

# Big holes in the air – or something real?

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Sometimes it is helpful to know the strategy of the “other side” – in this case, the strategy of some Parties who want to prevent a legally binding and effective regime against biopiracy.

After four days of negotiations to streamline text (i.e. weeding out duplications, merging similar proposals and withdrawal of some proposals) to produce documents that will be the basis for further negotiations at WGABS 7 and beyond, the main strategies of the friends of biopirates become clearer.

1. Creating an updated version of the Bonn Guidelines – still voluntary and toothless  
During the contact group on the regime’s objective at least two developed country Parties revealed their desire to effectively neutralise or simply delete compliance provisions that matter. Although the regime’s “nature” (i.e. legally binding or not) is not discussed during this working group meeting, the rejection of language to secure compliance is a clear statement towards a non-binding regime. Securing compliance in user countries will be one of the essential parts of the upcoming protocol, as the lack of this is one of the main reasons of ongoing biopiracy. Therefore any attempt to remove the compliance clause from the objective has to be countered.

2. Creating an empty Regime  
All negotiators have a fallback position, when their first scenario is not successful. The fallback position of the friends-of-biopirates group could already be seen in the Saturday night negotiations on scope. In the event they lose out in the discussion on the nature of the regime, they will do whatever they can to carve out as many exemptions and exclusions as possible from the regime’s scope. Therefore, during the upcoming discussion on scope, special attention has to be given to the attempts to gouge holes in the future protocol.

A special danger is the attempt to allow other “international agreements” to exclude themselves from the ABS obligations under the CBD. We still remember the torturous hours of debate over a “gap analysis” when the friends-of-biopirates tried to convince everyone that benefit sharing is already taken care of by existing agreements and measures. That gap analysis affirmed that there is indeed a big gap – nothing exists that deals with the international dimension of biopiracy.

Sadly, by the time the first round of discussions on scope ended we left cross-eyed at the long list of exclusions and special considerations – reading the list one would think that there are numerous ABS instruments all over.

Reminder: the International Treaty on Plant Genetic Resources for Food and Agriculture is the result of more than 100 governments’ decision in a Resolution that was made when the CBD was signed. It can be said to be a sub-set of the CBD.

If other organizations are mentioned because they have a role in the implementation of ABS, this should – at the very least – be based on a decision of the Parties to the future protocol and under a clear mandate. Only in this way will we avoid a sell-out of the ABS protocol.

### **The art to support something that does not exist anymore**

Party A: We withdraw our proposed operative text.

Party B: We would like to support the operative text of Party A

Party C: We also would like to support the Text of Party A

Party D: A text which is not on the table cannot be supported, neither by Party B, nor by Party C. Therefore the previous text of Party A can only be supported, if it is tabled by Party B or C. Will Party B or C do this?

Party C: We are happy to support Party B, if they propose the previous text of Party A as their own text.

Party B: Hmm. We cannot table the text of Party A as it does not reflect our position. Nevertheless we would like to support it.

Party D: But there is nothing that can be supported!

Party B: But there was!

Party D: But it's not anymore.

HUH?