVERSITY (IIFB) expressed concern that indigenous rights and interests have not been taken into account in the draft protocol text despite their inclusion in the Montreal

Annex and called for: indigenous prior informed consent (PIC) for access to traditional knowledge; recognizing indigenous rights over genetic resources; integration of traditional knowledge in provisions on compliance; and recognition of the role of customary laws. The CONSULTATIVE GROUP ON INTERNATIONAL AGRICULTURAL RESEARCH recommended that the international regime create space for the development of more specialized ABS norms in the future. The LIKE-MINDED IN SPIRIT GROUP OF WOMEN advocated for the inclusion of gender perspectives in the draft protocol. The INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE (ITPGR) suggested ensuring coherence among relevant international legal obligations. Highlighting the need for building national capacity in implementation, the UNITED NATIONS UNIVERSITY recalled its Bioprospecting Information Resource and the Traditional Knowledge Initiative.

**INTERNATIONAL ABS REGIME:** Co-Chair Casas invited parties to identify key issues for further consideration with respect to the draft protocol text. Brazil, for the LMMC, called for a streamlined and comprehensive draft protocol with compliance at its centre to include: PIC and mutually agreed terms (MAT) with regard to traditional knowledge; recognition of country of origin; clear obligations regarding financial resources and capacity; and accurate provisions on monitoring and an international certificate of compliance. GRULAC prioritized discussion on: derivatives; referring to the country of origin as the appropriate terminology; PIC of indigenous and local communities as a precondition for access to traditional knowledge; means of implementation, including financial resources; and non-parties' obligations.

The AFRICAN GROUP stressed that the draft protocol should include tracking and monitoring of the utilization of genetic resources and a dispute settlement procedure. Namibia, on behalf of the AFRICAN GROUP, further provided a list of priority issues regarding the protocol's scope, including derivatives. He stressed the need to effectively safeguard the rights of indigenous and local communities, including through compliance measures relating to traditional knowledge, and to devise specific rules dealing with non-parties. INDONESIA prioritized discussions on derivatives and products of genetic resources, as well as building national capacities and reporting systems.

SWITZERLAND requested discussions on: utilization of genetic resources in relation to access and benefit-sharing; the role of monitoring and tracking for transparency and compliance; compliance with MAT; and, with NORWAY and AUSTRALIA, traditional knowledge, compliance, and the regime's relationship with other agreements and processes. The Cook Islands, for the ASIA-PACIFIC GROUP, emphasized: including derivatives in the regime's scope; safeguarding parties' sovereign rights in relation to access; financial mechanism and financial resources; technology transfer; and non-parties.

YEMEN stressed clarifying when transfers of genetic resources are legal, and adding capacity building for research. Serbia, for CENTRAL AND EASTERN EUROPE, stressed the need to reach common understanding on access, benefit-sharing and derivatives. SAUDI ARABIA highlighted derivatives, technology transfer, and building capacity for research and development to add value to genetic resources. The REPUBLIC OF KOREA called for focus on the objective, scope, compliance with national ABS legislation and MAT, and monitoring and tracking.

MALAYSIA called for: adding clear obligations to respect national sovereignty over resources and community rights over traditional knowledge; strengthening rather than weakening CBD provisions on technology transfer; and giving parties the right to maintain or develop arrangements ensuring food security without undermining the protocol's objectives. The PHILIPPINES requested clarifying that every use must be subject to benefit-sharing and every access subject to PIC of the party concerned and, if appropriate, of the community.

CANADA expressed concern with: the scope not addressing the protocol's relationship with other instruments, temporal and geographic scope, and the issue of derivatives; patent offices as check-points; enforcement of national ABS laws; lack of definition of misappropriation; and insufficient flexibility for national legal frameworks. NEW ZEALAND proposed: ensuring flexibility for parties on traditional knowledge; balancing the interests of users and providers; dealing with certain compliance measures in other international fora, such as the World Intellectual Property Organization; and clarifying the protocol's relationship with the ITPGR and the Antarctic Treaty. THAILAND stressed that the international regime should allow for the advancement of science and biotechnology, and that derivatives should be included in the scope of the regime to capture technological advancements.

The EU outlined as priority issues: clarifying the temporal and geographic scope, as well as the relationship with other international processes either under scope or in a separate provision; access, including a list of access requirements, and access for research; and concerns regarding successful implementation of check points as well as certain compliance measures. ARGENTINA emphasized mutual supportiveness of international processes. JAPAN called for consistency throughout the draft protocol. The IIFB asked to include: references to indigenous rights in the preamble and the provisions on benefit-sharing and access; and an indigenous PIC requirement in the provision on compliance. A representative of CIVIL SOCIETY presented key points to be included in the protocol: recognition of the rights of indigenous peoples as referenced in UN human rights agreements; traditional knowledge associated with genetic resources as a cross-cutting issue; a broad scope to cover all uses of genetic resources; and clear and binding compliance rules.

### **IN THE BREEZEWAYS**

The winds of change were blowing through the breezeways in the Valle del Pacifico Events Center and into plenary as delegates supported working on the basis of the Co-Chairs' streamlined text for a draft protocol. Diverging expectations were expressed on how far this refreshing impetus would take them. Several delegates praised the potential of the draft protocol to enable well-structured negotiations on the regime's main components. Others feared, however, that working on the basis of a "middle of the road" document would result in a loss of substance, which the developing world and indigenous peoples had worked hard to secure. As a consequence, some predicted the reintroduction of bracketed language from the Montreal Annex that would result in an equally convoluted and "unworkable" document. If that were to happen as late as Friday, one seasoned delegate warned that this could "lead to a catastrophe." On a more positive note, many expressed optimism about the Co-Chairs' proposal to isolate key controversial issues before engaging in textual negotiations, hoping that this will keep delegates focused on the broader picture – no matter how challenging this is.