



## ICNP 3 HIGHLIGHTS: THURSDAY, 27 FEBRUARY 2014

In the morning, plenary heard a brief presentation on a UN Development Programme-India initiative, the “Global e-Network,” which facilitates scientific and technical knowledge-sharing between countries to assist in building the capacity necessary to ratify and implement the Nagoya Protocol. Plenary then addressed CRPs on: the draft agenda of COP/MOP 1; the ABS Clearing-House; model contractual clauses, codes of conduct, guidelines, best practices and standards (Articles 19-20); capacity building; and the global multilateral benefit-sharing mechanism. The contact group on compliance met in the morning, and continued its deliberations in the evening.

### COP/MOP 1 AGENDA

Delegates addressed a CRP. The EU proposed, and delegates agreed, to make a request to the Secretariat to develop a proposal for the organization of a concurrent meeting of the CBD COP and COP/MOP 1 for consideration by the fifth meeting of the CBD Working Group on the Review of Implementation. Delegates approved the draft recommendation, with this amendment.

### ABS CLEARING-HOUSE

Delegates addressed a CRP. Following a proposal by the EU, delegates agreed to specify that the advisory committee, and the Secretariat when it refines the modalities of the ABS Clearing-House, will also take into account the feedback received from parties and stakeholders during the pilot phase. CANADA called for advice by the committee on what information is mandatory or voluntary according to the Protocol provisions. Following a brief discussion on whether this is a technical issue falling within the committee’s mandate, delegates agreed to request the Secretariat to further refine the modalities of operation of the ABS Clearing-House, “especially with regard to the identification of mandatory and non-mandatory information according to the provisions of the Protocol,” as well as its functionality and user-friendliness. The CRP was approved with these and other minor amendments.

### MODEL CONTRACTUAL CLAUSES, CODES OF CONDUCT AND GUIDELINES

Delegates addressed a CRP. Adding to an existing preambular paragraph on the work of the Working Group on CBD Article 8(j) concerning standards and guidelines, ARGENTINA proposed another paragraph to also take into account the work of parties, international organizations and ILCs in this area.

Delegates agreed to the proposal.

The EU, supported by CANADA, proposed a new paragraph encouraging the Executive Secretary to engage with the ABS process launched at CGRFA 14. NAMIBIA said that: the CGRFA process should not be singled out, as other international processes are also relevant; CGRFA’s guidance to governments does not relate to model contractual clauses; and it is not yet known whether the CGRFA’s work will be relevant to Articles 19 and 20. Responding to queries, FAO suggested referring to the specific process of the CGRFA, namely the development of “draft elements to facilitate domestic implementation of ABS for different sub-sectors of genetic resources for food and agriculture.” Delegates agreed to include an additional preambular paragraph, “recognizing the need for the Executive Secretary to engage with relevant international processes, as appropriate, relevant to Articles 19 and 20.”

### CAPACITY BUILDING

Plenary addressed compromise proposals on outstanding issues in the CRP, resulting from informal consultations regarding the establishment of an informal advisory committee to provide advice to the Secretariat until COP/MOP 3 on matters related to the assessment of the effectiveness of the strategic framework; and deletion of the reference to the development of a global programme to assist developing countries achieve Aichi Target 16. Proposed amendments to the terms of reference of the informal advisory committee included that the committee provide: advice on the need for developing new tools, guidelines and training materials, including e-learning modules; and facilitation for matching needs in capacity building expressed by countries with potential opportunities and resources to support the implementation of the strategic framework. Under the key area on capacity to negotiate MAT, Namibia for the AFRICAN GROUP presented text resulting from informal consultations, on “developing capacity to enhance transparency about the utilization of genetic resources and TK associated with genetic resources, in accordance with the Protocol, to share information, including on MAT, and including after they have left the provider country, as appropriate.” Delegates approved the draft recommendation with these, and other minor amendments.

### GLOBAL MULTILATERAL BENEFIT-SHARING MECHANISM

SWITZERLAND, supported by the EU, CANADA and AUSTRALIA, proposed that parties and stakeholders submit to the Secretariat not only views, but also experiences gained



in the implementation of the Nagoya Protocol. SAINT LUCIA, BRAZIL, EGYPT, UGANDA, INDIA and MALAYSIA expressed concern that this may limit the opportunity only to parties who have gained experience in implementation, with the PHILIPPINES noting that most countries have not yet reached that stage. Delegates eventually agreed that the views collected by the Secretariat “may, where available, also include, reflections on experiences gained” towards the achievement of the Protocol.

On commissioning a study to support further discussion on Article 10, the EU proposed the study focus on any experience with the implementation of the Protocol, relevant for determining the need for, and the modalities of, a potential multilateral benefit-sharing mechanism. The PHILIPPINES proposed that the study also focus on the Pandemic Influenza Preparedness Framework of the World Health Organization, as an example of experiences gained in the development and implementation of other multilateral mechanisms; and, opposed by the EU, that it contain information on applications and commercialization of genetic resources accessed from *ex situ* collections relevant to Article 10. ARGENTINA suggested simplifying the proposal by eliminating reference to specific examples of relevant multilateral mechanisms or processes. NORWAY proposed that the study broadly include information on other processes that can enlighten further deliberations on Article 10. ARGENTINA, supported by BRAZIL, MEXICO, MALAYSIA and PERU, stressed inclusion of TK in the study through models, simulations and/or examples on a mechanism relating to *ex situ* collections and TK. The EU recommended focusing the study on already existing experiences at the international level and on the “potential relevance of ongoing work in other processes.”

The AFRICAN GROUP, supported by MEXICO, CHINA and the LMMC but opposed by CANADA and JAPAN, requested not to subject the conduct of the study to availability of funds, with UGANDA urging against making availability of funds “another hurdle” in the urgently needed discussion on Article 10. CANADA cautioned against expanding beyond the scope of an information-gathering exercise. JAPAN recommended keeping the scope of the study in line with the CBD and the Nagoya Protocol. The LMMC emphasized the importance of implementing the recommendations of the expert meeting concerning areas of further examination, stating that the study is “of utmost importance.”

In the evening, ARGENTINA presented the outcome of informal consultations on the study, noting agreement that the study focus on the “experiences gained in the development and implementation of the Nagoya Protocol and other multilateral mechanisms” and on the “potential relevance of ongoing work undertaken by other processes, including case studies in relation to *ex situ* and *in situ* genetic resources as defined by CBD Article 2, traditional knowledge associated with genetic resources and transboundary situations.” She said informal consultations did not reach agreement on whether the study will be subject to the availability of funding or not. NAMIBIA requested time to consult within the African Group, and the paragraph remained bracketed for consideration on Friday morning.

### COMPLIANCE

In the morning, the contact group debated at length whether the compliance committee may decide not to consider a submission if it “is *de minimis*,” “is manifestly ill-founded,”

“does not meet requirements” or “is anonymous.” One participant queried whether the burden of proof would be placed on those making a submission, and another whether the Secretariat would exercise some judgment before transmitting submissions to the committee.

Participants then discussed whether, in the context of a party-to-party trigger, the party that made the submission may be able to participate in the consideration of the submission and present responses or comments to the committee. Some participants opposed, noting the non-adversarial nature of the procedure. Other participants argued that due process necessitates participation by the party making the submission. A civil society representative invited delegates to consider a scenario where genetic resources are owned by, and traditional knowledge is located in, several countries. Delegates then debated whether “the concerned party” or all parties involved in the submission could be given the opportunity to comment on the committee’s recommendations; and whether any such comments are to be reflected in the committee’s report. Discussions continued in the evening.

### IN THE CORRIDORS

On Thursday, delegates labored over draft recommendations in a final push to get all papers ready for overnight translation. Despite the steady pace of negotiations through the week, discussions on this second-last day were protracted.

“There are many open questions about the scope of the Nagoya Protocol and its relation to other regimes,” said a CBD veteran. This created some stumbling blocks when it came to nailing down text even on relatively uncontroversial topics, such as the scope of a study to continue discussions on a global multilateral benefit-sharing mechanism (Article 10) and specifically which international processes and mechanisms should be looked at for inspiration in that context. The Protocol’s relationship with other bodies also came up during discussions on model contractual clauses, guidelines and other voluntary instruments for the Protocol’s implementation: a reference to engaging with the CGRFA, particularly its process of developing draft ABS elements for different agricultural sub-sectors, was expunged after a long and animated discussion, as delegates at the end considered it just one of many relevant processes, and not “the most relevant,” as one frustrated delegate was heard exclaiming.

Others highlighted that countries’ lack of experience in implementing the specific provisions of the Protocol may be a hindrance to holding more concrete deliberations. “We should discuss based on experiences, and not only opinions,” said one delegate. Another participant, expressed the conundrum: “Since we still need to find common understanding about the functioning of the Protocol on so many important areas, how can we start implementation on the ground?” As delegates hunkered down to try and get through the text on compliance in an evening session of the contact group, a new type of incentive was put before them: “There will be food in the room, but only for the ‘workers.’”

**ENB SUMMARY AND ANALYSIS:** The *Earth Negotiations Bulletin* summary and analysis of ICNP 3 will be available on Monday, 3 March 2014 online at: <http://www.iisd.ca/biodiv/icnp3/>