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## CBD GROUP MAKES SOME PROGRESS ON ACCESS-BENEFIT TALKS

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Geneva, 28 Jan (Lim Li Lin) -- A meeting of a working group under the Convention on Biological Diversity (CBD) made progress last week to develop an international regime for the fair and equitable sharing of benefits arising out of the utilization of genetic resources.

Although the progress was "slow and painful", as one delegate put it, there was nevertheless a positive movement forward, following a series of very disappointing meetings since the negotiations on the international regime started in 2005.

The working group, which is mandated to complete its work by 2010, held its sixth working meeting in Geneva on 21-25 January.

Two documents were adopted at the end of the meeting - a draft decision on the group's future work (to be transmitted to the ninth meeting of the Conference of the Parties - COP - of the CBD); and an Annex to this containing options on the objective, scope, nature and main components of the international regime. Both documents contained square brackets and other "markers" that denote the many areas of disagreement among the members, mainly on North-South lines.

Towards the end of the meeting, the progress that had been achieved was threatened by serious disagreement between the European Union and developing countries on a specific issue. A last-minute deal secured agreement, and the outcome of the working group was finally adopted.

The disagreement centred around the discussion on the development of tools to enforce compliance with the international regime which include dispute settlement mechanisms, and remedies and sanctions. The EU wanted "international access standards" to be included under this heading of "compliance."

The developing countries, led by Malaysia speaking on behalf of the Like-Minded Group of Mega-Diverse Countries (LMMC), argued instead that this was not a tool to enforce compliance, and was already listed in the "access to genetic resources" section.

Negotiations on the international regime for the fair and equitable sharing of benefits arising out of the utilization of genetic resources have been underway since 2005.

The international regime 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 (mainly developing 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 an attempt - led by the developing countries and resisted to varying degrees by developed countries - to address the problem of bio-piracy, 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 un-affordable to the people from where the resources and knowledge generates from.

The negotiations have been dogged by deep divisions and disagreements between developed and developing countries. Observers and delegates had been keenly watching to see if the position of Australia would be different after their recent change in government.

Unfortunately, this was not the case, even though some reports have indicated that Australia may reverse its position on the United Nations Declaration on the Rights of Indigenous Peoples. Australia, together with the US, Canada and New Zealand were the only four countries to vote against its adoption at the UN General Assembly.

The developing countries have been struggling in the working group meetings to get the developed countries to start engaging in actual negotiations, rather than to simply continue to discuss the issues, and to work on gap analyses, indicators, etc.

At the fourth meeting of the working group in Granada in 2006, a "Granada text" was produced, which compiled all the different text options of the elements of the international regime into one document. Developing countries have been insisting since then, to no avail, that the Granada text is the basis for the negotiations of the international regime.

Developed countries, particularly Australia, Canada, New Zealand and Japan, have refused to allow the Granada text to be the basis of the work, and to allow the process to take the form of actual negotiations. The US is not a Party to the CBD but holds similar positions.

At the fifth meeting of the working group in Montreal in October 2007, two documents - a paper containing the Co-Chairs' reflections on areas of potential convergence, options, possible tools and concepts for clarification, and another paper which contained a compilation of key concrete proposals from the 17-member LMMC group and bullet points from other CBD Parties - were produced.

(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, and hold the majority of the Earth's species.)

The initial proposal of the two Co-Chairs (Fernando Casas from Colombia and Tim Hodges from Canada) 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 Geneva meeting as the Co-Chairs' text. However, this was met with strong opposition from Australia, Canada, New Zealand and Japan. In the end the documents were downgraded to information documents which could not be used directly as a stepping stone for the negotiations.

During last week's meeting in Geneva, the working group developed two documents,

both of which (containing square brackets, denoting differences) were adopted last Friday:

- A draft decision for the ninth meeting of the Conference of the Parties (COP) of the CBD on the "road map" or the process for the future work on developing the access and benefit-sharing regime until the tenth COP in 2010, when the work is to be completed; and
- An annex to the draft decision, which contains options on the objective, scope and nature of the international regime. This document also contains the main components of the international regime - fair and equitable benefit-sharing, access to genetic resources, compliance, traditional knowledge associated with genetic resources, and capacity are included either in the form of "bullets" or "bricks".

The draft decision has numerous options in square brackets (indicating no consensus) and will be further negotiated at the ninth COP of the CBD in May 2008 in Bonn.

Negotiations on developing the Annex, which is in effect the substantive elements and content of the regime, took up a large part of the meeting. The discussion on various items were held in a "contact group".

On the nature and scope of the international regime, the contact group had only limited discussions. Thus, the texts on these items merely reflect a compilation of different options submitted by Parties and regional and negotiating groups. A footnote on these two sections reads: "These proposals were neither discussed, negotiated nor agreed".

On the section on "Objectives", the text is a synthesized compilation (reflected in square brackets) of various options submitted by Parties, regional and negotiating groups, and indigenous and local communities. The issue of whether text submitted by observers could be included in the options had been a sticky issue. This was resolved when the Philippines, and later Haiti supported the inclusion of submissions from the indigenous and local communities.

A footnote on this section reads: "These proposals were neither negotiated nor agreed." This footnote was inserted at the proposal of Australia, responding to objections raised by Japan in the final plenary on including the sections on objective, scope and nature of the international regime in the annex. Japan had suggested deleting these sections altogether. Australia then proposed including the footnote in the section on objective, and placing these sections into a separate document. The proposal to move these sections into a separate document was not adopted.

The section on the "Main Components" was the main focus of the week's meeting. The two Co-Chairs of the contact group, Pierre du Plessis from Namibia and Rene Lefebber from the Netherlands had instructed the group to indicate which items listed under each section (i. e. fair and equitable benefit-sharing, access to genetic resources, compliance, traditional knowledge associated with genetic resources, and capacity) of the main components could be regarded as a "brick" and those that would be regarded as a "bullet."

An item denoted as a "brick" meant that it had consensus among the Parties to be included as a component of the international regime. An item denoted as a "bullet" meant it did not have consensus among the Parties to be included as a component of

the international regime, and would need further discussion.

It was made clear that anything marked as a "bullet" meant that it was a component for further discussion, and did not mean that it was no longer considered a component of the international regime.

This process proceeded relatively quickly under the sections on capacity and traditional knowledge associated with genetic resources. The components compiled by the Co-Chairs of the contact group were based on the submissions received by Parties, regional and negotiating groups, and by the indigenous and local communities.

Under compliance, the first item to be discussed was "international access standards" under the sub-section on "development of tools to enforce compliance". The Africa Group and the LMMC did not agree that this item should be a "brick". The EU then insisted that all the other tools to enforce compliance would automatically have to be "bullets".

This was greeted with protests and objections by the Africa Group, GRULAC (the group of Latin American and Caribbean countries) and the LMMC which argued that this ran counter to the spirit and the process of the work they were engaging in. Namibia, speaking on behalf of the Africa Group suggested that the contact group should discuss each item one by one on their merits, as was the case with the other sections.

The EU was adamant however, and could only explain their position by indicating that if there were no clear international access standards, then it would be difficult for courts in the European Union to enforce compliance.

It was clear however, that the strict position of the EU is to ensure that the international regime contains international access standards, and that they were linking the two issues together as a bargaining chip in the negotiations. Developing countries are very strongly in favour of measures to enforce compliance, as even if they have strict domestic access and benefit-sharing laws, ensuring compliance in user countries is very difficult.

Malaysia on behalf of the LMMC also argued that item was wrongly placed, as international access standards is not a tool to enforce compliance. In fact, it was already listed as a component under the section on access to genetic resources. There was no special link between international access standards and compliance, and no reason why it should be the only substantive item to be linked to compliance. Many other issues relating to fair and equitable benefit-sharing, which are close to developing countries' hearts could similarly be listed under compliance if this were the case.

No agreement could be reached in the contact group on this issue despite numerous arguments put forward by developing countries, and proposals for ways forward. The EU was simply adamant, even though Malaysia and Brazil acknowledged the right of the EU to use this as a bargaining chip in the negotiations, but pleaded as a matter of principle that international access standards should be placed only in its correct place - under "access to genetic resources".

The Co-Chair from the Netherlands also explained that the EU's submission had not actually placed "international access standards" under the section on compliance, and that this was placed there in the drafting exercise by the Co-Chairs of the contact group.

The Co-Chair from the Netherlands wanted to resolve the issue by simply "bulleting" all of the items under "development of tools to enforce compliance" to indicate that all of the items required further consideration, but this solution failed to address the fact that the item was misplaced under compliance. This solution was also the preferred outcome of the EU, as it would mean keeping this issue alive under compliance.

Informal consultations to resolve this issue were then conducted in order to bring a resolution to the final plenary. The contact group completed its work on the sections on access to genetic resources and fair and equitable benefit-sharing.

In the final plenary to adopt the report of the working group, Malaysia, speaking on behalf of the LMMC, announced that the developing countries had made a proposal to the EU, as a compromise, and the EU subsequently confirmed that they had agreed to it.

This compromise was to remove "international access standards" from the section "development of tools to enforce compliance" and place it instead as a "bullet" under "development of tools to encourage compliance". Language to the effect that the Africa Group, GRULAC and LMMC were of the view that international access standards did not belong under compliance and that they had only agreed to its inclusion under that sub-section as a compromise, was to be included in the report of the working group.

The EU however continued to explain that it reserved the right to move that "bullet" at a subsequent stage of the negotiations. Malaysia responded with incredulity to this as this had not been articulated nor agreed to in the informal consultations. There was a clear understanding that items could be moved from "bullets" to "bricks" but not moved around into different sections.

Malawi threw its support behind Malaysia, and the EU subsequently relented. Some delegates later spoke of last minute telephone calls to the French government, which was the last EU country to agree to the compromise.

The text had also been amended to read "international access standards (that do not require harmonization of domestic access legislation) to support compliance across jurisdictions" to be consistent with the text included under the section on access to genetic resources.

Importantly, a paragraph in the final report of the working group was included that states "the annex to this report will form the basis for further elaboration and negotiation of the international regime". The annex is the document that contains the different options on objectives, scope and nature, and the main components of the international regime.

Despite the difficulties, there was optimism at the close of the meeting, as there was a palpable sense by many delegations that the negotiations of the international regime had finally begun.

Before the Geneva meeting last week, the negotiations had failed to move forward despite the work done in Granada at the fourth working group meeting to develop the Granada text, the work in Curitiba at the eighth COP to preserve the Granada text and the work in Montreal at the fifth working group meeting to make some progress.

However, as the Executive Secretary of the CBD stated in his closing remarks "Here in Geneva the negotiations of international regime started indeed".

The next step will take place at the ninth COP of the CBD in Bonn in May 2008, which will discuss the draft decision drawn up in Geneva, and make a decision on the work of the working group for the coming years until the tenth COP in 2010, when the work on the international regime on access and benefit-sharing is to be completed. +

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