

RESUMED ABS 9 HIGHLIGHTS: SATURDAY, 10 JULY 2010

Delegates to the resumed 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 a morning plenary to hear regional statements and address organizational matters, including reconvening the inter-regional negotiating group established during the first part of the meeting in Cali, Colombia. In the afternoon, the inter-regional group started negotiating the draft protocol article by article.

PLENARY

Working Group Co-Chair Timothy Hodges (Canada) welcomed delegates and thanked: Japan for funding the resumed ABS 9 session; Canada, Spain and Switzerland for funding developing country participation; and Norway for funding ENB coverage, underlining its importance for the transparency of the process. In a video message, UN Goodwill Ambassador for Biodiversity Edward Norton reminded delegates that all need to accept special responsibility to act now to prevent irreversible biodiversity loss. Working Group Co-Chair Fernando Casas (Colombia) said he expects high-level commitment from delegates to reach a definitive agreement. Noting previous successes in CBD negotiations held in Montreal, Hodges called for negotiations in good faith in the spirit of compromise, and stressed that postponing difficult issues to be resolved by the Conference of the Parties (COP) is not an option.

COP 10 Ambassador Kiyoshi Araki (Japan) called on delegates to engage in text-based negotiations and tackle difficult issues, so that any outstanding issues can be addressed through involvement of ministers at COP 10. Brazil, for the LIKE-MINDED MEGADIVERSE COUNTRIES (LMMC), stressed the need to maintain the integrity of the draft protocol contained in the Cali Annex (UNEP/CBD/WG-ABS/9/3, Annex I). He said that balance needs to be achieved in the negotiation of every article, stressing the importance of inclusion of derivatives and appropriate treatment of traditional knowledge (TK). Malawi, for the AFRICAN GROUP, and Mexico, for the LATIN AMERICAN AND CARIBBEAN GROUP (GRULAC), reiterated the need for a legally binding ABS protocol. The AFRICAN GROUP called for clear rules of engagement for the negotiations.

Serbia, for CENTRAL AND EASTERN EUROPE (CEE), prioritized: a legally binding instrument focusing on the utilization of genetic resources and derivatives, compliance,

capacity building, and benefit-sharing, taking into account conservation and sustainable use; and harmony with other processes in other international fora. SAUDI ARABIA emphasized technology transfer.

New Zealand, for the LIKE-MINDED IN SPIRIT GROUP OF WOMEN, underscored the need to reflect a gender perspective in the text of international regime and to ensure women's full and effective participation at all levels of policy-making and implementation of the CBD objectives. Malaysia, on behalf of the LIKE-MINDED ASIA-PACIFIC GROUP OF DEVELOPING COUNTRIES, emphasized compliance as the reason for existence and value added of an ABS protocol. The EUROPEAN UNION (EU) called for balance of rights and obligations under the instrument, as well as vis-à-vis other international instruments.

ORGANIZATIONAL MATTERS: Co-Chair Hodges explained that meeting officers remain as elected in Cali, with the COP Bureau serving as the meeting Bureau and Somaly Chan (Cambodia) as the meeting rapporteur. The Working Group then adopted the agenda (UNEP/CBD/WG-ABS/9/1/Rev.1).

Regarding the organization of work, Hodges proposed that negotiations continue on the basis of the Cali Annex, aiming to improve consensus text. He suggested reconvening the inter-regional negotiating group formed in Cali, to work in a roundtable format and comprise: five representatives for each UN region; two representatives each for indigenous and local communities, civil society, industry and public research; and the representatives of the current and upcoming COP Presidencies. He explained spokespersons and representatives can change freely, and discussions will be open to the attendance of all Working Group participants. The Working Group approved reconvening the inter-regional group, to be co-chaired by the Working Group Co-Chairs.

Co-Chair Casas then presented the rules of engagement, according to which: parties are expected to start negotiating the draft protocol article by article; and an article will be considered agreed if there are no objections, bearing in mind that nothing is agreed until everything is agreed. Calling on parties to "exercise maximum restraint" and propose text that will also accommodate the views of others, he suggested using brackets if there is no compromise, for further consideration at a later stage. He proposed that: the inter-regional group addresses Articles 1-19, with the exception of use of terms (Article 2), during the next three days; a plenary is held on Tuesday, 13 July 2010, to

assess progress; and the inter-regional group resumes to finalize negotiations, including the preamble, use of terms and final clauses (Articles 20-31).

Responding to Canada's questions, Co-Chair Casas clarified that delegates may propose new text or text based on submissions recorded in the Cali meeting report, but explain how this will improve the draft protocol. In response to a question by the EU, he confirmed that parties can bracket entire articles. Regarding Brazil's concerns, Casas reiterated that parties should not suggest language that reflects only their own positions, since doing so would lead to heavily bracketed text rather than compromise.

INTER-REGIONAL NEGOTIATING GROUP

OBJECTIVE (ARTICLE 1): GRULAC, the CEE and the LMMC supported the text in its current form on ensuring fair and equitable benefit-sharing from the utilization of genetic resources, with the PHILIPPINES requesting to add derivatives. The EU and the REPUBLIC OF KOREA proposed adding reference to facilitation of access to genetic resources. The AFRICAN GROUP, supported by GRULAC, proposed instead using the wording of the third objective in CBD Article 1 (Objectives). NEW ZEALAND pointed to the interconnectedness of the CBD objectives, with CANADA proposing to clarify that the objective is benefit-sharing, rather than "ensuring" benefit-sharing, and to add reference to contributing to the first and second CBD objectives at the end of the article. Delegates agreed on the objective of the protocol being "the fair and equitable sharing of benefits arising out of the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and technologies, and by appropriate funding, thereby contributing to the conservation of biological diversity and sustainable use of its components."

SCOPE (ARTICLE 3): The LMMC, the LIKE-MINDED ASIA-PACIFIC and the CEE requested reference to derivatives. NEW ZEALAND opposed extending the scope to biological resources, derivatives and products. NORWAY suggested derivatives are covered under reference to "any utilization" of genetic resources.

The EU proposed that the protocol apply to genetic resources acquired after the protocol's entry into force, with JAPAN and NEW ZEALAND opposing retroactive application of the protocol. The AFRICAN GROUP said users have a moral obligation to share benefits from new and continued uses, adding that coverage of uses after the protocol's entry into force does not suggest retroactivity. NORWAY suggested that parties "encourage" users to do so. The LIKE-MINDED ASIA-PACIFIC and PERU reminded delegates that there has been a benefit-sharing obligation since the CBD's entry into force.

CANADA proposed excluding from the protocol's scope: genetic resources beyond national jurisdiction; genetic resources falling under Annex I of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGR) for CBD parties that are ITPGR parties; genetic resources when "utilized solely as a commodity"; and TK associated with genetic resources acquired prior to the protocol's entry into force. The AFRICAN GROUP cautioned against undermining the comprehensiveness of the regime and violating CBD Article 3 on states' responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of areas beyond national jurisdiction; and recommended extending the scope to pre-CBD accessions to ensure coverage of *ex situ* collections. The EU suggested exclusion of genetic resources beyond the

limits of national jurisdiction or those located in the Antarctic Treaty Area; and addressing the relationship with the ITPGR and the issue of pathogens in a separate provision on the relationship with other instruments.

CANADA proposed excluding human genetic resources. The AFRICAN GROUP preferred reviewing Decision COP II/11 (Access to Genetic Resources) which reaffirms that human genetic resources are not included within the CBD framework, rather than addressing the issue in the protocol. AUSTRALIA, opposed by the AFRICAN GROUP, drew attention to human pathogens as a possible exclusion. NEW ZEALAND suggested addressing human genetic resources and pathogens under a different article, and NORWAY suggested that human resources be addressed in a COP decision.

Co-Chair Casas proposed referring to genetic resources within the scope of the Convention rather than drafting a list of inclusions and exclusions. NORWAY and NEW ZEALAND suggested that genetic resources in areas beyond national jurisdiction are covered by CBD Article 4 (Jurisdictional Scope), whereas the LIKE-MINDED ASIA-PACIFIC argued they are addressed by Article 22.2 (implementation consistent with the UN Convention on the Law of the Sea). JAPAN proposed to deal with exclusions in other articles. CANADA explained that exclusions are needed for legal certainty, they are not meant to limit the protocol.

NEW ZEALAND proposed as streamlined text that the protocol apply to genetic resources and associated TK within the scope of the CBD, that were acquired after the protocol's entry into force, and to the benefits arising from the utilization of such resources and knowledge. After some discussion, the proposal was not retained. Negotiations will continue on Sunday.

IN THE CORRIDORS

Aware that this is the "make or break" meeting of the ABS Working Group – the very last chance to negotiate an ABS instrument for adoption at COP 10 – delegates finally engaged in textual negotiations of the draft protocol. The cheers that erupted when the group agreed on the very first article, however, turned out to be more due to the last goal scored at the World Cup small final, than to finding consensus on language by drawing from CBD Article 1. Still, this first step towards building consensus marked a change in the atmosphere of the negotiations, since this very same compromise had been previously proposed but not accepted. Many delegates generally drew reassurance that overcoming some of the many outstanding issues is possible, thanks to a renewed collaborative attitude nurtured by clearer rules of engagement. Others pointed to the stumbling blocks still lying ahead, such as checkpoints, temporal scope and relationship with other agreements, noting that, just as in football, a one-zero lead does not mean that one has won the game.

As delegates headed towards the evening reception, the halls were abuzz with speculations about Sunday's World Cup final. Most delegates seemed to bet on Spain, in line with the prediction of Paul the Octopus, a cephalopod with an amazing record of predicting the outcomes of World Cup games. Paul's gift of foresight clearly has commercial potential, which led some to wonder if this could change positions on the inclusion of marine biodiversity in areas beyond national jurisdiction into the protocol's scope.