



THIRD MEETING OF THE INTERGOVERNMENTAL COMMITTEE FOR THE NAGOYA PROTOCOL ON ACCESS AND BENEFIT-SHARING: 24-28 FEBRUARY 2014

The Third Meeting of the Open-ended *Ad Hoc* Intergovernmental Committee for the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (ICNP 3) to the Convention on Biological Diversity (CBD) begins today in Pyeongchang, Republic of Korea. It was preceded by a capacity-building workshop on the access and benefit-sharing (ABS) Clearing-House, held on 23 February 2014.

ICNP 3 is expected to address outstanding issues in its work plan, in preparation for the first meeting of the Conference of the Parties serving as the Meeting of the Parties to the Protocol (COP/MOP), including: development of a programme budget for the biennium following the entry into force of the Protocol; consideration of rules of procedure for the COP/MOP; elaboration of a draft provisional agenda for COP/MOP 1; the need for and modalities of a global multilateral benefit-sharing mechanism (Article 10); modalities of operation of the ABS Clearing-House; capacity building and development; and procedures and mechanisms on compliance. The eleventh meeting of the Conference of the Parties (COP) to the CBD decided that ICNP 3 should also address monitoring and reporting; and exchange views on the state of implementation of the Nagoya Protocol, and the development, updating and use of sectoral and cross-sectoral model contractual clauses, voluntary codes of conduct, guidelines and best practices and/or standards.

A BRIEF HISTORY OF THE ABS PROTOCOL

The Nagoya Protocol on ABS was adopted at CBD COP 10 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. With 29 ratifications to date, the Nagoya Protocol will enter into force 90 days after the deposit of the 50th instrument of ratification.

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. Over two meetings, the expert panel developed recommendations on prior informed

consent (PIC), mutually agreed terms (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 considered the role of IPRs in ABS 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.

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, 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.

COP 9: At its ninth meeting (May 2008, Bonn), the COP adopted a roadmap for the negotiation of the international regime, established three expert groups, and instructed the ABS Working Group 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 COP 9 and 10 (April 2009, Paris, France; November 2009, Montreal; March 2010, Cali, Colombia; and July 2010, Montreal), assisted by expert, informal and regional consultations. In Cali, the Working Group Co-Chairs Timothy Hodges (Canada) and Fernando Casas (Colombia) 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 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 negotiations, including scope and pathogens, derivatives and the concept of utilization of genetic resources, and mechanisms to support compliance. An additional meeting of the ING convened in September 2010, in Montreal, but several key issues remained outstanding.

COP 10: Immediately prior and during COP 10 (18-29 October 2010, Nagoya), the ING continued negotiations. Towards the end of the meeting, informal ministerial consultations discussed a compromise proposal put forward by the Japanese COP Presidency, where agreement was reached on a package relating to outstanding issues, including: the concept of utilization and derivatives, and related benefit-sharing; the provision on scope; access procedures; traditional knowledge-related issues, including deleting a provision on publicly available traditional knowledge; special considerations with regard to human, animal or plant health emergencies and food security issues; 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 PIC; and compliance-related provisions on checkpoints, information requirements and the internationally recognized certificate of compliance. The COP adopted the Protocol as part of a "package" including the new CBD Strategic Plan 2011-2020 and a decision on the implementation of the Strategy for Resource Mobilization. It also established the ICNP to undertake the preparations necessary for COP/MOP 1.

ICNP 1: At its first meeting (5-10 June 2011, Montreal), the Committee adopted four recommendations initiating work on: the modalities of operation of the ABS Clearing-House; capacity building; awareness raising; and compliance.

ICNP 2: At its second meeting (2-6 July 2012, New Delhi, India), the Committee adopted eight recommendations on: the ABS Clearing-House; capacity building; awareness raising; compliance; a global multilateral benefit-sharing mechanism; guidance for the financial mechanism; resource mobilization for the Protocol's implementation; and future work in preparation for COP/MOP 1.

COP 11: COP 11 (8-19 October 2012, Hyderabad, India) decided to reconvene the ICNP for a third meeting and added to its agenda: monitoring and reporting; an exchange of views on sectoral and cross-sectoral model contractual clauses, codes of conduct and guidelines; and an exchange of views on the state of implementation of the Protocol. It also called for intersessional work on a multilateral benefit-sharing mechanism, capacity building and the ABS Clearing-House.

INTERSESSIONAL HIGHLIGHTS

CGRFA 14: Held from 15-19 April 2013, in Rome, Italy, the fourteenth session of the FAO Commission on Genetic Resources for Food and Agriculture (CGRFA 14) adopted two new documents, the Global Plan of Action on forest genetic resources, and the Genebank Standards for Plant Genetic Resources; agreed that it is premature to negotiate an international agreement or agreements on ABS for genetic resources for food and agriculture; and requested the Commission's Intergovernmental Technical Working Groups to explore ABS issues related to their respective sub-sectors, assisted by a team of technical and legal experts on ABS, and aiming at draft elements as a voluntary tool to facilitate domestic implementation of ABS for different sub-sectors.

ITPGR GB 5: At its fifth session (24-28 September 2013, Muscat, Oman), the Governing Body (GB) of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGR) launched an intersessional Working Group to Enhance the Functioning of the Multilateral System (MLS) of ABS, which is mandated to develop measures to increase user-based payments and contributions to the Treaty's Benefit-sharing Fund as a priority, as well as additional measures to enhance the functioning of the MLS. The GB also decided to reconvene its intersessional committee on the sustainable use of plant genetic resources for food and agriculture, to provide advice on the development of a toolbox on sustainable use, and prepare a set of options for parties' consideration in national implementation of farmers' rights.

WORKING GROUP ON ARTICLE 8(j): At its eighth meeting (7-11 October 2013, Montreal) the CBD Working Group on Article 8(j) (traditional knowledge) and Related Provisions adopted a draft plan of action for customary sustainable use; and recommended developing guidelines on repatriation, and on prior informed approval by indigenous and local communities for access to, benefit-sharing from, and reporting and prevention of unlawful appropriation of, traditional knowledge.

SBSTTA 17: The 17th meeting of the CBD Subsidiary Body on Scientific, Technical and Technological Advice (14-18 October 2013, Montreal) adopted three recommendations on: scientific and technical needs for implementing the Strategic Plan; new and emerging issues; and the Intergovernmental Platform on Biodiversity and Ecosystem Services (IPBES).

WIPO IGC 26: Following renewal of its mandate by the 43rd session of the General Assembly of the World Intellectual Property Organization (WIPO) (23 September – 2 October 2013, Geneva), the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore held its 26th session from 3-7 February 2014, in Geneva, where it developed a revised consolidated document on intellectual property and genetic resources. Provisions on including mandatory disclosure of the origin of genetic resources used by patent applicants, as well as a range of post-grant sanctions for non-compliance with the disclosure requirement, remain unresolved.