

**SUMMARY OF THE FIRST MEETING OF THE INTERGOVERNMENTAL COMMITTEE FOR THE NAGOYA PROTOCOL TO THE CONVENTION ON BIOLOGICAL DIVERSITY: 5-10 JUNE 2011**

The Intergovernmental Committee for the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (ABS) to the Convention on Biological Diversity was established to undertake the preparations necessary for the first meeting of the Conference of the Parties serving as the Meeting of the Parties to the Protocol. At its first meeting, held from 5-10 June 2011, the Committee considered: the modalities of operation of the ABS clearinghouse; measures to assist in capacity building, capacity development and strengthening of human and institutional capacities in developing countries; measures to raise awareness of the importance of genetic resources and associated traditional knowledge; and cooperative procedures and institutional mechanisms to promote compliance with the Protocol and address cases of non-compliance.

The meeting was attended by over 300 participants, representing governments, intergovernmental and non-governmental organizations, local authorities, indigenous and local communities, the research community and the private sector. The Committee adopted four recommendations on the ABS clearinghouse, capacity building and development, awareness raising, and compliance procedures, setting in motion a series of intersessional activities to advance the preparations for the Protocol's entry into force. As delegates transitioned from negotiations to implementation mode, they started to grapple with the need to find common understanding on unprecedented or ambiguous provisions of the Protocol. Compliance procedures emerged as the substantively dominant and politically charged element of the discussions, and can be expected to take a significant role at the next meeting of the Committee in April 2012.

**A BRIEF HISTORY OF THE PROTOCOL**

The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (ABS) to the Convention on Biological Diversity

(CBD) was adopted at the tenth meeting of the Conference of the Parties (COP) to the CBD on 29 October 2010, in Nagoya, Japan. The objective of the Protocol is the fair and equitable sharing of the benefits arising from the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding, thereby contributing to the conservation of biodiversity and the sustainable use of its components. The Protocol has 24 signatures and no ratifications to date. The Protocol will enter into force on the 90th day after the date of deposit of the 50th instrument of ratification, acceptance, approval or accession by states or regional economic integration organizations that are parties to the Convention.

The Protocol implements the third CBD objective and builds on Article 15 addressing access to genetic resources, including facilitating access, prior informed consent (PIC), mutually agreed terms (MAT) and benefit-sharing. Related articles refer to traditional knowledge (Article 8(j)), access to and transfer of technology (Article 16.3), and handling and distribution of benefits of biotechnology (Article 19).

The Convention's work on ABS was initiated at COP 4 (May 1998, Bratislava, Slovakia) when parties established a regionally-balanced expert panel on ABS. The expert panel

**IN THIS ISSUE**

A Brief History of the Protocol . . . . .	1
ICNP 1 Report . . . . .	3
ABS Clearinghouse . . . . .	3
Capacity Building . . . . .	5
Awareness Raising . . . . .	7
Compliance Mechanism . . . . .	8
Other Matters . . . . .	11
Closing Plenary . . . . .	11
A Brief Analysis of ICNP 1 . . . . .	11
Upcoming Meetings . . . . .	13
Glossary . . . . .	14

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held two meetings (October 1999, San José, Costa Rica; and March 2001, Montreal, Canada) and developed a set of recommendations, including on PIC, MAT, approaches for stakeholder involvement and options to address ABS within the CBD framework. COP 5 (May 2000, Nairobi, Kenya) established the Working Group on ABS to develop guidelines and other approaches on: PIC and MAT; participation of stakeholders; benefit-sharing mechanisms; and the preservation of traditional knowledge.

**ABS 1:** At its first meeting (October 2001, Bonn, Germany), the Working Group on ABS developed the draft Bonn Guidelines on ABS, identified elements for a capacity-building action plan, and considered the role of intellectual property rights (IPRs) in the implementation of ABS arrangements.

**COP 6:** At its sixth meeting (April 2002, The Hague, the Netherlands), the COP adopted the Bonn Guidelines on ABS and also considered the role of IPRs in the implementation of ABS arrangements, and the relationship with the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS) of the World Trade Organization.

**WSSD:** In the Johannesburg Plan of Implementation, the UN World Summit on Sustainable Development (WSSD) (September 2002, Johannesburg, South Africa) called for negotiating, within the CBD framework, an international regime to promote and safeguard the fair and equitable sharing of benefits arising out of the utilization of genetic resources.

**ABS 2:** At its second meeting (December 2003, Montreal, Canada), the ABS Working Group debated the process, nature, scope, elements and modalities of an international ABS regime, and also considered measures to ensure compliance with PIC and MAT, and capacity building.

**COP 7:** At its seventh meeting (February 2004, Kuala Lumpur, Malaysia), the COP adopted the Action Plan on capacity building for ABS, mandated the ABS Working Group to elaborate and negotiate an international ABS regime and set out the terms of reference for the negotiations.

**ABS 3 and 4:** At its third and fourth meetings (February 2005, Bangkok, Thailand, and January 2006, Granada, Spain), the ABS Working Group produced draft text compilations to serve as the basis for future negotiations. It also considered additional approaches to complement the Bonn Guidelines on ABS, including an international certificate of origin/source/legal provenance, measures to support compliance with PIC and MAT, and options for indicators for ABS.

**COP 8:** At its eighth meeting (March 2006, Curitiba, Brazil), the COP instructed the ABS Working Group to complete its work with regard to the international ABS regime at the earliest possible time before COP 10 in 2010. The COP also requested the Working Group on Article 8(j) to contribute to the mandate of the ABS Working Group on issues relevant to traditional knowledge.

**ABS 5 and 6:** At its fifth and sixth meetings (October 2007, Montreal, Canada, and January 2008, Geneva, Switzerland), the ABS Working Group focused on the main components of the international regime on ABS, including fair and equitable sharing of benefits, access to genetic resources, compliance, traditional knowledge and genetic resources, and capacity building. In Geneva, the Working Group produced a short and concise working document on the international regime, consisting of

sections on the main components and lists of items “to be further elaborated with the aim of incorporating them in the international regime” in the case of agreement in principle, or “for further consideration” in the case of disagreement or need for further clarification.

**COP 9:** At its ninth meeting (May 2008, Bonn, Germany), the COP adopted a roadmap for the negotiation of the international regime, ensuring that the ABS Working Group will meet three times before the 2010 deadline for completion of negotiations. The COP also established three expert groups, and instructed the ABS Working Group to finalize the international regime and to submit an instrument/instruments for consideration and adoption by COP 10. The three expert groups (concepts, terms, working definitions and sectoral approaches; compliance; and traditional knowledge associated with genetic resources) each met once between December 2008 and June 2009.

**2009-2010 NEGOTIATIONS:** The ABS Working Group met four times between COPs 9 and 10 (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 consolidated 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 interregional negotiating group (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 required further compromise, 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.

**COP 10:** During COP 10, held from 18-29 October 2010, in Nagoya, Japan, the ING met to continue negotiations on several key elements of the protocol. Towards the end of the meeting, informal ministerial consultations were held to discuss a compromise proposal put forward by the Japanese COP Presidency, where agreement was reached on a package relating to the remaining outstanding issues, including: the concept of utilization and derivatives, and related benefit-sharing; the provision on scope; non-arbitrary access procedures; traditional knowledge-related issues, including a provision on publicly available traditional knowledge that was eventually deleted; special considerations with regard to human, animal or plant health emergencies and food security issues; the issue of temporal scope and a related proposal on a multilateral benefit-sharing mechanism to address benefit-sharing for genetic resources and traditional knowledge that occur in transboundary situations or for which it is not possible to grant or obtain prior informed consent (PIC); and compliance-related provisions on checkpoints, information requirements, and the international certificate of compliance. The COP adopted the clean text of the

Protocol submitted by the informal ministerial consultations, as part of a “package” including also the new CBD Strategic Plan 2011-2020 and the Strategy for Resource Mobilization.

### ICNP 1 REPORT

On Sunday, 5 June 2011, Kazuaki Hoshino, representing the COP Presidency, opened the first meeting of the Intergovernmental Committee for the Nagoya Protocol (ICNP) and read a message from Japan’s Environment Minister Ryu Matsumoto. Noting that access and benefit-sharing (ABS) has been a controversial topic, the minister applauded the “respectful and sincere efforts” that had led to the successful conclusion of the negotiation of the Nagoya Protocol. He reminded delegates of Japan’s contribution of one billion yen to support developing countries in capacity building in relation to ABS, and the establishment of a new trust fund managed by the Global Environment Facility (GEF) in March 2011 to administer contributions. Hoshino called attention to a joint letter from the COP President and the Executive Secretary of the Convention on Biological Diversity (CBD), addressed to environment ministers of all CBD parties, calling for the early ratification and entry into force of the Protocol. Following a proposal by the COP 10 Bureau, Janet Lowe (New Zealand) was nominated, and elected by acclamation, to replace Tim Hodges (Canada) as ICNP Co-Chair.

On Monday morning, Co-Chair Lowe reminded delegates that the focus has shifted from negotiating the content of a possible agreement on ABS, to implementing an agreed Protocol. In a video message, Edward Norton, UN Goodwill Ambassador for the CBD, urged all countries to ratify the Nagoya Protocol, and reassured them that negotiations on the preservation of biodiversity influence life on the ground. Hélène Mandroux, Mayor of Montpellier, France, stressed the importance of engaging local actors in raising awareness on biodiversity conservation, especially the youth. She announced that Montpellier will host the World Ethnobiology Conference in 2012, bringing together academics, indigenous peoples and local level actors to discuss the management of the planet’s biological resources.

Co-Chair Lowe congratulated the GEF Council for its rapid approval of the operational arrangements of the Nagoya Protocol Implementation Fund. Monique Barbut, GEF CEO and Chairperson, thanked the Japanese COP Presidency for its role in advancing the CBD objectives; reported that Japan, France, Norway and Switzerland are donors to the Fund; emphasized the importance of the ABS clearinghouse; pointed out that with the Nagoya Protocol, countries are entering “a new world of opportunity” with the sharing of monetary and non-monetary benefits arising from the Protocol’s implementation; and encouraged all parties to ratify the Protocol and put in place a legal regime that is attractive to investors.

CBD Executive Secretary Ahmed Djoghlaif inaugurated the new Arabic section of the CBD website, thanking Saudi Arabia, France and Spain for their contributions towards the development of communications material in the relevant UN languages; and congratulated the 24 states that signed the Protocol, expressing hope that it will enter into force no later than 10 July 2012 so that the first meeting of the conference of the parties serving

as the meeting of parties (COP/MOP) can be convened back-to-back with the biodiversity summit in Hyderabad, India, in October 2012.

India, on behalf of the Asia-Pacific Group, stressed the wide range of interpretations and implementation options that have emerged since the Protocol’s adoption, and the need for flexibility and non-prohibitive costs for effective implementation at the national level. The Philippines for the Like-minded Megadiverse Countries (LMMC) urged delegates not to reopen the text of the Protocol, highlighting the importance of flexibility in national implementation. Peru, on behalf of the Latin American and Caribbean Group (GRULAC), encouraged delegates to shift from “negotiation gear to cooperation gear.” Hungary, on behalf of the European Union (EU), its Member States, Croatia, Turkey and Serbia, expressed readiness to sign the Nagoya Protocol as soon as the process of correction of the French version of the Protocol is successfully concluded. Croatia, for Central and Eastern Europe (CEE), requested the Secretariat to prepare and disseminate an information note on, *inter alia*, the linkages between the Nagoya Protocol and other legal instruments including the TRIPS Agreement and the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGR), and the implications of becoming a party to the Protocol. Egypt, for the African Group, called for strong political will on compliance, monitoring, tracking and the establishment of the clearinghouse. Japan prioritized awareness raising and compliance.

**ORGANIZATIONAL MATTERS:** Dubravka Stepic (Croatia) was appointed rapporteur. The following members were elected to the ICNP Bureau: David Hafashimana (Uganda) and Samuel Dieme (Senegal) for Africa; M.F. Farooqui (India) and Leina Al-Awadhi (Kuwait) for Asia-Pacific; Monica Rosell (Peru) and Anita James (Saint Lucia) for GRULAC; Dubravka Stepic (Croatia) and Sergiy Gubar (Ukraine) for CEE; and Ben Phillips (Australia) and Ines Verleye (Belgium) for the Western Europe and Others Group.

Delegates then adopted the meeting’s agenda (UNEP/CBD/ICNP/1/1) without amendment. On the organization of work, Co-Chair Lowe proposed prioritizing commitments with budgetary implications, noting that the Protocol has far-reaching implications for the environment and development, which are of relevance to ongoing negotiations on climate change and trade. Delegates adopted the organization of work (UNEP/CBD/ICNP/1/1/Add.1/Rev.1) without amendment.

This report summarizes discussions on each of the items on the agenda of ICNP 1.

### ABS CLEARINGHOUSE

Delegates first discussed the ABS clearinghouse on Monday, after the Secretariat presented a report from the expert meeting held from 11-14 April 2011 in Montreal, Canada on the modalities of operation of an ABS clearinghouse, and a tentative timeline and resource requirements for a pilot phase and the adoption of modalities of the clearinghouse (UNEP/CBD/ICNP/1/2 and 3). On Wednesday, the Secretariat introduced a timeline of suggested activities and resource requirements (UNEP/CBD/ICNP/1/7), highlighting planned activities, estimated costs and possible intersessional work. Delegates

considered a draft recommendation on Wednesday, and a revised recommendation on Thursday. On Friday they adopted the final recommendation.

**Phased development:** Mexico, Cuba, Brazil, Argentina, Switzerland and Indonesia supported the proposed phased approach to the development of a clearinghouse, with a pilot phase to begin as soon as possible after ICNP1. India observed that: the aims of ABS are different from those of other protocols, cautioning against applying lessons learned from the Biosafety Clearinghouse; and the pilot phase should take into account the deliverables of a fully expanded system.

The EU, supported by Norway, emphasized that the main goal of the clearinghouse should be to support and facilitate compliance. The EU also noted that the results of the pilot phase would help identify capacity-building needs. Cuba requested a flexible information system not solely based on the internet and including other communication tools. The Maritime Aboriginal Peoples Council suggested experimentation in accommodating the use of indigenous peoples' languages and terminology.

New Zealand underscored that the platform should respond to the Protocol's provisions on information that is required to be included in the clearinghouse. Iran requested an information-sharing mechanism to be established at the national level first, with the necessary financial support. Switzerland highlighted the pilot phase should: prioritize operationalization of the obligations of the Nagoya Protocol, remain simple and user-friendly, and clarify additional information that may be needed. Egypt recommended "a large degree of flexibility" in the development of the pilot phase, suggesting that links could be provided to sources of existing information except where the Protocol demands a formal approach through national authorities.

The EU, supported by Guatemala, requested that the pilot phase of the clearinghouse be initiated before ICNP 2, urging parties to provide additional financial support for the implementation of the pilot CH; and outlined a proposed list of activities to kick-start the pilot phase, including drafting the modalities for the pilot, a development and operation phase, and the creation of a user interface. Japan noted the need to appoint a project manager as soon as possible.

The Philippines suggested that, when reviewing the results of the pilot phase, consideration be given to the possibility of reaching a common understanding on issues identified by the expert meeting on the clearinghouse on, *inter alia*: notification of permits; updating certificates of compliance, including the information on third party transfer arrangements; and tracking genetic resources across sectors. The EU cautioned against overburdening the Secretariat. Co-Chair Lowe suggested that the proposal be noted in the meeting report.

Switzerland requested elimination of references allowing parties to amend national permits through the clearinghouse, saying this issue should either be addressed by the COP, or qualified by adding "if mutually agreed." The International Indigenous Forum on Biodiversity (IIFB), supported by several parties, suggested that "needs and priorities should be determined by ILCs themselves, with the participation of indigenous women of the world," not only those in developing countries.

When considering the draft recommendation, the Philippines reiterated the proposal to explore, when the pilot phase is reviewed, ways to reach common understanding on unresolved

issues so that ICNP 2 can make recommendations. Co-Chair Lowe proposed reflecting the Philippines' concerns in the meeting report, emphasizing that the pilot phase has limited time and resources to deal with issues on which parties have not reached agreement, and that these would be addressed at a later stage. The EU cautioned against over-burdening the initial pilot phase, while the Philippines, supported by Namibia, reiterated that the pilot phase serves to find ways to reach common understanding of all unresolved issues identified by the April 2011 expert group on: notification of permits or their equivalent; updating internationally recognized certificates of compliance; third party transfer; tracking the utilization of genetic resources; identification of subject matter or genetic resources covered by the certificate; and confidential information. The EU proposed instead requesting the Secretariat to report on progress in the implementation of the pilot phase, "including on lessons to be drawn from the pilot phase on the modalities of the operation of the ABS clearinghouse." Delegates eventually agreed on recommending that the ABS clearinghouse be implemented in a phased manner "with a view to reaching common understanding on unresolved issues."

#### **Information to be incorporated in the clearinghouse:**

Co-Chair Lowe pointed out that the critical priorities of the ABS clearinghouse are based on the Protocol, and are not up for renegotiation. Noting that the last phase of the Protocol's negotiation was "very rushed," Namibia, supported by Senegal, Cuba and the Philippines, suggested including information on the conditions for third party transfer arrangements, with the EU proposing including this among "other information" identified as being particularly valuable for the ABS clearinghouse.

Iran suggested including information on parties' affiliations with other arrangements on genetic resources outside of the CBD. South Africa, with the indigenous and local communities (ILCs), suggested adding information on relevant customary authorities that grant access to traditional knowledge associated with genetic resources. Canada, supported by Switzerland but opposed by Mexico, Cuba and the Philippines, proposed deleting references to information on the contribution made by ABS measures to the sustainable use and conservation of biodiversity, and checkpoints. India, supported by Saudi Arabia, specifically requested retention of reference to checkpoints. The Philippines stressed the importance of including information on both access and benefits. Uganda suggested adding information on the contribution of ABS to the Millennium Development Goals (MDGs).

On Wednesday, Namibia, supported by Norway, reiterated its proposal to add information on third party transfer arrangements. Co-Chair Lowe noted that the draft text was taken directly from the Protocol and could not be altered. Namibia then suggested adding "conditions to transfer to third parties" among information currently available in the CBD ABS measures databases. Australia suggested that reference to the certificate of compliance should reflect Protocol language. Regarding information to be incorporated in the pilot phase of the ABS clearinghouse, Canada proposed to qualify that "information that should be incorporated on a priority basis" is "mandatory" information under the Protocol.

**Submission of information:** Mexico, with Mali, called for better definition of the role of the focal point, detailing its specific tasks, profile and functions. Thailand proposed deleting reference to ILC focal points to the clearinghouse. Ethiopia, supported by China and Switzerland, stressed that selecting multiple national focal points should be for each country to decide. Peru proposed that additional national focal points only submit information other than that required by the Nagoya Protocol.

Uganda and Egypt expressed concern that additional focal points would create confusion. Canada proposed clarifying that “each party” should consider the establishment of an ILC focal point. The EU and Norway highlighted that Protocol Articles 13 and 14, on national focal points and competent national authorities and on the clearinghouse and information-sharing mechanism, provide full flexibility for national authorities to identify more than one focal point, although there is no obligation to do so. Egypt proposed adding a reference to Protocol Articles 13 and 14, and Brazil to Protocol Article 12(2) on traditional knowledge associated with genetic resources.

Uganda, supported by Nepal and India, observed that Article 13 of the Protocol provides for national but not ILC focal points, and suggesting that ILC “contact persons” be identified instead. Uganda and India objected to information from ILCs being located separately from national information, due to possible confusion, with the EU proposing to qualify this by “with appropriate” and take into account alternatives.

Guatemala supported indigenous peoples’ inclusion in decision-making, as more than half of the Protocol provisions are relevant to them. The Métis National Council urged developing the process for submitting information with ILCs in an inclusive manner, respecting community protocols, confidentiality and MAT. She also noted that indigenous focal points do not have authority to grant access to community resources, since this authority rests with the communities.

The EU noted that not all parties have ILCs, suggesting that the recommendation address only concerned parties, and favored referring to parties establishing ILC contact “points” in plural. Ethiopia proposed reflecting Protocol language regarding participation of ILCs.

**Information Management:** Mali, with China, noted that implementation of an internet-based centralized portal requires training of personnel and has budgetary implications. The EU supported the use of common formats to report information, and controlled vocabularies, to facilitate entry and retrieval of information. Tanzania suggested including an explanation on the development of a common format and encouraging the development of a mechanism for baseline information on traditional knowledge. Canada noted that common formats and controlled vocabularies cannot be applied to permits that are submitted in local languages.

**Tentative timeline:** The EU enquired about the type of activities and the countries to be included in the pilot phase, expressing concern that ICNP 2 will have to further discuss the implementation of the clearinghouse before it has been tested. The Philippines enquired about the timing of the pilot phase in exploring all elements of the clearinghouse, and Saint Lucia about whether a selected group of countries will be targeted in the pilot phase. Norway supported the timeline suggested.

Cuba underscored the continued need to evaluate clearinghouse operations, while Colombia drew attention to national focal points as the engine of the clearinghouse.

**Funding and resource requirements:** The EU queried how anticipated costs could be absorbed by the CBD budget. Japan requested clarification on the relationship between the proposed additional staff and the additional post approved at COP 10, noting that the creation of new posts needs to be approved by the COP and suggesting that the proposed activities be undertaken by the Secretariat until and unless the COP decides otherwise.

The Secretariat clarified that: there are currently no existing CBD resources to develop the clearinghouse; work can begin as soon as staff are recruited; and colleagues involved in the Biosafety Clearinghouse could provide guidance.

**Recommendation:** In the final recommendation (UNEP/CBD/ICNP/1/L.2), the ICNP:

- recommends that the ABS clearinghouse be implemented in a phased manner, building up its functions and activities in response to clear and identified demand, considering ongoing feedback from users, in line with available resources, recognizing the importance of reaching common understanding on unresolved issues in the ICNP;
- recommends that the first phase of the clearinghouse be a pilot phase and requests the Secretariat to implement the pilot phase as soon as possible after ICNP 1, subject to the availability of resources;
- invites parties, governments and other donors to provide additional financial support to enable the pilot phase to be implemented as soon as possible; and
- requests the Secretariat to: report on progress in the implementation of the pilot phase at ICNP 2; develop draft modalities of operation of the clearinghouse for consideration by ICNP 2; and explore opportunities for collaboration with partners and other data providers in the clearinghouse’s development.

The annex to the recommendation contains guidance for the pilot phase of the clearinghouse, including on objectives, information to be incorporated in the pilot phase, information management including submissions and updates, networking with existing mechanisms, capacity building and reporting requirements. Information to be incorporated in the pilot phase includes mandatory information incorporated on a priority basis; additional information; and other information identified as particularly valuable, including the contribution of ABS to, among others, the MDGs, and information on third party transfer arrangements. On information management including submissions and updates, the guidance contains information on, *inter alia*, each party, as appropriate, considering the establishment of ILC contact points for the ABS clearinghouse to facilitate effective participation of ILCs. On capacity building, the guidance includes that ILCs be encouraged to identify their capacity-building needs with emphasis on enhancing the capacity of women to access genetic resources and/or traditional knowledge associated with genetic resources.

#### **CAPACITY BUILDING**

On Tuesday, Co-Chair Casas introduced the document on capacity building, capacity development and strengthening of human resources and institutional capacities in developing countries and parties with economies in transition (UNEP/

CBD/ICNP/1/4), drawing delegates' attention to the proposed elements for a strategic approach to capacity building and development for ABS under the Protocol. Delegates considered a draft recommendation on Wednesday, and a revised draft recommendation on Thursday. Delegates adopted the recommendation on Friday.

Argentina, Mexico, Japan, Egypt, India, the Republic of Korea and Niger endorsed the proposed elements to the strategic approach, with Saint Lucia requesting that capacity building for small island developing states be geared towards integrating ABS into existing processes. Vietnam called for capacity building for ABS implementation on the ground and for the preservation of traditional knowledge. Ecuador suggested including monitoring and evaluation in the definition of indicators. Bhutan called for strong North-South cooperation on capacity building. Guatemala, supported by Brazil, requested adding provisions for technology transfer in the capacity-building programme for provider countries. Timor-Leste recommended using both formal and non-formal education approaches, based on the needs of ILCs. Canada proposed adding that: capacity building must enable countries to comply with the requirements of the Nagoya Protocol; national self-assessments be carried out on key areas for capacity building; and past and existing work on capacity building for ABS, especially by the GEF, be highlighted. The Republic of Korea proposed identifying the gap between the current situation and the desired outcome on capacity building on ABS.

Underlining the importance of financial resources for the successful implementation of a strategic approach, Mexico, supported by Switzerland, proposed including the GEF as a partner. Canada noted that the GEF earmarked US\$52.5 million for national capacity building in the period 2010-2014. Norway recommended focusing on setting up protocols for PIC and MAT, and supporting countries to develop their own research and business capacities. Regarding aid priorities for ABS capacity building, she recommended using "ordinary bilateral channels," and giving guidance to the GEF.

The EU: prioritized training in MAT; highlighted that the results of the pilot phase of the clearinghouse would help to identify capacity-building needs; and queried the need for a proposed expert meeting to further develop the draft strategic approach, and for a coordination mechanism. Switzerland suggested using the questionnaire on parties' specific capacity needs for implementation to determine if there is need for a coordination mechanism. Japan supported a coordination mechanism, and the need for monitoring the strategic approach. India recommended a subregional approach, and supported a mechanism for coordination with the ITPGR, the UN Food and Agriculture Organization and the Cartagena Protocol on Biosafety.

Egypt requested elaboration of elements in the strategic approach: establishment of a scientifically verifiable biodiversity baseline, its components, and relevant traditional knowledge; tracking of genetic material; transfer of technology; and training of ILCs for negotiation and recognition of the added value of the material of which they are custodians. Uganda requested adding to the strategic approach: a process of stakeholder identification; and measures for dealing with transboundary issues.

The EU recommended: including in the guiding principles the need to build on lessons of previous ABS capacity-building initiatives; adding indicators for monitoring of capacity-building impacts on conservation and the sustainable use of biodiversity; and building any strategic approach upon a bottom-up and demand-driven process. Thailand recommended that all levels of implementation should be closely related and capture synergies between the different levels. Tanzania proposed inclusion of support for academic institutions to mainstream ABS issues in their curriculum.

The IIFB requested specific mention of capacity building of women, and identification of monitoring indicators that reflect the actual conditions of ILCs. The Maritime Aboriginal Peoples Council pointed to meeting capacity needs for indigenous peoples in developed countries.

On Wednesday, the EU proposed emphasizing: the role of bilateral and multilateral cooperation in capacity-building and capacity-development activities for the Protocol's implementation; and a bottom-up approach by making reference to "the domestic needs and priorities identified by parties." China suggested inviting governments, international finance institutions, the GEF, regional development banks and other multinational financing institutions to provide parties with resources for the implementation of the capacity-building strategic framework. Canada stressed the need to include early efforts on capacity building in the strategic framework, including the GEF national capacity self-assessments. The IIFB, supported by Guatemala, underscored the need to take into account ILCs' capacity-building needs on the basis of the Protocol.

**Next steps:** Delegates discussed a proposed questionnaire, to be developed by the Secretariat, on the possible elements of a strategic approach; and a proposed expert meeting on this issue, whose outcomes would be considered by ICNP 2. Cuba and Mexico endorsed the development and use of the questionnaire and, with Rwanda, the proposed expert group meeting. Mexico and Nepal requested that the expert group incorporate experiences shared at this meeting, as well as involve developing country party participants. Japan endorsed the development and use of the proposed questionnaire, and with Canada, suggested that the questionnaire be used to determine the need for the proposed expert group meeting. The EU supported development and use of the proposed questionnaire, but, with New Zealand, queried the added value of the expert group.

Co-Chair Casas highlighted that the expert group meeting would require additional financial resources, and stressed that a decision of its establishment would need to be made at this meeting, as its outcomes would form the basis for discussion at ICNP 2. Canada requested that a draft of the questionnaire be made available to parties and others as soon as possible. Ethiopia supported an expert group, subject to availability of funding. Canada requested terms of reference for the group, noting that it could be convened after the results of the questionnaire become available. The EU suggested holding an expert meeting after INCP 2, with Co-Chair Casas cautioning that the strategic framework should be ready for adoption at COP/MOP 1. The IIFB, supported by Guatemala, highlighted the need to include indigenous experts in the expert meeting.

**Recommendation:** Delegates adopted the recommendation on Friday with one amendment: China proposed referring to the GEF as “an institutional structure carrying out the financial mechanism of the Nagoya Protocol,” rather than as “the financial mechanism” of the Protocol; and delegates agreed to refer to it as “the” institutional structure, as proposed by the EU. In the final recommendation (UNEP/CBD/ICNP/1/L.3), the ICNP:

- takes note of previous and ongoing ABS capacity-building initiatives supported by the GEF, the ITPGR and other organizations and institutions, including the ABS Capacity Development Initiative;
- recommends the development of a strategic framework for capacity building and development, on the basis of domestic needs and priorities identified by parties, including those identified by ILCs;
- invites submission of views and information from governments, international organizations, ILCs and other stakeholders on domestic needs and priorities, and on the proposed elements;
- requests the Secretariat to prepare a questionnaire to facilitate the submission of views, and to prepare a synthesis of the views and information received for consideration by ICNP 2; and
- invites the provision of financial resources to support capacity-building and development initiatives for the effective implementation of the Protocol.

The recommendation contains an annex on proposed elements of the strategic framework including: experience and lessons learned from past and ongoing ABS capacity-building and development initiatives; guiding principles and approaches including those specified in Protocol Article 22; key areas for capacity building and development; mechanisms for implementation; a coordination mechanism and its possible elements, including the reporting of capacity-building and development initiatives to the ABS clearinghouse; cooperation among parties; monitoring and review, including indicators for impact assessment; a possible sequence of actions for implementation of the strategic framework, including a possible roadmap of activities to assist countries in defining their priorities and corresponding timelines; and financial and other resource requirements.

### **AWARENESS RAISING**

On Tuesday, the ICNP discussed measures to raise awareness of the importance of genetic resources and associated traditional knowledge. Co-Chair Lowe introduced the document on the overview of early experiences and lessons learned on awareness on ABS (UNEP/CBD/ICNP/1/INF/2) and the proposed elements and timetable for an awareness-raising strategy (UNEP/CBD/ICNP/1/5). On Thursday, delegates discussed a draft recommendation, which was adopted on Friday without amendment.

**Strategy:** The EU emphasized that: Protocol Article 21 focuses on awareness raising at the national level; the GEF could be requested to include awareness in its relevant funded activities; and a bottom-up analysis of parties’ needs related to awareness raising could build upon the pilot phase of the clearinghouse and the capacity-building needs assessment, as well as Communication, Education and Public Awareness. The GEF described the avenues available for financing awareness-

raising activities, including the Nagoya Protocol Implementation Fund, the GEF Trust Fund and its US\$1 million contribution for awareness raising for the Protocol.

Switzerland, Norway and Canada underlined that awareness raising should be party-driven, as needs and approaches to ABS differ from country to country. India affirmed that increasing awareness at the national level is the first priority. Norway recommended that the strategy be a tool for guidance and should specify which actions are for the Secretariat and which are for national actors to undertake.

Argentina supported the elements and timetable of the strategy, stressing the need to understand awareness-raising needs at all levels, with Japan noting the need to address financial implications at ICNP 2. Brazil suggested that the strategy: be broad; consolidate dialogue between and within states; and consider the regional level, as well as translation challenges in countries with multiple community languages. Mexico emphasized the need for: clear key messages that respond to the needs of the parties, without creating internal conflicts; identification of target audiences; and highlighting benefits derived from using genetic resources. Saint Lucia proposed focusing on ways to encourage “buy-in.” Indonesia proposed creating different toolkits for different target audiences.

Egypt noted the importance of awareness on the rules on ABS and for the strategy to incorporate ILCs. The Maritime Aboriginal Peoples Council suggested that the establishment of an inter-agency taskforce for communication on the Protocol should be a stand-alone activity. Iran stressed the interlinkages between awareness raising, capacity building and the clearinghouse; and the need for subregional workshops. The IIFB called for ILCs’ involvement in the proposed workshops, highlighting their willingness to share experiences and best practices. Zambia proposed a compilation of comparative case studies from the regional, subregional and national levels. Bhutan recommended that awareness-raising methodologies be country-specific.

**Next steps:** Saint Lucia recommended that the needs analysis regarding awareness raising start before COP/MOP 1 as a pilot phase. Brazil called for workshops related to awareness raising to be held before COP/MOP 2. Argentina, Japan and Norway favored submitting a revised strategy for adoption by COP/MOP 1; while Argentina, Norway, Egypt and Mexico supported urging the GEF to provide financial resources for early action on Protocol Article 21. Mexico, Colombia and Egypt preferred identifying further intersessional work on the strategy.

The EU proposed that the Secretariat collect comments on the draft strategy and compile a revised draft highlighting particular “inputs of added-value.” Mexico reiterated the need to include awareness-raising activities in the intersessional period.

Co-Chair Lowe noted that although there is support for a “bottom-up approach” to the strategy, a global perspective would also be helpful, taking into account the experience of other multilateral environmental agreements (MEAs). Guatemala endorsed the possible combination of nationally-driven awareness raising and taking lessons from other MEAs. Supporting the draft strategy, Norway cautioned against postponing discussion to ICNP 2. Ethiopia called for a clear mandate for the expert group. Co-Chair Lowe proposed allowing further submissions from parties within the proposed timeline.

**Recommendation:** In the final recommendation (UNEP/CBD/ICNP/1/L.4), the ICNP:

- invites governments, international organizations, ILCs and others to submit views to the Secretariat on the proposed elements of an awareness-raising strategy for the Protocol;
- invites governments, ILCs and others to submit information to the Secretariat on awareness-raising activities on the importance of genetic resources and traditional knowledge, including lessons learned from existing experience; and
- requests the Secretariat to revise the proposed elements of the strategy, taking into account views expressed at ICNP 1, for consideration at ICNP 2.

The recommendation contains an annex on the proposed elements of an awareness-raising strategy for the Protocol (2012-2016), including operational objectives, expected outcomes, indicators, suggested activities, actors, time frame and estimated costs for four priority activities, namely: a communications situation analysis; creating key messages, a suite of communication products and a media strategy; creating an ABS communication toolkit; and holding workshops.

### COMPLIANCE MECHANISM

On Tuesday and Wednesday, the ICNP discussed cooperative procedures and institutional mechanisms to promote compliance with the Protocol and address cases of non-compliance (UNEP/CBD/ICNP/1/6 and UNEP/CBD/ICNP/1/INF/1). On Thursday, delegates addressed a draft recommendation, and on Friday they adopted the recommendation without amendment.

Delegates debated the relationship of Protocol Article 30 (procedures and mechanisms to promote compliance with the Protocol) with Articles 15 (compliance with domestic legislation on ABS), 16 (compliance with domestic legislation on ABS from traditional knowledge associated with genetic resources) and 18 (compliance with MAT). They also exchanged views on the options for procedures and mechanisms, and on next steps.

**Relationship of Article 30 with Articles 15-16 and 18:** On Tuesday, Co-Chair Casas reminded delegates that Article 30 of the Protocol requires that procedures and mechanisms to promote compliance with the Protocol be considered at COP/MOP 1, stressing that compliance with domestic measures and MAT was not the topic at hand. The African Group asserted that Protocol Article 30 aims to produce an institutionalized system related to Protocol Articles 15-18 on compliance with domestic legislation, monitoring and MAT.

The Secretariat clarified that Article 30 is about states' obligations under general international law to fulfill all obligations under the Protocol. Peru, China and the African Group questioned wording in document UNEP/CBD/ICNP/1/6 on "excluding the notions of compliance with domestic legislation (Articles 15-16) and compliance with MAT (Article 18)" from the context of Article 30, with the African Group stressing that "cases of non-compliance" under Protocol Article 30 should include non-compliance with domestic legislation on ABS. China explained that if the compliance procedures are to apply to "all" the obligations under the Protocol, then the obligations under Protocol Articles 15-16 and 18 could not be "excluded" from the notion of compliance under Article 30, as stated in the meeting document. Egypt formally objected to the inclusion of the document UNEP/CBD/ICNP/1/6 among the official meeting documents, stressing the need to review it to

ensure accuracy and objectivity. Co-Chair Casas suggested that the Secretariat prepare a legal explanatory note as a non-paper to provide further clarification on the issue.

On Wednesday morning, Co-Chair Casas noted that document UNEP/CBD/ICNP/1/6 "has no status" as it represents the Secretariat's proposed guidance for parties' discussions and can be rejected in part or as a whole by parties as they agree on the desired output. He also emphasized the importance of the ICNP to the Protocol's ratification, highlighting that compliance is at the heart of the Protocol. He then explained that: "parties to the Protocol are bound by international law to comply with all their obligations under the Protocol, noting that these obligations include compliance with domestic legislation, as contained in Protocol Articles 15-16, as well as compliance with MAT, as contained in Protocol Article 18; and if a party does not take these compliance-related measures, this is considered non-compliance under the Protocol and will be reviewed under the compliance mechanism to be established by the COP/MOP."

He also explained that the wording in document UNEP/CBD/ICNP/1/6 on "excluding the notions of compliance with national legislation and compliance with MAT" had inadvertently created the impression that parties are not obligated to comply with obligations in Articles 15-16 and 18 in the context of Article 30, reiterating that parties are bound to comply with all the obligations under the Protocol; and the phrase in document UNEP/CBD/ICNP/1/6 "the consequences of non-compliance are normally not legally binding on parties," had been included "to reflect the cooperative, non-judicial nature of the mechanism and not to imply non-compliance." He proposed that this clarification be reflected in the meeting report, requesting delegates not to open up legal discussions on the document, but consider the options for the way forward.

GRULAC supported Co-Chair Casas's proposal to reflect the clarification in the report of the meeting. China, supported by the African Group, objected, affirming that document UNEP/CBD/ICNP/1/6 has official status, and requested it be amended to avoid future misunderstandings, as it is posted on the CBD website as an official document and, therefore, stands as a reference and would be consulted by delegations in the future. The African Group expressed concern that the document would create difficulties for parties in the process of signature and ratification because of the perceived threat to the integrity of the Protocol, and requested that the document be officially withdrawn.

The Secretariat proposed that: a revised version of document UNEP/CBD/ICNP/1/6 be issued, without references to "excluding the notions of compliance with domestic legislation and compliance with MATs" and "the consequences of non-compliance are normally not legally binding on parties;" and the meeting report reflect that "the Secretariat identified errors in UNEP/CBD/ICNP/1/6 and has issued a revised version." Speaking for the African Group, Egypt called for the further deletion from that document of "In the context of Article 30, compliance means 'the fulfillment by the contracting parties of their obligations under an MEA and any amendments to the MEA,'" noting that such language implied a reinterpretation of the Protocol by providing a definition of compliance that is not found in the Protocol itself.

Co-Chair Lowe clarified that there are two types of compliance in the Protocol: states' compliance with their international obligations under the Protocol, on the one hand; and users' compliance at the domestic level, on the other. China opposed the differentiation, stating that: Protocol Articles 15-16 and 18 include international obligations for states not only to legislate domestically, but also to cooperate to address cases of non-compliance; if parties do not take appropriate measures to address non-compliance, they violate their international obligations and will be subject to the compliance mechanism; and the meeting report should reflect all interpretations of these provisions.

Peru proposed requesting the Secretariat to withdraw document UNEP/CBD/ICNP/1/6; or convening a working group comprising regional representatives to resolve the issue. Co-Chair Casas cautioned that the meeting documents, although official, are not a basis for negotiations; reminded delegates that the Secretariat had identified and proposed to deal with errors in the document; and urged focusing on planning intersessional activities, since the signing of the Protocol is at stake.

Following the adoption of the recommendation on compliance on Friday morning, Egypt, for the African Group, expressed regret at the errors in the meeting document on cooperative procedures and institutional mechanisms on compliance (UNEP/CBD/ICNP/1/6), and the fact that the Secretariat did not withdraw the document and had not yet issued an amended version. He cautioned that actions such as these "will not be tolerated in the future," and warned the Secretariat that it was in "danger of being viewed as attempting to manipulate parties, and renegotiate the Protocol." Executive Secretary Djoghlaflaf acknowledged that the Secretariat made mistakes and apologized for it, highlighting that financial limitations have hampered the Secretariat's work. He emphasized that the Secretariat has no intention to manipulate or influence the process, or to renegotiate the Protocol.

Co-Chair Lowe assured the African Group that their statement would be reflected in the meeting report. Egypt and Cameroon, on behalf of the African Group, supported by Peru, requested that the African Group's statement be reproduced *verbatim* in the meeting report. Executive Secretary Djoghlaflaf pointed to increased translation costs, emphasizing that the UN practice is to reflect discussions in the meeting report, giving assurance that the meeting rapporteur would consult with the African Group to that end, and proposing to also include the Secretariat's response. Co-Chair Lowe noted agreement that the African Group's statement be appended to the meeting report along with the response by the Executive Secretary.

**Options for procedures and mechanisms:** Noting that the use of compliance procedures across MEAs has not been prolific, New Zealand called for a simple, supportive, facilitative and cost-effective mechanism, meeting as required rather than at regular intervals; adding that the mechanisms under the Cartagena Protocol and the ITPGR can be useful starting points. Canada supported the: establishment of a mechanism with regionally and provider-user balanced representation; exclusion of Protocol Articles 15-16 and 18 from the compliance mechanism; and absence of compliance measures with punitive or trade-related sanctions. Australia underscored the need for predictable and accountable measures to support compliance and

certainty; noting that non-compliance is usually due to lack of awareness or capacity. Japan favored: a flexible system similar to that under the ITPGR where the compliance body meetings are organized on an *ad hoc* basis and subject to financial availability; the submission of views on non-compliance to the governing body; and the possibility to review national reports.

India and China emphasized the need to devise a mechanism specific to the Protocol, while drawing on lessons from the Cartagena Protocol and the ITPGR, with India underscoring the critical importance of the facilitative nature of the mechanism in responding to cases of non-compliance due to lack of capacity or resources. Cuba noted the need to identify how technical assistance will be provided to parties to support their compliance. Brazil favored a transparent, voluntary, positive, non-confrontational and facilitative mechanism, remarking that this could not be developed by simply adapting elements of mechanisms under other MEAs. China questioned the possible legally binding nature of the consequences of non-compliance.

The EU emphasized that a compliance mechanism: is not to ensure compliance by individuals with domestic legislation; should be predictable and ensure confidentiality; and links with monitoring and reporting, capacity building and the ABS clearinghouse. Peru favored that the compliance mechanism should be: "an *ad hoc* advisory-type group," without excluding the possibility that it issues legally binding recommendations in exceptional cases; and governed by the principles of predictability, transparency and due process, noting that confidentiality should not be a general principle in environmental matters. Norway noted that the compliance mechanism should draw from other MEAs, particularly the innovative features of the compliance mechanism under the ITPGR, and that compliance with the Protocol provisions on traditional knowledge should be dealt with "on an equal footing" with other Protocol provisions.

China emphasized: the link between compliance and capacity building; the need for parties to have the final decision-making power on compliance and non-compliance; and the need for the compliance mechanism to take into account the specific needs of developing countries.

Indonesia preferred: ensuring the principles of accountability, good faith and legal certainty in the compliance procedure; establishing an *ad hoc* body with 15 members as under the Cartagena Protocol, with members nominated by the parties to represent different regional groups equally; triggering of the compliance procedure by a party with respect to itself or another party, by the compliance body or the governing body; ensuring confidentiality; and clarifying that the governing body is the only institution able to make final decisions on compliance issues.

Switzerland favored: a facilitative, transparent, fair, predictable, expeditious and non-controversial compliance mechanism, inspired by the Cartagena Protocol and possibly the ITPGR; submissions to the future compliance committee from any party, the Secretariat and stakeholders; and the possibility for the compliance committee to take facilitative measures in its own capacity.

Norway, supported by the African Group, proposed to draw on experiences and lessons learned on compliance procedures and mechanisms also from "other relevant agreements." China recommended that experiences and lessons learned be

drawn exclusively from MEAs, and not from compliance and verification mechanisms in other international processes such as human rights and nuclear treaties. India, supported by the EU, China and Saudi Arabia, suggested the deletion of reference to the Cartagena Protocol and the ITPGR, as this may limit the number of experiences and lessons learned.

The IIFB requested referring to “ILCs” rather than “indigenous and local community organizations” in line with Protocol and CBD language, and, with the Maritime Aboriginal Peoples Council, guaranteed ILCs’ participation in the expert group meeting. Co-Chair Casas proposed inviting “parties, international organizations, ILCs and relevant stakeholders” to communicate their views to the Secretariat on elements and options for compliance procedures and mechanisms, taking into account the experience and lessons learned “from other relevant multilateral agreements.”

**Next steps:** New Zealand, Argentina, Australia, India, the Republic of Korea, Samoa, Switzerland and Japan favored requesting the Secretariat to submit a synthesis report on the draft elements and options to ICNP 2. Peru and Saudi Arabia preferred convening an expert meeting on compliance procedures and mechanisms to refine the draft elements and options developed by the Secretariat.

The CEE, the EU, GRULAC and China favored the compilation of the synthesis report by the Secretariat, without precluding the possibility of an expert meeting. Cameroon, on behalf of the African Group, called for a regionally-balanced expert group meeting, underscoring the importance of clarity on compliance for the Protocol’s ratification. The Maritime Aboriginal Peoples Council stressed the stakes of indigenous peoples in Protocol provisions on traditional knowledge and the compliance mechanism, recommending indigenous peoples also be invited to submit views on compliance procedures.

The EU called attention to the sequence of proposed next steps: submissions by parties on elements and options for compliance procedures and mechanisms; preparation of a draft synthesis report by the Secretariat; convening of an expert meeting to review and refine the draft synthesis; and submission of the refined draft to ICNP 2.

The African Group, with India, the EU, Ukraine and Bangladesh, requested that the proposed expert meeting reflect regional balance. China, opposed by the EU, requested that the expert meeting be open-ended. The Secretariat explained that expert groups are relatively small, regionally- and gender-balanced groups, with Co-Chair Casas informing delegates of the respective costs of an open-ended group and of an expert meeting. Cuba and Brazil supported the expert meeting. Canada proposed requesting the Secretariat “to develop terms of reference for, and convene a meeting of experts and regional representatives” to review and refine the synthesis report.

Iran, supported by Bangladesh, Saudi Arabia, the Philippines and Qatar, and opposed by Japan and the EU, suggested that, as compliance issues are technical as well as political, an “interregional working group” take on a negotiating role to lessen the burden at ICNP 2, comprising two or three representatives per region, with clear composition and terms of reference. Switzerland, supported by Australia but opposed by China, proposed a regionally-balanced Friends of the Co-Chairs group to deal with both technical and political considerations.

Following informal consultations, Co-Chair Casas put forward that the expert group could: include five experts per region, with others permitted to attend as observers at their own expense; and be tasked to review the synthesis report and further refine the draft elements and options for consideration at ICNP 2. China expressed concern about an unlimited number of observers. Egypt underscored that funding should not determine the membership of the proposed group, provided that all participants are experts in the field. Co-Chair Casas then proposed that the experts’ meeting be comprised of five representatives per region nominated on the basis of expertise in compliance procedures and mechanisms, with up to seven observers from NGOs and other stakeholders.

GRULAC preferred a meeting of experts, noting the need for a “neutral basis for studying institutional mechanisms and procedures for compliance” and highlighting that only the COP can mandate other groups to carry out negotiations during the intersessional period. Iran proposed that a small interregional group, with negotiating power, meet back-to-back with ICNP 2, to review the report of the expert group meeting. China instead proposed scheduling a half-day session, back-to-back with ICNP 2, to consider the expert group report, with full participation from all parties. Mexico highlighted the option of convening a contact group at ICNP 2.

Co-Chair Casas noted delegates’ consensus on the expert meeting, noting it would be more practical to review the expert meeting report at ICNP 2 and that if no consensus is reached at ICNP 2, the ICNP would reconvene prior to COP/MOP 1 to finalize consideration of the issue.

Iran suggested including in the draft recommendation a request to the Co-Chairs to “exhaust all efforts to conclude the compliance procedures and mechanisms by COP/MOP 1.” Co-Chair Lowe noted that concluding efforts on the compliance mechanism and procedures is not the responsibility of the Co-Chairs, but of the parties. Iran, supported by the Philippines, then proposed to invite “parties, the Co-Chairs and the Secretariat to exhaust every effort in preparations necessary for the successful conclusion of the compliance procedures and mechanisms in COP/MOP 1,” with Canada proposing to refer to the successful conclusion of “discussions” of the compliance procedures and mechanisms.

**Recommendation:** In the final recommendation (UNEP/CBD/ICNP/1/L.5) the ICNP:

- recognizes that the parties to the Protocol must comply with all of their obligations under the Protocol;
- invites governments, international organizations, ILCs and relevant stakeholders to communicate by 1 September 2011 their views on elements and options for cooperative procedures and institutional mechanisms on compliance, taking into account the experience and lessons learned from other relevant multilateral agreements;
- requests the Secretariat to prepare a synthesis report and develop draft elements and options based on the views expressed;
- requests the Secretariat, in consultation with the Bureau, and subject to the availability of funds, to convene an expert meeting to review the synthesis report and further refine the draft elements and options for consideration at ICNP 2; and

- invites parties, the Co-Chairs and the Secretariat to exhaust every effort in preparations necessary for the successful conclusion of the discussions on compliance for COP/MOP 1.

### **OTHER MATTERS**

Qatar stressed that capacity-building projects be needs-specific, as some parties require both technical and financial assistance, while others only require technical assistance. Mali, on behalf of francophone countries, protested the unavailability of the French translation of the Nagoya Protocol, noting the difficulty for least developed countries to draft national ABS legislation without the requisite documentation. CBD Executive Secretary Djoghlaif pointed to translation problems with the French version, but said the official French translation of the Protocol will be available by the end of June, emphasizing the need for the Secretariat to have official translators on staff and proposing to address this issue at COP 11.

### **CLOSING PLENARY**

On Friday, 10 June, the ICNP heard closing statements. The Philippines for LMMC: congratulated ICNP 1 for having laid the basis for successful implementation, and recommended that ICNP 2: design compliance procedures in relation to ongoing practices of “biopiracy” with the full participation of relevant stakeholders; and provide concrete proposals to facilitate common understanding on the tracking of use of genetic resources and traditional knowledge in the clearinghouse, noting the importance of the clearinghouse as a tool to facilitate compliance. He also called for mobilization of support, including for pre-implementation activities. Ukraine, on behalf of CEE, stressed the importance of awareness raising among policymakers and of the pilot phase of the clearinghouse.

Cameroon, for the African Group, stated that following uncertainties about the future of the Protocol after Nagoya, ICNP 1 had met expectations on charting the way forward towards implementation, adding that in order to build trust, honest communication must be ensured between parties and the Secretariat. Saint Lucia, for GRULAC, welcomed the Co-Chairs’ strong leadership, expressing hope for a strong partnership with the Secretariat in ensuring capacity building and awareness raising.

India, for the Asia-Pacific Group, urged delegates to “get over the negotiation mode” and work more positively towards implementation, reiterating the Asia-Pacific Group’s commitment to early ratification and entry into force of the Protocol. The EU commended all parties for moving into full implementation mode to achieve the tasks needed in time for COP/MOP 1, which he hoped will take place at the same time as CBD COP 11. Japan, on behalf of the COP Presidency, expressed hope that all preparatory activities be completed by ICNP 2.

The Maritime Aboriginal Peoples Council requested that ILCs’ “full and effective participation,” rather than “involvement,” consistently be reflected in the recommendations, as provided for in the Protocol. The IIFB hoped for improved ILCs’ participation in future meetings; noted “gaps” in the Nagoya Protocol, calling for national and international measures on free PIC and on transboundary traditional knowledge; and stressed the need to respect community customary laws, protocols and procedures. She also emphasized the need for financial and technical support

for ILCs, and called for respect of minimum international standards in recognizing indigenous peoples’ collective rights on traditional knowledge and genetic resources.

Rapporteur Stepic introduced the draft report of the meeting (UNEP/CBD/ICNP/1/L.1). France requested reflecting a point of order on the need for interpretation in all UN languages at these meetings. The EU requested inserting Co-Chair Casas’s explanation on the sequence of next steps on compliance, to be followed in the intersessional period. The meeting report was adopted with these amendments. Co-Chair Lowe drew the meeting to a close at 12:41 pm.

## **A BRIEF ANALYSIS OF ICNP 1**

### **SWITCHING GEARS!**

“It is no longer possible to re-open the text of the Nagoya Protocol: it is time to shift from negotiation to implementation gear.” This was the mantra many delegates and the Co-Chairs kept repeating at their first meeting since the adoption of the Protocol in Nagoya. Completing this transition was implicit on the Intergovernmental Committee’s agenda, together with the overall mission to maintain momentum and send the “right signals” to encourage rapid ratification and early entry into force of the Protocol. The urgency to see this innovative and complex new international environmental agreement up and running was compounded with the desire to repeat the success of Nagoya and prepare for another historic “biodiversity summit” in October 2012 in India, when the first meeting of the parties to the Protocol could take place. But several key details for the implementation of the Nagoya Protocol remain to be worked out before countries will feel comfortable ratifying it.

The road between negotiation and implementation seems pitted with questions of interpretation, and the widely-appreciated flexibility afforded by the Protocol’s text to governments does not necessarily facilitate the clear identification of next steps. In particular, the “creative ambiguity” of the Protocol, which was the key to its adoption, means that delegates still have to figure out “a workable common understanding” of the essential mechanisms that are needed at the international level for the Protocol to function.

Compliance has emerged as the substantively dominating and politically charged element of discussions, and is likely to be the litmus test of the Protocol’s success. This brief analysis will map the items discussed by the ICNP that revolved around compliance, and conclude with an assessment of the extent to which compliance is pivotal for the early ratification and implementation of the Protocol.

### **WHAT DOES IT TAKE TO COMPLY?**

The last-minute adoption of the Protocol in Nagoya and the fact that its final text was not actually negotiated, but rather adopted on a take-it-or-leave-it basis, means that former negotiators and governments alike are still deciphering what they got out of the deal and understanding how the Protocol is supposed to work. To that extent, the first meeting of the ICNP was the first opportunity for both ABS veterans and newcomers to look at the nuts and bolts of the Protocol.

One important, although not prominent, piece of the Nagoya Protocol is awareness raising. While UN Goodwill Ambassador

Edward Norton reassured CBD delegates that their work matters in the outside world, nobody denies that ABS is still a little-known issue to the general public and even to the numerous government and stakeholder sectors that will be affected by the Protocol. Many participants fretted that without effective awareness raising, there is very little chance of the Protocol being implemented by the environment, trade, development, and enforcement officers at the national level, let alone being complied with by private parties. Thus, swift agreement to develop an awareness-raising strategy was a welcome step.

Capacity building is another element of the Protocol that is seen as a prerequisite for effective compliance. Unlike other MEAs, however, the Protocol has addressed capacity building in detail and at multiple points, linking it explicitly with compliance (both to put in place ABS measures to comply with the Protocol, and to monitor others' compliance). Once again, because of the Protocol's built-in flexibility, capacity-building activities will vary greatly from one country to another, so delegates tried to balance a bottom-up approach to allow countries and communities to determine their own needs with an overarching global strategy to ensure optimal use of resources.

The ABS clearinghouse will store information on capacity-building initiatives, and by sharing information will itself contribute to capacity building. In addition, the clearinghouse is expected to become an international centralized information system that will give legal certainty to both users and providers, and provide some sort of independent verification of access and benefit-sharing decisions on the ground. Delegates began to identify key questions for the clearinghouse pilot phase: how can it be dynamic and constantly updated, but also reliable and not too burdensome or costly? And as to equity concerns, will there be equal information-sharing on access and on benefit-sharing? Will ILCs be able to control the management of their information that is needed on the system?

Attention, though, mostly gravitated towards the multiple links between the clearinghouse and compliance. Initially, parties will have to input information on their national implementation measures (such as national ABS laws and MAT) in the clearinghouse, and if they don't, that could be considered a "case of non-compliance." Once the information is in the system, parties will be able to use the clearinghouse to monitor compliance or perhaps even use that information as defense against non-compliance allegations. Once included in the clearinghouse, national permits will turn into "internationally recognized certificates of compliance"—the cornerstone of the international system set up by the Protocol to control bilateral access and benefit-sharing. Delegates debated the appropriate level of ambition between an early and cost-effective set-up of the clearinghouse, and using its pilot phase to clarify outstanding issues, notably those that an April 2011 expert group could not resolve, such as third party transfer and tracking the utilization of genetic resources. Those strongly arguing for the latter were worried that leaving unresolved issues to be addressed at a later stage would be equivalent to "sweeping them under the carpet" and potentially using them as an excuse to withhold information in the future. Delegates were eventually able to compromise on "recognizing the importance of reaching common understanding on unresolved issues in the ICNP," possibly putting the issue to the next Committee meeting.

### **COMPLYING WITH WHAT, EXACTLY?**

In line with the emphasis placed on compliance issues in relation to other items on the Committee's agenda, it came as no surprise that participants had the liveliest discussions on the compliance mechanism for the Protocol. While often rife with heightened sentiments of suspicion and mistrust, these difficult discussions ultimately proved useful in shedding light on the "core" provisions of the Protocol.

Many MEAs have set up their compliance mechanisms, so the Nagoya Protocol can draw on a wealth of ideas and lessons learned, particularly from the Cartagena Protocol as the first protocol under the CBD, and the ITPGR with its most recently adopted compliance procedures on a specialized set of ABS issues. Nevertheless, many delegations clarified that they expect the Nagoya Protocol to develop a mechanism "of its own" because of its unique features.

One of the specificities of the Protocol that was extensively and hotly debated was the role of an international compliance committee (to be established under Protocol Article 30) to look into parties' compliance with their obligations to ensure respect for national ABS legislation of other countries and of contractual arrangements (Articles 15-16 and 18). This is certainly complex in practical terms, and an unusual task when compared with other MEAs. Some parties argued that misunderstanding would be generated by associating states' compliance under international law with private parties' compliance with domestic legal and contractual obligations. Other parties viewed this as an attempt to shield from international oversight states' efforts to avoid or address "biopiracy" within their jurisdiction, in compliance with the Protocol. The debate was eventually beneficial in clarifying that the Protocol's compliance mechanism will look into states' compliance with "all" their international obligations under the Protocol, including parties' obligations to adopt laws and other national measures to ensure private parties' compliance, and to cooperate with other states to address cases of non-compliance by private parties. The latter seemed to be particularly important for provider countries, who may be able to use (or at least threaten) a party-to-party trigger under a future compliance mechanism to ensure that user countries cooperate in ensuring access to justice in cases of misappropriation.

Another specificity of the Nagoya Protocol that was only touched upon at this meeting but that will no doubt be discussed in more depth at the next, is how the compliance mechanism will address non-compliance with the traditional knowledge-related provisions of the Protocol and the role of ILCs. One option is to allow for a stakeholder trigger, which was suggested at this meeting, but is politically quite unlikely, as parties to the CBD and other MEAs have clearly shown their preference for state-controlled compliance mechanisms. Other options could be found in human rights compliance mechanisms, although these assume states' lack of political will to comply, while MEA compliance procedures tend to focus on capacity issues. Nonetheless, the ICNP, in the end, left the door open for participants to look beyond environmental treaties in such a difficult quest, reflecting the fact that the Nagoya Protocol not only calls for inter-state cooperation on environmental issues, but also for states' protection of the rights of indigenous and local communities.

Intersessional discussions will thus have to be intense and focused to map out realistic and innovative options for a compliance mechanism tailor-made for the Nagoya Protocol. ILCs' inputs, specifically called for in the final recommendation, will be critical, as will a careful review of the reasons why other MEA compliance systems often end up being under-utilized, or not utilized at all. Financial implications and practicality will also play a part, particularly as ICNP 2 will tackle the budget and resource mobilization for the Protocol.

### **THE AB"CD" OF EARLY RATIFICATION AND EFFECTIVE IMPLEMENTATION**

Overall, ICNP 1 was itself about awareness raising and capacity development, allowing delegates to better understand the tasks at hand, identify substantive outstanding issues, and plan the next steps to operationalize the Protocol. In doing so, the meeting shed light on the need to continue to build trust and common understanding on difficult issues that had been sidelined during the final hours of negotiations in Nagoya.

ICNP 1 thus contributed to an even heavier agenda for ICNP 2 in April 2012, where complex compliance issues will have to compete for delegates' attention with other outstanding issues from Nagoya, most notably the multilateral benefit-sharing mechanism, which was a compromise to overcome the stalemate on the temporal scope of the Protocol. Nonetheless, with the clock ticking away for the Protocol to gather not only signatures, but also ratifications in order for its first Meeting of the Parties to be scheduled for October 2012 in Hyderabad, broad-based satisfaction with compliance under the Protocol has emerged as the Copernican system to true international cooperation on ABS.

## **UPCOMING MEETINGS**

### **CBD Ad Hoc Technical Working Group (AHTEG) on Indicators for the Strategic Plan for Biodiversity 2011-2020:**

The *Ad Hoc* Technical Expert Group (AHTEG) of the CBD on Indicators for the Strategic Plan for Biodiversity 2011-2020 is to provide advice on: further development of agreed indicators and additional indicators to assess progress towards targets of the Strategic Plan; mechanisms to support parties in their efforts to develop national indicators and associated biodiversity monitoring and reporting systems; and strengthening of linkages between global and national indicator development and reporting. An International Expert Workshop to support the AHTEG will take place from 20 to 22 June 2011, hosted by the UK Department for Environment, Food and Rural Affairs and convened by UNEP-WCMC and the Biodiversity Indicators Partnership in cooperation with the CBD Secretariat. **dates:** 20-24 June 2011 **location:** High Wycombe, United Kingdom **contact:** CBD Secretariat **phone:** +1-514-288-2220 **fax:** +1-514-288-6588 **email:** [secretariat@cbd.int](mailto:secretariat@cbd.int) **www:** <http://www.cbd.int/doc/?meeting=AHTEG-SP-IND-01>

**International Technical Symposium on Intellectual Property and Sustainable Development:** The symposium, focusing on documentation and registration of traditional knowledge and traditional cultural expressions, is organized by the World Intellectual Property Organization (WIPO) and the Public Authority for Crafts Industries. **dates:** 26-28 June 2011 **location:** Muscat, Oman **contact:** WIPO Secretariat **phone:**

+41-22-338-9111 **fax:** +41-22-733-5428 **email:** [grtkf@wipo.int](mailto:grtkf@wipo.int) **www:** [http://www.wipo.int/meetings/en/2011/wipo\\_tk\\_mct\\_11/index.html](http://www.wipo.int/meetings/en/2011/wipo_tk_mct_11/index.html)

**International Conference: A Global Partnership for Plant Conservation – Supporting the worldwide implementation of the Global Strategy for Plant Conservation:** The conference, organized by the Global Partnership for Plant Conservation, the CBD Secretariat and Botanic Gardens Conservation International, brings together plant conservation scientists, policy makers and practitioners to showcase examples, share experiences and discuss mainstreaming plant conservation in national development agendas, as well as evaluate progress and provide guidance and suggestions for countries that are updating National Biodiversity Strategies and Action Plans (NBSAPs) to include targets for plant conservation. The meeting will also build on, and evaluate progress in implementing the GSPC from 2002 to 2010. A meeting of the Liaison Group for the GSPC will take place on 8-9 July, following the conference. **dates:** 5-7 July 2011 **location:** St Louis, Missouri, USA **contact:** Missouri Botanical Garden **phone:** +1-314-577-9473 **email:** [gppc2011@mobot.org](mailto:gppc2011@mobot.org) **www:** <http://www.mobot.org/gppc2011>

### **CBD Ad Hoc Expert Group Meeting of Local Community**

**Representatives:** Organized by the CBD Secretariat, this meeting aims to identify common characteristics of local communities and gather advice on how local communities can participate more effectively in Convention processes. **dates:** 14-16 July 2011 **location:** Montreal, Quebec, Canada **contact:** CBD Secretariat **phone:** +1-514-288-2220 **fax:** +1-514-288-6588 **email:** [secretariat@cbd.int](mailto:secretariat@cbd.int) **www:** <http://www.cbd.int/doc/?meeting=AHEG-LCR-01>

**Thirteenth session of the Commission on Genetic Resources for Food and Agriculture (CGRFA 13):** The thirteenth session of the Commission on Genetic Resources for Food and Agriculture (CGRFA 13) will meet in July 2011. **dates:** 18-22 July 2011 **location:** FAO Headquarters, Rome, Italy **contact:** CGRFA Secretariat **email:** [cgrfa@fao.org](mailto:cgrfa@fao.org) **phone:** +39-6-5705-4981 **fax:** +39-6-5705-5246 **www:** <http://www.fao.org/nr/cgrfa/cgrfa-home/en/>

**Climate Change and Genetic Resources for Food and Agriculture: State of Knowledge, Risks and Opportunities:** This seminar will include presentations covering: animal genetic resources; plant genetic resources; aquatic genetic resources; forest genetic resources; micro-organism genetic resources; and invertebrate genetic resources. Additional discussions will include setting the policy scene, and agriculture biodiversity and climate change. **date:** 16 July 2011 **location:** Rome, Italy **contact:** CGRFA Secretariat **phone:** +39-6-5705-4981 **fax:** +39-6-5705-5246 **email:** [cgrfa@fao.org](mailto:cgrfa@fao.org) **www:** [http://www.fao.org/fileadmin/templates/nr/documents/CGRFA/EN\\_DaftAgenda\\_CC\\_Final.pdf](http://www.fao.org/fileadmin/templates/nr/documents/CGRFA/EN_DaftAgenda_CC_Final.pdf)

**WIPO IGC 19:** The 19th session of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore of the World Intellectual Property Organization will continue text-based negotiations to reach agreement on an international legal instrument (or instruments) that ensure the effective protection of traditional knowledge, traditional cultural expressions and genetic resources, without prejudice to the work pursued in other fora.

**dates:** 18-22 July 2011 **location:** Geneva, Switzerland **contact:** WIPO Secretariat **phone:** +41-22-338-9111 **fax:** +41-22-733-5428 **email:** grtkf@wipo.int **www:** <http://www.wipo.int/tk/en/>  
**2011 International Biodiversity Conference:** This Conference will focus on scientific issues related to biodiversity conservation and tropical ecology. **dates:** 29 July - 4 August 2011 **location:** Baños, Ecuador **contact:** Wild Spots Foundation **phone:** +1-888-635-7291 **email:** info@wsfbioconference.org **www:** <http://www.wsfbioconference.org/>

**XIII Annual BIOECON Conference:** This conference will focus on resource economics, biodiversity conservation and development. **dates:** 11-13 September 2011 **location:** Villa Barton, Graduate Institute of International and Development Studies, Geneva, Switzerland **contact:** Silvia Bertolin **phone:** +39-41-271-1411 **fax:** +39-41-271-1461 **email:** silvia.bertolin@feem.it **www:** [http://bioecon-network.org/04\\_13\\_ann-conf.htm](http://bioecon-network.org/04_13_ann-conf.htm)

**49th Series of Meetings of the WIPO Assemblies:** Among other issues, the WIPO Assembly will address matters concerning the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore. **dates:** 26 September - 5 October 2011 **location:** Geneva, Switzerland **contact:** WIPO Secretariat **phone:** +41-22-338-9111 **fax:** +41-22-733-5428 **www:** [http://www.wipo.int/meetings/en/details.jsp?meeting\\_id=22166](http://www.wipo.int/meetings/en/details.jsp?meeting_id=22166)

**First Plenary Meeting of IPBES:** The First Plenary Meeting of the Intergovernmental Platform on Biodiversity and Ecosystem Services (IPBES) will adopt the platform's rules of procedure, and modalities for participation and membership. The plenary is also set to hear offers from governments to host the platform's secretariat and is expected to decide on a detailed work programme and budget. **dates:** 3-7 October 2011 **location:** TBA **contact:** IPBES Secretariat **phone:** +254-20-762-5135 **fax:** +254-20-762-3926 **email:** ipbes.unep@unep.org **www:** <http://ipbes.net/plenary-sessions.html>

**Seventh meeting of the Ad Hoc Open-ended Working Group on Article 8(j) and Related Provisions:** The meeting will consider mechanisms to promote the effective participation of indigenous and local communities in the work of the CBD, including in-depth dialogue on ecosystem management, ecosystem services and protected areas. **dates:** 31 October - 4 November 2011 **location:** Montreal, Canada **contact:** CBD Secretariat **phone:** +1-514-288-2220 **fax:** +1-514-288-6588 **email:** secretariat@cbd.int **www:** <http://www.cbd.int/doc/?meeting=WG8J-07>

**CBD SBSTTA 15:** The 15th meeting of the Subsidiary Body on Scientific, Technical and Technological Advice of the CBD will report and follow up on the Strategic Plan for Biodiversity 2011-2020, including support of ecosystem restoration, a capacity-building strategy for the Global Taxonomy Initiative, invasive alien species, inland water, sustainable use and Arctic biodiversity, and ways and means to improve the effectiveness of SBSTTA. **dates:** 7-11 November 2011 **location:** Montreal, Canada **contact:** CBD Secretariat **phone:** +1-514-288-2220 **fax:** +1-514-288-6588 **email:** secretariat@cbd.int **www:** <http://www.cbd.int/doc/?meeting=SBSTTA-15>

**Expert Group on Biodiversity for Poverty Eradication and Development:** The Expert Group will elucidate linkages between the objectives of the CBD and poverty eradication

and development processes, building on existing initiatives and cooperation with relevant organizations. The report of the Group will provide technical input to the AHTEG on Review of Implementation of the CBD. **dates:** 12-14 December 2011 **location:** Dehradun, India **contact:** CBD Secretariat **phone:** +1-514-288-2220 **fax:** +1-514-288-6588 **email:** secretariat@cbd.int **www:** <http://www.cbd.int/meetings/>

**1st Meeting of the Global Platform for Business and Biodiversity:** The Global Platform on Business and Biodiversity aims to promote markets that support nature conservation and sustainable use. The meeting will facilitate dialogue among businesses, governments and other stakeholders who are developing tools and are involved in making the business sector more sustainable. **dates:** 15-16 December 2011 **location:** Tokyo, Japan **contact:** CBD Secretariat **phone:** +1-514-288-2220 **fax:** +1-514-288-6588 **email:** business@cbd.int **www:** <http://www.cbd.int/meetings/>

**2nd Meeting of the Open-Ended Ad Hoc Intergovernmental Committee for the Nagoya Protocol on ABS (ICNP-2):** ICNP 2 is mandated to consider: the budget for the biennium following the entry into force of the Protocol, guidance for the financial mechanism, guidance for resource mobilization, rules of procedure for the COP/MOP, a draft provisional agenda for COP/MOP 1, the need for and modalities of a global multilateral benefit-sharing mechanism, and items taken up at ICNP 1, as needed. **dates:** 23-27 April 2012 (tentative) **location:** Delhi, India (tentative) **contact:** CBD Secretariat **phone:** +1-514-288-2220 **fax:** +1-514-288-6588 **email:** secretariat@cbd.int **www:** <http://www.cbd.int/meetings/>

## GLOSSARY

ABS	Access and benefit sharing
CBD	Convention on Biological Diversity
CEE	Central and Eastern Europe
COP	Conference of the Parties
COP/MOP	Conference of the Parties serving as the Meeting of the Parties
GEF	Global Environment Facility
GRULAC	Group of Latin American and Caribbean Countries
ICNP	Intergovernmental Committee for the Nagoya Protocol
IIFB	International Indigenous Forum on Biodiversity
ILCs	Indigenous and local communities
ITPGR	International Treaty on Plant Genetic Resources for Food and Agriculture
LMMC	Like-minded Mega-diverse Countries
MAT	Mutually agreed terms
MEAs	Multilateral Environmental Agreements
PIC	Prior informed consent
TRIPS	Agreement on Trade-related Aspects of Intellectual Property Rights