

TENTH MEETING OF THE CONFERENCE OF THE PARTIES TO THE CONVENTION ON BIOLOGICAL DIVERSITY: 18-29 OCTOBER 2010

The tenth meeting of the Conference of the Parties (COP 10) to the Convention on Biological Diversity (CBD) opens today in Nagoya, Japan, following the fifth Meeting of the Parties (COP/MOP 5) to the Cartagena Protocol on Biosafety (11-15 October 2010), the meeting of the Interregional Negotiating Group (ING) on access and benefit-sharing (ABS) (13-16 October 2010) and the second resumed ninth meeting of the *Ad Hoc* Open-ended Working Group on ABS (16 October 2010).

During this two-week meeting, the COP will consider a series of strategic, substantive, administrative and budgetary issues. Among several items, the meeting is expected to adopt an international protocol on ABS; assess achievement of the target to reduce significantly the current rate of biodiversity loss by 2010; adopt a new strategic plan and a multi-year programme of work for the Convention; consider issues related to cooperation with other conventions, organizations and initiatives; and address substantive issues, including on marine and coastal biodiversity, biodiversity and climate change, forest biodiversity, biofuels, and Article 8(j) (traditional knowledge).

A series of meetings and events will be held concurrently with CBD COP 10, including: the Rio Conventions' Ecosystems and Climate Change Pavilion, the fair on experiences and best practices in communication, education and public awareness, and more than 300 side-events (18-29 October 2010); the City Biodiversity Summit (24-26 October 2010); the Parliamentarians and biodiversity meeting (25-26 October 2010); and the COP 10 High-level segment (27-29 October 2010).

A BRIEF HISTORY OF THE CBD

The CBD was adopted on 22 May 1992, and entered into force on 29 December 1993. There are currently 193 parties to the Convention, which aims to promote the conservation of biodiversity, the sustainable use of its components, and the fair and equitable sharing of benefits arising from the use of genetic resources. The COP is the governing body of the Convention.

COP 1: At its first meeting (November - December 1994, Nassau, the Bahamas), the COP set the general framework for the Convention's implementation, by establishing the Clearing House Mechanism (CHM) and the Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA), and by designating the Global Environment Facility (GEF) as the interim financial mechanism.

COP 2: At its second meeting (November 1995, Jakarta, Indonesia), the COP adopted a decision on marine and coastal biodiversity (the Jakarta Mandate) and established the Open-

ended *Ad Hoc* Working Group on Biosafety to elaborate a protocol on biosafety, specifically focusing on transboundary movement of living modified organisms (LMOs) that may have an adverse effect on biodiversity.

COP 3: At its third meeting (November 1996, Buenos Aires, Argentina), the COP adopted work programmes on agricultural and forest biodiversity, as well as a Memorandum of Understanding with the GEF, and called for an intersessional workshop on Article 8(j) and related provisions.

COP 4: At its fourth meeting (May 1998, Bratislava, Slovakia), the COP established a Working Group on Article 8(j) and a panel of experts on ABS, and adopted the Global Taxonomy Initiative (GTI) and a work programme on marine and coastal biodiversity, as well as decisions on: inland water, agricultural and forest biodiversity, and cooperation with other agreements.

EXCOP: Following six meetings of the Biosafety Working Group between 1996 and 1999, delegates at the first Extraordinary Meeting of the COP (ExCOP) (February 1999, Cartagena, Colombia) did not agree on a compromise package to finalize negotiations on a biosafety protocol, and the meeting was suspended. The resumed ExCOP (January 2000, Montreal, Canada) adopted the Cartagena Protocol on Biosafety, and established the Intergovernmental Committee for the Cartagena Protocol on Biosafety to undertake preparations for COP/MOP 1. The Protocol addresses the safe transfer, handling and use of LMOs that may have an adverse effect on biodiversity, taking into account human health, with a specific focus on transboundary movements.

COP 5: At its fifth meeting (May 2000, Nairobi, Kenya), the COP reviewed the work programme on agricultural biodiversity, established an ABS Working Group, and adopted work programmes on dry and sub-humid lands, and incentive measures, and decisions on Article 8(j), the ecosystem approach, sustainable use, biodiversity and tourism, invasive alien species (IAS) and the GTI.

COP 6: At its sixth meeting (April 2002, The Hague, the Netherlands), the COP adopted the Convention's Strategic Plan, including the target to reduce significantly the rate of biodiversity loss by 2010. The meeting also adopted: an expanded work programme on forest biodiversity; the Bonn Guidelines on ABS; guiding principles for IAS; the Global Strategy for Plant Conservation; a work programme for the GTI; and decisions on incentive measures and Article 8(j).

COP 7: At its seventh meeting (February 2004, Kuala Lumpur, Malaysia), the COP adopted work programmes on mountain biodiversity, protected areas (PAs), and technology transfer and cooperation, and mandated the ABS Working Group to initiate negotiations on an international regime on ABS. The COP established the *Ad Hoc* Open-ended Working

Group on Review of Implementation, and adopted: a decision to review implementation of the Convention, its Strategic Plan and progress towards achieving the 2010 target; the Akwé: Kon Guidelines for cultural, environmental and social impact assessments; the Addis Ababa Principles and Guidelines for sustainable use; and decisions on communication, education and public awareness (CEPA), incentive measures, inland waters, and marine and coastal biodiversity.

COP 8: At its eighth meeting (March 2006, Curitiba, Brazil), the COP adopted a work programme on island biodiversity and decisions on a range of issues including Article 8(j), CEPA, cooperation with other conventions and private sector engagement, PAs, including high seas PAs, incentive measures, biodiversity and climate change, and forest, marine and coastal, and agricultural biodiversity. COP 8 reaffirmed the COP 5 ban on the field testing of genetic use restriction technologies, and instructed the ABS Working Group to complete its work with regard to an international regime on ABS at the earliest possible time before COP 10, to be held in 2010.

COP 9: At its ninth meeting (May 2008, Bonn, Germany), the COP adopted a roadmap for the negotiation of the international ABS regime before the 2010 deadline for completion of negotiations, a Resource Mobilization Strategy for the Convention, and scientific criteria and guidance for marine areas in need of protection; and established an *ad hoc* technical expert group (AHTEG) on biodiversity and climate change.

INTERSESSIONAL HIGHLIGHTS

ABS NEGOTIATIONS: The ABS Working Group met four times to negotiate the international ABS regime (April 2009, Paris, France; November 2009, Montreal, Canada; March 2010, Cali, Colombia; and July 2010, Montreal), assisted by expert, informal and regional consultations. During the first two meetings, delegates worked on consolidating a draft. In Cali, the Working Group Co-Chairs circulated a draft protocol text, but due to procedural wrangling the meeting was suspended. The resumed meeting in Montreal, using the ING format established in Cali, worked in good spirit on the draft protocol text, reached agreement on non-controversial provisions, and made progress on certain difficult issues, including the relationship with other instruments and compliance with domestic ABS requirements. Delegates also identified key issues that require further compromises, including scope and pathogens, derivatives and the concept of utilization of genetic resources, and mechanisms to support compliance. With several sets of brackets remaining, the Working Group held an additional meeting of the ING, which convened in September 2010, in Montreal. While the meeting achieved some progress towards an improved common understanding on derivatives and the concept of utilization, key issues remained outstanding.

ARTICLE 8(J) WG 6: At its sixth meeting (November 2009, Montreal, Canada), the Working Group on Article 8(j) adopted a series of recommendations, including an advanced draft of a code of ethical conduct to ensure respect for the cultural and intellectual heritage of indigenous and local communities, and transmitted detailed views on the international ABS regime to the ABS Working Group.

GEF 5: The fifth replenishment process of the Global Environment Facility (GEF) progressed through six meetings convened during 2009 and 2010, when participants discussed the Fourth Overall Performance Study of the GEF, the programming approach for GEF 5, policy recommendations, and financial arrangements and burden-sharing. Negotiations were concluded on 12 May 2010, the total contributions resulting in a 52.5% increase in new resources available to the GEF. In the case of biodiversity, funding will increase from \$941 million in GEF 4 to \$1.21 billion in GEF 5, an increase of about 29% for biodiversity.

SBSTTA 14: The 14th meeting of SBSTTA (May 2010, Nairobi, Kenya) witnessed the launch of the third edition of the Global Biodiversity Outlook and adopted 18 recommendations to COP 10, including on: in-depth reviews of implementation

of work programmes on mountain, inland waters and marine and coastal biodiversity, PAs, biodiversity and climate change, and Article 10 (sustainable use); agricultural biodiversity and biofuels; dry and sub-humid lands; forest biodiversity; IAS; post-2010 outcome-oriented goals and targets; incentive measures; the GTA; and the Global Strategy for Plant Conservation.

WGRI 3: The third meeting of the CBD Working Group on Review of Implementation of the Convention (WGRI) (May 2010, Nairobi), adopted 12 recommendations to COP 10, including: an updated and revised strategic plan for the post-2010 period, which remains bracketed pending resolution of financial issues and negotiations on ABS; a proposed UN decade on biodiversity 2011-2020; business engagement; a proposed biodiversity technology initiative; the multi-year programme of work of the Convention for the period 2011-2020; integration of biodiversity into poverty eradication and development; and a science-policy interface on biodiversity, ecosystem services and human well being.

IPBES: Following two meetings (November 2008, Putrajaya, Malaysia; and October 2009, Nairobi, Kenya), the third *ad hoc* intergovernmental and multi-stakeholder meeting on an intergovernmental science-policy platform on biodiversity and ecosystem services (IPBES) (June 2010, Busan, Republic of Korea) concluded that such a platform should be established and reached agreement on its main elements, recommending that it would collaborate with existing initiatives on biodiversity and ecosystem services and be scientifically independent. The meeting also recommended that the UN General Assembly be invited to consider its conclusions and take appropriate action for the establishment of the platform.

CONFERENCE ON CULTURAL AND BIOLOGICAL DIVERSITY: Organized in collaboration with UNESCO, the International Conference on Cultural and Biological Diversity for Development adopted a declaration on bio-cultural diversity and a proposed joint programme between the CBD Secretariat and UNESCO on the links between biological and cultural diversity.

UNGA HIGH-LEVEL MEETING ON BIODIVERSITY: A contribution to the International Year of Biodiversity, the high-level meeting of the UN General Assembly (22 September 2010) included a general discussion and thematic panels on the way forward in achieving the three CBD objectives and the internationally agreed biodiversity goals and targets. Participants highlighted, among others: the need for political impetus and flexibility in the negotiations on a draft protocol on ABS; the opportunity to adopt an ambitious post-2010 strategic plan; and the importance of creating an IPBES.

REPORT OF THE ABS NEGOTIATIONS

The ING met from 13-16 October 2010 to continue negotiations on a draft protocol on ABS. The second resumed ninth meeting of the Working Group on ABS was held in the afternoon of 16 October, to approve the ING outcome and forward it to the COP.

INTERREGIONAL NEGOTIATING GROUP

The ING developed consensus language on several provisions of the draft protocol contained in the report of its meeting held from 18-21 September 2010, in Montreal, Canada (UNEP/CBD/WG-ABS/9/ING/1). With regard to issues of major controversy, including derivatives and the concept of utilization, compliance and pathogens, delegates held in-depth discussions in small groups, in preparation for further negotiations during the COP.

This section outlines discussions and outcomes on cross-cutting issues and protocol provisions addressed during the ING negotiations.

PREAMBLE: Delegates discussed the preamble without making much progress. Several preambular clauses remain bracketed.

DERIVATIVES: Building on prior Working Group and ING deliberations and following discussions in a small group, delegates noted emerging consensus on the concept of genetic resource utilization and benefit-sharing from derivatives under

article 4 of the draft protocol. An area of disagreement was identified with regard to the conditions for access to derivatives under article 5, and specifically whether prior informed consent (PIC) would be required for access to derivatives not containing functional units of heredity, such as biochemical compounds. Discussions are expected to continue during the COP.

PATHOGENS: The issue was discussed in a small group and then in informal consultations. On Saturday, 16 October, facilitator Paulino Franco de Carvalho Neto (Brazil) reported to the ING that consultations continue on the basis of draft text to be placed under article 6 on emergency situations. The text states that parties shall take into consideration the need for simplified measures on access in case of emergencies or other circumstances of extreme urgency regarding public health and food security that would cause serious damage or threat to biodiversity and, in this respect, pay due regard to rules, procedures and practices established under relevant organizations and conventions, such as the World Animal Health Organization, the International Plant Protection Convention or the World Health Organization. Discussions are expected to continue during the COP.

ACCESS TO TK ASSOCIATED WITH GENETIC RESOURCES (ARTICLE 5 BIS): Following informal consultations, delegates accepted clean language stating that, in accordance with domestic law, parties shall take measures, as appropriate, with the aim of ensuring that traditional knowledge (TK) associated with genetic resources that is held by ILCs is accessed with the PIC or approval and involvement of these indigenous and local communities (ILCs), and that MAT have been established. An ILC representative considered agreement on such language a major step forward, but put on record ILCs' disagreement with deletion of a bracketed reference to the UN Declaration on the Rights of Indigenous Peoples. He further noted concern about the reference to domestic law, but said ILCs could accept it.

During the resumed Working Group session held on Saturday afternoon, an ILC representative, speaking on behalf of seven indigenous organizations from North America, noted they had not been consulted and they are not in agreement with the proposed text.

Other provisions remained bracketed for consideration at a later stage, namely on: parties taking measures to ensure that TK within their jurisdiction has been accessed and utilized in accordance to paragraph 1; parties' measures addressing situations of non-compliance; and cooperation in cases of alleged violations.

TRADITIONAL KNOWLEDGE (ARTICLE 9): Delegates discussed whether parties shall take into consideration community-level procedures, including customary laws of ILCs, or ILCs laws, community protocols, procedures and/or customary laws, without reaching consensus. Delegates also addressed the cross-cutting issue of whether to refer to associated TK or TK associated with genetic resources, and agreed to refer to TK associated with genetic resources throughout the protocol.

A lengthy discussion was held on benefit-sharing from publicly available TK. Some parties requested deleting the paragraph, others supported "requiring" sharing of benefits while others called for "encouraging" benefit-sharing. Co-Chair Fernando Casas (Colombia) proposed that parties shall encourage the users of publicly available TK associated with genetic resources to take reasonable measures to enter into benefit-sharing arrangements with the holders of such knowledge. One party suggested specifying that such TK has been lawfully obtained by the user from a source other than an ILC. A proposal to include language stating that the first COP/MOP review shall assess implementation of this obligation in the light of international developments, in particular work in the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore of the World Intellectual Property Organization, was strongly opposed and not reflected in the text.

ABS CLEARING HOUSE (ARTICLE 11): Delegates agreed to a reference to the protection of confidential information and removed related brackets. They deleted requirements to make available to the ABS Clearing House information on any bilateral, regional or multilateral agreements or arrangements, and details of MAT. They also agreed to delete a bracketed reference to submitting information regarding community and customary laws or community-level procedures, and refer instead to information regarding relevant competent authorities of ILCs. The only outstanding provision refers to information regarding PIC decisions.

The article provides for the establishment of an ABS Clearing House as part of the Clearing-House Mechanism of the Convention. It also provides for the information that each party shall make available, and for examples of additional information, if available and as appropriate.

MONITORING (ARTICLE 13): Delegates addressed the compliance-related provisions of article 13 both in the ING and in a small group. Discussions focused on the legal nature of measures to support compliance, such as checkpoints; the measures' objective; and the international certificate of compliance.

Checkpoints: Delegates debated whether establishment of checkpoints should be made mandatory, as supported by developing countries, or be left to parties' discretion, as generally suggested by developed countries; whether or not to include a list of checkpoints; and whether such list should be mandatory or indicative. They also discussed possible compromise solutions, including a general mandatory requirement for establishment of checkpoints accompanied by an indicative list allowing for flexibility for parties.

With regard to the measures' objective, delegates discussed whether measures should be linked to supporting compliance or also to enhancing transparency. Some developed countries stressed the need for language on transparency to ensure clarity about parties' obligations, while developing countries argued that reference to transparency would dilute the provision's focus on compliance, proposing to address transparency under a different provision. The small group then held an in-depth discussion on the issue of, and draft list of checkpoints, considering them in terms of functionality and effectiveness. Discussions are expected to continue.

Certificate: Following a conceptual discussion, participants in the small group acknowledged the need for an internationally recognized certificate of compliance but said that time was insufficient to address the minimum information to be contained in it. On the basis of text proposed by the small group Co-Chairs Alejandro Lago (Spain) and Sem Shikongo (Namibia), they reached agreement on some language on the certificate under article 13, as well as under article 5 (access to genetic resources). Co-Chair Shikongo reported on productive discussions and constructive atmosphere. Discussions are expected to continue.

MODEL CONTRACTUAL CLAUSES (ARTICLE 15): Following withdrawal of a proposal to refer to development of clauses in collaboration with international and regional organizations, delegates approved the provision with no remaining brackets. The provision states that parties shall encourage, as appropriate, the development, update and use of sectoral and cross-sectoral model contractual clauses for MAT. The COP/MOP is mandated to periodically take stock of the use of these clauses.

CODES OF CONDUCT (ARTICLE 16): Following agreement to delete bracketed references, delegates approved a clean version of the provision. The article requires: parties to encourage, as appropriate, the development, update and use of voluntary codes of conduct, guidelines and best practices and/or standards in relation to ABS; and the COP/MOP to periodically take stock of their use and consider adoption of specific ones.

AWARENESS-RAISING (ARTICLE 17): Delegates approved the provision, with the only remaining brackets on the cross-cutting issue of derivatives, referenced along with genetic

resources. According to the article, parties are mandated to take measures to raise awareness of the importance of genetic resources and TK associated with genetic resources, and related ABS issues, through measures including, *inter alia*: meetings and help desks for ILCs and relevant stakeholders; promotion of voluntary codes of conduct, guidelines and best practices and/or standards in consultation with ILCs and relevant stakeholders; promotion of, as appropriate, domestic, regional and international exchange of experiences; and involvement of ILCs and relevant stakeholders in the further implementation of the protocol.

CAPACITY (ARTICLE 18): Delegates discussed a bracketed reference to the role of stakeholders, including the private sector, in capacity building, with developed countries emphasizing the role of private sector in capacity-building activities, and developing countries arguing against diluting developed countries' obligations regarding capacity building. Following informal consultations, delegates agreed to state that parties should facilitate the involvement of relevant stakeholders, *inter alia*, ILCs, NGOs and the private sector.

Delegates then discussed a bracketed reference to capacity to implement or comply with the protocol's obligations, and agreed to retain both references removing the brackets. They also agreed that information on capacity-building initiatives should be provided to the Clearing House. The provision was then approved with one outstanding item regarding the cross-cutting issue of reference to the country of origin or the country providing genetic resources.

According to this article, parties are required to cooperate in capacity building, capacity development and strengthening of human resources and institutional capacities to effectively implement the protocol in developing country parties, including through existing global, regional, subregional and national institutions and organizations. In doing so, parties should facilitate the involvement of relevant stakeholders, *inter alia*, ILCs, NGOs and the private sector. As the basis for appropriate measures in relation to the implementation of this protocol, parties should identify their national capacity needs and priorities through national capacities self-assessments, and support the capacity needs and priorities of ILCs and relevant stakeholders as identified by them, and emphasize the needs and priorities of women.

The article indicates areas to be addressed by capacity building and capacity development, such as the capacity to implement and to comply with the protocol's obligations, and the capacity of countries to develop their endogenous research capabilities to add value to their own genetic resources. The article also includes an indicative list of measures.

TECHNOLOGY TRANSFER AND COOPERATION (ARTICLE 18 BIS): Delegates agreed to delete a bracketed reference to measures by developed country parties that provide incentives to companies and institutions within their jurisdiction. Brackets remain with regard to whether collaborative activities shall or should take place with or in the country of origin or the country providing genetic resources. The article further requires parties to collaborate and cooperate in technical and scientific research and development programmes, including biotechnological research activities, as a means to achieve the objective of the protocol.

NON-PARTIES (ARTICLE 18 TER): Following discussion, parties agreed to clean text stating that parties shall encourage non-parties to adhere to the protocol and to contribute appropriate information to the ABS Clearing House.

FINANCIAL MECHANISM AND RESOURCES (ARTICLE 19): Delegates agreed to the provision, with the only outstanding issue referring to the qualification of financial resources as adequate, predictable, timely, new and additional. The article states that the financial mechanism of the Convention shall be the financial mechanism for the protocol. On capacity building, the COP/MOP is mandated to take into account, in providing guidance with respect to the financial mechanism, the need for financial resources, with reference to adequate,

predictable and timely flow of new and additional resources in brackets, by developing country parties, in particular the least developed and the small island developing states among them, and of the parties with economies in transition, as well as the specific needs and priorities of ILCs, including women within these communities.

COP/MOP (ARTICLE 20): Delegates resolved the only outstanding issue, agreeing that the meetings of the COP/MOP to the protocol shall be held concurrently with COP meetings. The article provides for institutional arrangements for the COP/MOP.

SUBSIDIARY BODIES (ARTICLE 21): Delegates agreed to delete two bracketed paragraphs addressing: establishment of a subsidiary body for implementation to assist the COP/MOP in the assessment and review of the protocol's implementation; and specifying that this subsidiary body shall consider information communicated by parties on implementation, and assist the COP/MOP, as appropriate, in the preparation and implementation of its decisions.

The provision contains no brackets. It states that: any subsidiary body under the Convention may, upon decision by the COP/MOP, serve the protocol, in which case the COP/MOP shall specify which functions it shall exercise; CBD parties that are not protocol parties may participate as observers; decisions relating to the protocol be taken only by parties to the protocol; and the bureau members from non-parties to the protocol of subsidiary bodies to the Convention shall be substituted by members elected by and from among protocol parties, if that body addresses matters relating to the protocol.

ABS WORKING GROUP

Working Group Co-Chairs Timothy Hodges (Canada) opened the meeting on Saturday afternoon, 16 October, and drew attention to the revised draft protocol on ABS (UNEP/CBD/WG-ABS/9/ING/2). He noted that the draft contains remaining brackets but that work has been very intense over the recent months. He called on the Working Group to take note of the ING work and forward the draft to the COP. He also noted that the COP Bureau will continue serving as the Working Group Bureau, with Somaly Chan (Cambodia) acting as Rapporteur.

Drawing attention to the draft protocol text, he shared his assessment that its finalization is within reach and suggested recommending to the COP that all efforts be made to allow for resolution of outstanding matters and removal of remaining brackets. The Working Group then approved annexing the draft protocol revised by the ING to the Working Group report, and forwarding it to the COP. Canada put on record that "nothing is agreed until everything is agreed."

Co-Chair Hodges then turned to the draft COP decision (UNEP/CBD/WG-ABS/9/4), first circulated by the Co-Chairs before the Cali meeting. He called on delegates to forward the draft to the COP on the understanding that it was not negotiated, which was accepted.

The Working Group then adopted the report of the meeting (UNEP/CBD/WG-ABS/9/L.1/Add.2) on the understanding that it will be finalized by the Rapporteur and the Secretariat.

CBD Executive Secretary Ahmed Djoghlaif commended the Co-Chairs for their leadership and the Working Group for its achievement, noting that the draft protocol, including its 13 clean articles, is a historic outcome. Jochen Flasbarth, on behalf of the COP Presidency, drew attention to the German government's commitment to a legally binding ABS instrument. Noting that all ministers at the high-level event on biodiversity in New York supported such an instrument, he urged delegates to show flexibility. Hodges said the Co-Chairs will be making recommendations to the COP, in cooperation with the Bureau, on how to finalize work, and gavelled the meeting to a close at 5:12 pm.