

REPORT OF THE ABSWG CO-CHAIRS TO THE COP9 BUREAU BARCELONA, 4 OCTOBER 2008

Advance Draft

The purpose of this report is to provide Bureau members with the following:

- an update on selected Co-Chair activities since COP9
- a candid assessment of the road ahead
- some emerging thinking, based on the Co-Chairs SOA (see below), on forthcoming Working Group and technical meetings
- an outline of the Co-Chairs potential future activities and collaborations
- suggestions on the means to enhance role of Bureau in strengthening support for ABS

The report is divided into four sections:

- I. Overview of principal Co-Chairs post-COP9 activities, June 2008 - October 2008;
- II. Context and current state of play of ABS International Regime talks
- III. Interim inter-sessional strategic and operational approach (SOA) to ABS
- IV. Prospects for Nagoya

I. Interim Activities

1. Masters program of the Andalucía International University (Baeza, June)
 - Co-chair lecture to the students and other invited lecturers on the ABS negotiation.
 - Informal consultations with selected participants and Spanish officials.
2. Panel on "CBD/TRIPS: A 360 Review of Access and Benefit Sharing" (Geneva, July)
 - Co-chair presentation and discussion on ABS in relation to COP9 decision and WTO Doha ministerial.
 - Informal discussions with Geneva-based diplomats and industry representatives.
3. COP9 Presidency visit to SCBD (Montreal, August)
 - Co-chair joined COP President in meetings with executive Secretary and staff, with focus on ABS Roadmap.

4. Co-Chairs' retreat (Cachipay, Colombia, September)
 - Developed draft ABS Co-Chairs interim inter-sessional strategic and operational approach (SOA), as basis for briefing of Bureau at its first meeting in Barcelona and subsequent informal consultations with Parties, international organizations, indigenous and local communities, and other stakeholders.

5. Informal consultations with Brazilian industry (Brazil, September)
 - Co-Chair raising awareness and listening to concerns and proposals from a number of stakeholders including: Business Council for Sustainable Development; Business Chamber of Biodiversity and Biotechnology; Natura; Unicamp.
 - Informal consultations with the Ministry of External Affairs, Ministry of Environment, Ministry of Agriculture, and the National Research Centre for Genetic Resources and Biotechnology.

II. Context and Current State of Play

Context:

- Propose continuing to adhere to Co-Chairs' principles as first adopted by the COP8 Bureau and as widely embraced by the Working Group.
- These principles include: transparency, predictability (no-surprises), inclusiveness, universal accessibility.
- Recall that the ABS Co-Chairs were elected by COP8 as a whole and it is our intention to continue to jointly reflect and work to the benefit all Parties, ILCs and stakeholders in all regions, both the North and South.

Current State of Play:

- With COP9 Decision on ABS (IX/12) Parties have entered new stage of negotiations.
- From Co-Chairs perspective COP9 went "according to plan" -- as outlined to the Bureau and the negotiators at the outset in Bonn.
- ABS Decision is strong on detailed prescription for process and, while progress on substance was limited, the decision holds the key to addressing substance and getting down to negotiations proper. Both Parties and stakeholders appear broadly satisfied with the decision.

- Annex I of Decision IX/12 provides common single basis for the negotiations, including an agreed detailed agenda for each of the next three meetings of the ABSWG.
- Important to note Decision underscores role of consultations (including by the Co-Chairs), preparations, technical input, analysis and support to the successful conclusion to the IR talks. The SCBD and UNEP are singled out as having central responsibilities in this regard.

III. Interim inter-sessional strategic and operational approach (SOA) to ABS

Role of Bureau re ABS

- COP Bureau is in effect acting as a “dedicated Bureau” for ABS.
- We count on the Bureau to play significant role in two-way communications with regions and between regions.
- Bureau members can provide on-going strategic advice re conducting/organizing meetings and dealing with issues.
- Bureau can perform leadership role both intra- and inter-regionally to enhance awareness of ABS and the issues under negotiation.

Role of Ministers

- Potential remains for Ministers to play leadership role in building awareness of ABS in broader environmental/development context (domestically and internationally), resolving limited number of key political issues at appropriate juncture.
- Ministers often best deployed late in negotiations but potential to use them mid-negotiating stream prior to a key round of talks
- We would recommend reviewing this potential after ABSWG7.

Resources

- Wish to express our gratitude to Parties who have provided financial and moral support. As well, the ES has championed the provision of enabling support to the Co-Chairs.
- However, in this new and critical stage, support is urgently needed if we are to meet our mandate (including regional and inter-regional consultations as per Decision IX/12) and avoid placing disproportionate burden on our own governments and those that are already contributing.
- Our draft calendar confirms the magnitude of the task at hand.

Stakeholder Engagement

- Stakeholder participation has improved at recent WG meetings and we met informally with a number of key stakeholders in margins of COP9.
- This has resulted in concrete activities on their part to promote their interests and provide possible solutions.
- For example, an international workshop is planned on “Non-Commercial Research and the International Regime for Access and Benefit Sharing” in Bonn in November.
- Informal consultations have been held by the Co-Chairs with business, academics, NGOs and representatives of indigenous and local communities in a number of countries.
- Such meetings will provide important input to Parties, TEGs and the WG itself.

Informal meetings

- At this juncture, excepting the workshop noted above no informal meetings have been announced -- although we are being consulted on a possible dialogue with industry on ABS, perhaps in the first quarter of 2009.

Regional Consultations

- Decision IX/12 underscores the importance of regional and inter-regional consultations and the role of the Co-Chairs in this regard.
- As per our calendar, at minimum we will need at least one intra-regional meeting during the inter-sessional period (Africa, Asia, GRULAC, CEE, as well as WEOG, EU, JUSCANZ and LMMC).
- The question remains whether or not resources will be available to organize such meetings.
- We are in discussions with a number of UN organizations in this regard and we are hopeful that regional and inter-regional consultations will be held (particularly if the Bureau expresses its support and underlines the need to hold these consultations).

TEGs

- Decision IX/12 provides clear TORs for the TEGs and prescribes the number and type of participants.
- The ES will provide details but at this juncture the following meetings have been confirmed:

- Concepts, terms, working definitions and sectoral approaches relating to the IR on ABS (Windhoek: 2-5 December 2008)
- Compliance in the context of the IR on ABS (Tokyo: 27-30 January 2009)
- Traditional knowledge associated with genetic resources as it relates to the IR on ABS has yet to have date and location confirmed although we have been in correspondence with the EU Bureau member from Sweden in this regard (16-19 June 2009?)
- TEGs represent important opportunities to generate substantive input for the subsequent WG meetings
- In this regard selection of credible participants and regional balance is critical
- As well, meeting chairs are important and we recommend experts consider the election of co-chairs (developing and developed) at each of the TEGs

ABSWG7 (Paris: 2-8 April, 2009)

- Regional and interregional consultations will be held in Paris on 31 March-1 April, 2009)
- Co-Chairs will hold consultations, including an open-ended consultation, on 1 April
- Bureau will also need to meet on 1 April

ABSWG7

- Inputs from regional and interregional consultations
- Inputs from the strategic programme on capacity-building for ABS in order enable Parties to elaborate, negotiate and implement the international regime (GEF mobilizing of the fourth replenishment and to provide appropriate resources in its fifth replenishment)
- Inputs from capacity-development activities and raising awareness (UNEP, Governments and relevant international organizations)
- Inputs from the ABS component of the CHM in order to facilitate the exchange of information related to ABS, including relevant literature, legislation, analytical studies, and case-studies
- Inputs from studies on:
 - Concepts
 - Methods to identify GR
 - Tracking and monitoring
 - Compliance
 - In harmony and mutually supportive (FAO-ITPGRFA)
 - Transaction costs in access to justice across jurisdictions

- Compliance in customary law, national law, international law, ...
- Inputs by subject matter and the respective sources:
 - Views and proposals including any operative text submitted by Parties, other Governments, international organizations and indigenous and local communities, and relevant stakeholders
 - Operational text including related explanations and rationale
 - Any other views and information
- Inputs from invited experts on:
 - Technical aspects of matters relevant to ABS
 - Economic rent and the basis for the valuation of such rent
 - Information technology environment established by the Secretariat of the ITPGRFA for accessing material covered by the IT
- Negotiation of an operational text on:
 - Objective
 - Scope
 - Compliance
 - Fair and equitable benefit-sharing
 - Access
- Organization of work
 - We are continuing to study options. Workload is high so an innovative approach may be required to get the task done
 - We are also concerned about gender and regional balance in selection of chairs for various breakout groups
 - Blocks and bullets exercise
- Other matters: Indicators?

Meeting of experts on TK related to GRs

- Traditional knowledge associated with genetic resources as it relates to the IR on ABS (Venue?: 16-19 June 2009)
- Inputs: Results from studies on:
 - Concepts
 - Methods to identify GR
 - Tracking and monitoring
 - Compliance
 - In harmony and mutually supportive (FAO-ITPGRFA)

- Transaction costs in access to justice across jurisdictions
- Compliance in customary law, national law, international law, ...

WG 8(j) 6 (Kuala Lumpur: 2-6 November, 2009)

- Respective roles of 8 (j) and ABS WGs
- Prospects for ABS in WG 8(j)

ABSWG8 (Kuala Lumpur, 9-15 November 2008)

- Regional and interregional consultations, 7-8 November 2009
- Co-chair consultations, including opened-ended consultations, 8 November 2009
- Bureau meeting on 8 November 2009

ABSWG8

- Inputs from regional and interregional consultations
- Inputs from the strategic programme on capacity-building for ABS in order enable Parties to elaborate, negotiate and implement the international regime (GEF mobilizing of the fourth replenishment and to provide appropriate resources in its fifth replenishment)
- Inputs from capacity-development activities and raising awareness (UNEP, Governments and relevant international organizations)
- Inputs from the ABS component of the CHM in order to facilitate the exchange of information related to ABS, including relevant literature, legislation, analytical studies, and case-studies
- Inputs from studies on:
 - Concepts
 - Methods to identify GR
 - Tracking and monitoring
 - Compliance
 - In harmony and mutually supportive (FAO-ITPGRFA)
 - Transaction costs in access to justice across jurisdictions
 - Compliance in customary law, national law, international law, ...
- Inputs by subject matter and the respective sources:
 - Views and proposals including any operative text submitted by Parties, other Governments, international organizations and indigenous and local communities, and relevant stakeholders
 - Operational text including related explanations and rationale

- Any other views and information
- Invited experts on:
 - Technical aspects of matters relevant to ABS
- Negotiations of the draft provisions of operational text related to the components of the IR on:
 - Traditional knowledge associated with genetic resources
 - Capacity-building
 - Compliance
 - Fair and equitable benefit-sharing
 - Access
 - Nature
 - Draft the provisions addressed through:
 - legally binding measures
 - non-legally binding measures
 - A mix of the two
 - *Matrix including all operational text following the three criteria (value-added)*

ABSWG9 (Colombia, tbc, March 2010)

- Regional and interregional consultations
- Co-chair consultations
- Bureau meeting

ABSWG9

- Inputs from regional and interregional consultations
- Inputs from the strategic programme on capacity-building for ABS in order enable Parties to elaborate, negotiate and implement the international regime (GEF mobilizing of the fourth replenishment and to provide appropriate resources in its fifth replenishment)
- Inputs from capacity-development activities and raising awareness (UNEP, Governments and relevant international organizations)
- Inputs from the ABS component of the CHM in order to facilitate the exchange of information related to ABS, including relevant literature, legislation, analytical studies, and case-studies
- Inputs by subject matter and the respective sources:
 - Views and proposals including any operative text submitted by Parties, other Governments, international organizations and indigenous and local communities, and relevant stakeholders
- Invited experts on:
 - Technical aspects of matters relevant to ABS
- Negotiation of the international regime on ABS – Consolidation of operational texts provisions addressed through:

- legally binding measures
- non-legally binding measures
- A mix of the two

IV. Prospects for Nagoya

- Bureau's involvement important from the outset.
- Leadership role of both the German and Japanese Governments essential if we are to get to Nagoya with a meaningful result.
- We have built a strong relationship with the German COP Presidency and we look forward to building an equally strong relationship with the Japanese government at the earliest possible moment.
- ABS is a key to success of this inter-sessional period and to immediate post-2010 period.
- Mindful that 2010 is the UN year of biodiversity.
- Prospects for completing ABS have never been better and the stakes have never been higher for the Convention.