

## RESUMED ABS 9 HIGHLIGHTS: THURSDAY, 15 JULY 2010

Delegates met in the inter-regional negotiating group throughout the day and into the night, to address provisions on benefit-sharing and access, among others, on the basis of the revised draft tabled on Tuesday, and the preamble on the basis of the Cali Annex. Informal groups met on compliance with mutually agreed terms (article 14) and on the concept of utilization of genetic resources in the context of benefit-sharing (article 4.2). A closed meeting of regional representatives was held in the afternoon.

### INTER-REGIONAL NEGOTIATING GROUP

#### BENEFIT-SHARING (ARTICLE 4): Paragraph 1:

The EU proposed adding to a bracketed reference to benefit-sharing from derivatives “where mutually agreed between the provider and the user.” The LIKE-MINDED ASIA PACIFIC and GRULAC opposed qualifying benefit-sharing from derivatives. GRULAC argued that benefit-sharing is a self-standing obligation and proposed inserting a footnote on the definition of utilization. SWITZERLAND proposed to simplify the language by stating that benefits shall be shared with the party providing the genetic resources. The AFRICAN GROUP, supported by the PHILIPPINES, stressed that there is a benefit-sharing obligation for every use. CANADA proposed to move parts of the paragraph to the preamble or to reformulate it as an obligation.

**Paragraph 2:** GRULAC requested insertion of the proposed definition of utilization of genetic resources. The EU recommended tackling utilization in an informal setting with regard to all relevant provisions of the protocol. The LIKE-MINDED ASIA PACIFIC emphasized that the concept of utilization is central to developing countries’ efforts to receive benefits.

Co-Chair Casas proposed that an informal group produce text on utilization of genetic resources in the context of article 4.2. The EU requested that the group focus on all relevant articles of the protocol, while the LMMC, the LIKE-MINDED ASIA PACIFIC and GRULAC preferred prioritizing discussion of article 4.2. Delegates eventually agreed to the latter approach.

**PREAMBLE:** The EU and CANADA proposed wording to ensure that reference is made to all COP decisions mandating the ABS Working Group to elaborate and negotiate an international regime on ABS, with the IIFB also referring to the role of the Article 8(j) Working Group in the process.

Several new preambular paragraphs were proposed. The AFRICAN GROUP proposed stating that fair and equitable benefit-sharing is the primary incentive available for sustainable use and conservation of biodiversity. The IIFB proposed noting the significance of the UN Declaration on the Rights of Indigenous Peoples, which was supported by the EU adding “in relation to this protocol.” The LMMC suggested reaffirming the sovereign rights of states over their natural resources.

The EU asked to acknowledge the fundamental role of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGR) and the FAO Commission on Genetic Resources for Food and Agriculture (CGRFA). SWITZERLAND proposed recalling the ITPGR Multilateral System as a legally binding international ABS instrument developed in harmony with the CBD.

CANADA suggested affirming that nothing in the protocol shall be interpreted as affecting the granting or the exercise of intellectual property rights (IPRs). The LMMC proposed recognizing that IPRs play an important role in benefit-sharing, and need to be supportive of, and not run counter to, the three CBD objectives.

CANADA requested acknowledging ongoing related work in various forums including the ITPGR, the CGRFA, the UN Working Group on marine biodiversity in areas beyond national jurisdiction, and the World Health Organization’s Working Group on pandemic influenza preparedness. AUSTRALIA proposed language on the importance of ensuring access to human pathogens for public health preparedness and response purposes. The AFRICAN GROUP proposed acknowledging the ongoing work of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore of the World Intellectual Property Organization, noting that the protocol is the comprehensive instrument on ABS. Pending agreement on the relationship with other instruments, NORWAY proposed: recognizing that this protocol and other relevant international agreements should be mutually supportive; emphasizing that this protocol shall not be interpreted as implying a change in the rights and obligations of a party under any existing international agreement; and understanding that the above is not intended to subordinate this protocol to other international agreements.

The AFRICAN GROUP suggested noting the interrelationship between genetic resources and TK and the inseparable nature of these resources for ILCs. The LMMC proposed underlining

the importance of TK and its development for biodiversity conservation and sustainable use. INDIA highlighted that TK may be owned by ILCs and countries, as applicable. The LIKE-MINDED IN SPIRIT GROUP OF WOMEN proposed recognizing the vital role of women in ABS.

**PROCEDURAL ISSUES:** Following a closed meeting of regional representatives, proposed by Canada, delegates heard reports on the informal groups. SWITZERLAND reported on utilization of genetic resources in the context of benefit-sharing, noting general agreement that reference to utilization would cover most of the benefit-sharing scenarios. He recommended further discussion of cases of non-compliance and TK associated with genetic resources in the inter-regional group. INDIA reported back that the informal negotiations on compliance with MAT (article 14) had reached agreement on all paragraphs, with the last being subject to confirmation by one group. The AFRICAN GROUP pointed out that they had conceded some previously held positions, but made acceptance of the article contingent on the outcome in the related article on an international ABS ombudsperson (Article 14 bis).

Co-Chair Casas proposed for the inter-regional group to get to the core of the negotiation, by addressing: the link between utilization of genetic resources and benefit-sharing; temporal scope; access; and disclosure and certificates with regard to compliance. The LIKE-MINDED ASIA PACIFIC and the AFRICAN GROUP expressed hope that exchange on these issues will help bridge differences on key issues and also resolve others. The EU further identified as key issues: the relationship with other international instruments; the entire provision on scope; and TK. The AFRICAN GROUP argued that all those issues are part of a package. The EU and the LIKE-MINDED ASIA PACIFIC prioritized a second reading of the articles on access and on research and emergency situations.

**ACCESS (ARTICLE 5): Paragraph 1:** Delegates agreed to refer to sovereign rights over “natural resources.” The EU requested retention of bracketed references to relevant CBD provisions; and GRULAC to references to “subject to national legislation.”

**Paragraph 2:** Delegates discussed, without reaching agreement, whether parties shall take measures when they “require” PIC, which was supported by CANADA and the EU, or “unless they waive” their right to PIC, which was supported by the AFRICAN GROUP. The EU noted the need to enact rules at domestic level to receive benefits and to activate the compliance-related obligation under the protocol.

With regard to a list of criteria for parties’ measures on access, delegates discussed language on non-discrimination in access applications, and establishing MAT at the time of access, without reaching agreement. Delegates accepted language proposed by Switzerland on providing the information on how to apply for PIC; and by Japan and Canada on providing for a clear and transparent written decision by a competent national authority in a reasonable period of time. Clauses on simplified procedures for non-commercial research and criteria or processes for communities’ PIC remain outstanding pending consultations.

SWITZERLAND asked to retain a clause that the cost for obtaining PIC decisions does not exceed the actual cost of processing the application. The LMMC, instead, proposed to include it in the clause on timely decisions, noting that they should also be cost-effective. GRULAC asked to bracket the entire paragraph on measures to be taken by parties requiring

PIC. Following a lengthy discussion and informal consultations, GRULAC agreed to remove the brackets. Negotiations continued into the night.

#### **INFORMAL GROUP ON COMPLIANCE WITH MAT (ARTICLE 14)**

On requiring parties to take measures, as appropriate, to address cases of alleged non-compliance, delegates discussed whether to delete reference to “cases of alleged non-compliance,” which was initially opposed by most developing country groups. Cautioning that measures in relation to MAT should not interfere with domestic contract law procedures, developed countries suggested referring to “measures regarding non-compliance with MAT,” which was agreed. On enforcement of foreign judgements, delegates agreed that parties “promote the utilization of mechanisms regarding mutual recognition and enforcement of foreign judgments and arbitral awards.” The group also agreed to a reference to cooperation between parties, after clarifying that it refers to assisting parties making claims, rather than to compliance with MAT. The group agreed to merge references to facilitating access to justice and providing support to those seeking redress. Delegates also decided that the COP/MOP review the article’s effectiveness in accordance with article 26 (assessment and review).

#### **IN THE CORRIDORS**

As the clock was ticking away, delegates started speculating about the next steps. While most acknowledged that unprecedented progress has been made at the resumed session, they were also well aware of the limited room left for reaching compromise at this meeting. As one put it, “we are solving many issues, but we are not getting anywhere closer on the cross-cutting ones.” Others reported that several countries had exhausted their negotiating instructions, thus making further progress nearly impossible. With major issues thus still outstanding (such as scope, derivatives, traditional knowledge and measures to support compliance), several felt that the text is clearly not ripe for adoption by the COP, in particular if the final touches are expected to be put by a ministerial segment.

Notwithstanding the lingering question as to how COP 10 will live up to the pressure to deliver on the negotiation of the ABS protocol, the mood continued to be constructive. Many considered the message inside the fortune cookie awarded to the African Group for an outstanding performance in accommodating the concerns of others – “Great things are about to happen to you!” – as the positive oracle needed for the last push in the negotiations.

**ENB SUMMARY AND ANALYSIS:** The *Earth Negotiations Bulletin* summary and analysis of the resumed ABS 9 will be available on Monday, 19 July 2010 online at: <http://www.iisd.ca/biodiv/rabs9/>