

SUNS article

This article was published in the SUNS #6345, Wednesday, 17 October 2007. Any reproduction or re-circulation of this article requires the permission of the SUNS (sunstwn@bluewin.ch). SUNS #6345 Wednesday 17 October 2007 south-north development monitor SUNS [Email Edition] United Nations: Biopiracy meet ends with no progress

Montreal, 16 Oct (Lim Li Lin and Chee Yoke Ling) -- The persistent opposition of several developed countries to coming up with a clear negotiating text for an international treaty against biopiracy resulted in a disappointing ending to the 5th Meeting of the Open-Ended Ad Hoc Working Group on Access and Benefit-Sharing (ABS), a subsidiary body of the United Nations Convention on Biological Diversity (CBD).

After a week of talks that ended on 12 October in Montreal, the two Co-Chairs of the Working Group, Fernando Casas from Colombia and Tim Hodges from Canada, had produced two documents - a paper containing their reflections on areas of potential convergence, options, possible tools and concepts for clarification, as well as a paper which contained a compilation of key concrete proposals from the 17-member Like Minded Mega-diverse Group (LMMC) and bullet points from other CBD Parties that had been made over the course of the week.

The LMMC countries, all Parties to the CBD, are Bolivia, Brazil, China, Colombia, Costa Rica, Democratic Republic of Congo, Ecuador, India, Indonesia, Kenya, Madagascar, Malaysia, Mexico, Peru, Philippines, South Africa, and Venezuela.

The LMMC, which holds the majority of the Earth's species, had submitted text proposals reflecting their position on each of the substantive issues for discussion. These issues were fair and equitable sharing of benefits, access to genetic resources, compliance, traditional knowledge and genetic resources, and capacity building. Under compliance, there was examination of measures to support compliance with prior informed consent and mutually agreed terms; an internationally recognized certificate of origin/source/legal provenance; as well as monitoring, enforcement and dispute settlement.

The Co-Chairs proposal that the next (6th) meeting of the Working Group be regarded as an integral part of the Montreal meeting had been accepted by all Parties and non-Parties. The 6th meeting will elaborate and negotiate on compliance, traditional knowledge and genetic resources, capacity building and the nature (legally binding or not), scope and objectives of the international regime.

The initial proposal of the two Co-Chairs had been to annex their two documents to the report of the meeting, which would be adopted on the final day. This would then be passed on to the next negotiation session next January as it will remain as the Co-Chair's text for the next meeting. However, this was met with strong opposition from Australia, Canada, New Zealand and Japan. The US also shares the same position, but they are not Parties to the CBD, and are thus less vocal. Interestingly, the statements by industry and these opposing countries share much common ground.

The meeting had seen a split approach taken by Parties, reflecting divergent views on whether they should start negotiating the text of a treaty already or whether they should

just continue discussing concepts of how to deal with biopiracy. Between the developing countries and the opposing developed countries was the European Union which sought to play a bridging role that many questioned, because a fundamental choice was at stake - whether there will be an international regime or not.

The LMMC's submissions were based on a distillation of various text proposals compiled at the last meeting of the Working Group in Granada, Spain in February 2006. This document popularly known as the Granada text, has the beginnings of a structure of an international agreement. Opposing countries continue to advocate contracts between those seeking genetic resources and those providing the resources, whether they are private parties, local communities or government institutions. They also prefer codes of conduct rather than anything legally binding.

The EU was prepared to start serious substantive discussions which was marked shift from previous meetings. The approach of the LMMC was to take the negotiations forward, by working on actual text rather than to simply continue to generally discuss the issues. This was supported by the Africa Group and the Group of Latin American and Caribbean Countries (GRULAC). However, it was clearly the strategy of some of the developed countries to engage in general discussion, since they oppose any progress in developing an international regime on access and benefit sharing.

The eighth meeting of the Conference of the Parties of the CBD (COP8) held in Curitiba, Brazil in March 2006 had clearly decided that the Granada Text be used by the Working Group "for the purposes of continuing to elaborate and negotiate the international regime" and to complete its work at the earliest possible time before the tenth meeting of the Conference of the Parties (2010). It had also identified other inputs for the Montreal meeting.

Developing countries stressed throughout the week that the Working Group has a clear mandate from the decision of heads of States at the 2002 World Summit on Sustainable Development to negotiate an international regime on benefit sharing. This was endorsed by the General Assembly later in the same year, and the CBD Parties had arduously negotiated the terms of reference at COP7 in 2004. Again, very difficult negotiations in COP8 resulted in the final decision to specifically transmit the Granada text for further work on the international regime.

The International Regime on Access and Benefit-Sharing is expected to set the rules on how benefits from the utilization of genetic resources and associated traditional knowledge are to be fairly and equitably shared between the provider countries and the indigenous and local communities which are the holders of the knowledge, and the companies and research institutions which are mainly from developed countries.

Underlying the discussions is the problem of biopiracy - where the unique properties of biological material, from the forests and the seas and even the soil of developing countries and indigenous and local communities are taken from them without their knowledge and consent and these are developed and patented into useful products and medicines which are often unaffordable to the people from where the resources and knowledge generates from. A study conducted in 1999 estimates the global market value of industries using biological and genetic material is between \$500-800 billion.

The historic adoption by the UN General Assembly of the United Nations Declaration on the Rights of Indigenous Peoples last month has given a major boost to the demands of indigenous people in the ABS discussions. The Declaration sets out the individual and collective rights of indigenous peoples, recognizes their rights to land and other resources, calls for the maintenance and strengthening of their cultural identities, and emphasizes their right to pursue development in keeping with their own needs and aspirations. It also prohibits discrimination against indigenous peoples and promotes their full and effective participation in all matters that concern them.

Directly relevant to the discussions on issues pertaining to genetic resources and traditional knowledge is Article 31 of the Declaration: "Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, etc. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions. States shall take effective measures to recognize and protect the exercise of these rights".

Only four countries - the US, Canada, Australia and New Zealand – voted against it, while 11 countries abstained. During the discussions at the biopiracy meet here, Canada continually asserted that the Declaration was not legally binding and that it does not represent customary international law. They insisted that this be reflected in the report of the meeting, and objected to any reference to the Declaration in the documents that were being developed.

As a result of the disagreement on the status of the two papers - "Co-Chair's Reflections on Progress Made by the Working Group on ABS at its Fifth Meeting" and "Notes from the Co-Chair's on Proposals made at WGABS-5" - the meeting was held up by numerous consultations within and between regional and political groupings on the final day.

Malaysia, on behalf of the LMMC and supported by GRULAC and the Africa Group, had initially proposed that all the submissions from the meeting be merged into the Granada text in the appropriate places, and that Parties be given the opportunity to submit proposals preferably in legal text form according to the issues identified by the sub-headings in the Granada text.

The developed countries, led by Australia, refused to accept the Co-Chairs' documents and made it clear that they would not negotiate on the basis of the Granada text and opposed the LMMC's proposal to do so. Instead, they proposed that Parties be allowed to submit a summary of their own proposals as annexes to the meeting report.

On the morning of the final day, the meeting was delayed by several hours in order to allow for regional and political groupings to consult. The meeting then heard further proposals from Brazil, who forwarded the position of the LMMC, GRULAC and the Africa Group in support of progressive work on developing the international regime.

Brazil on behalf of those countries also proposed that Parties should be invited to make submissions preferably in the form of operational text by the end of November 2007 in

respect of elements that are being considered by the Working Group. The CBD Secretariat would then compile the submissions so that more elements can be added on to the Notes. Brazil also requested that the Co-Chairs with the support of the CBD Executive Secretary, compile and distribute a working paper in operational text format for the purposes of elaborating and negotiating an international regime on access and benefit sharing. This again met with further opposition.

The EU stated that Parties should determine the form and language of the submissions, and that all submissions should be made available at the next Working Group meeting instead of being compiled by the Secretariat

Canada made the point that it did not matter how many Parties were aligned with one view, what mattered was that there were several views, and that the work should be focused on bringing these views together. Canada proposed that submissions in the Co-Chair's Notes document should be attributed to Parties and that such submissions could be pulled together in a document. Canada then suggested that the next Working Group should also be conducted in plenary and since there was so much material on the table, it might be better to begin with a clean slate.

Given that the positions stated by countries at that time were poles apart, the Bureau of the Convention, a decision-making body of the CBD composed of regional representatives of the CBD Parties and presided over by the country which previously hosted a conference of the Parties, stepped in and convened a meeting right after that session. After the lunchtime Bureau meeting, the Co-Chairs convened the meeting again and announced that the documentation for Working Group 6 would be the same as it had been for this Working Group. In addition, the Co-Chairs' Notes will be open to Parties for further submissions until the end of the meeting.

Importantly, further submissions on concrete options on the substantive items by Parties, governments, indigenous and local communities, and stakeholders were invited until the end of November. The Secretariat would then circulate a compilation of these options as soon as practicable prior to the next meeting of the Working Group.

The Co-Chairs stressed that all of these elements have been strongly and fully supported by the Bureau. The Bureau and other Parties have strongly urged the Co-Chairs to continue informal consultations with a view to moving this process forward. To the relief of the delegates, the report was then adopted by the meeting, with some minor amendments. However, Australia immediately objected on the basis that they had expected to discuss the two Co-Chairs' documents that were attachments to the report.

After another recess giving Australia time to consult, Australia proposed that new language be inserted into the report of the meeting, replacing text referring to the Co-Chairs' two papers. Firstly, that the Working Group urges the Co-Chairs to continue consultations with a view to reaching a common understanding on the way forward. And secondly, that the Co-Chairs' two papers were their sole responsibility, and would have the status of information documents, and not be attached to the report of the meeting.

After some discussion, it was finally agreed that the Co-Chairs' two documents would be information papers for the next Working Group meeting, and, at the insistence of Mali, that these documents would be translated into all the six UN languages. Normally, information documents are only made available in the language received.

Developing countries were deeply disappointed with this final outcome, as the process had hardly, if at all, moved forward. Developing countries had wanted to begin negotiations on the basis of the Granada text, and had hoped that the work of the Working Group over the week would make progress on the Granada text. Instead, the week's work had simply been downgraded to an information document.

Nevertheless, Malaysia on behalf of the LMMC, emphatically stressed that the Montreal meeting had elaborated on key issues and the next stage has to be about actual negotiations. Therefore, Malaysia called for the next negotiation session to focus on the concrete text to be submitted by Parties by the end of November in respect of the substantive elements on the agreed agenda of the Working Group.

The sixth meeting of the Working Group will be held in Geneva from 21-25 January 2008.