

ICNP 2 HIGHLIGHTS: WEDNESDAY, 4 JULY 2012

ICNP 2 plenary discussed procedural issues and draft recommendations on: guidance for the financial mechanism; resource mobilization; awareness raising; and the ABS clearing-house. Two contact groups addressed a global multilateral benefit-sharing mechanism and compliance.

PLENARY

PROCEDURAL ISSUES: Delegates discussed a proposal submitted by the Co-Chairs to postpone agenda items on the programme budget for the biennium following the Protocol's entry into force, and the COP/MOP rules of procedure and provisional agenda, for consideration at either a potential future meeting of the ICNP or the COP/MOP. Following clarifications that it is up to CBD COP 11 to decide on future meetings of the ICNP, discussion focused on whether ICNP 2 has the mandate to propose a budget to COP 11 regarding intersessional activities before COP 12 or whether it should recommend a list of activities and let the COP address their financial and budgetary implications. It was clarified that the Secretariat will prepare a budget proposal for consideration by COP 11, including the financial implications arising from ICNP recommendations. Cameroon, for the AFRICAN GROUP, expressed concern regarding how priorities identified by ICNP 2 will be reflected into discussions on budget at COP 11, especially in relation to the intersessional period between COP 11 and COP/MOP 1. Co-Chair Casas suggested, and delegates agreed, that ICNP 2 request that the COP 11 background document on the budget include the cost of activities identified in its recommendations.

GUIDANCE FOR THE FINANCIAL MECHANISM: Delegates addressed a draft recommendation submitted by the Co-Chairs (UNEP/CBD/ICNP/2/CRP.1). Peru, for GRULAC, said some of their suggestions had not been reflected in the document and suggested including reference to "traditional knowledge associated with genetic resources" following references to genetic resources throughout the text. She also proposed to enable parties to participate in the ABS clearing-house using communication tools other than Internet, such as video and radio; and to "recommend the allocation of funds by the GEF in a separate window specific for ABS activities under the STAR mechanism." CANADA opposed the last suggestion, noting that it is up to each GEF party to determine application of its funds, cautioning against a variation from the current GEF methodology. The EU said the COP 11 should decide on the issue. The recommendation remained in brackets.

BURKINA FASO said the request for GEF funding is not only to support ratification of the Protocol, but also its implementation. GRULAC and Senegal, for the AFRICAN GROUP, reiterated their suggestion of recommending to GEF the simplification of procedures for access to financial resources for ABS.

NAMIBIA suggested bracketing text on deciding that the guidance included in the recommendation supersedes all previous guidance to the financial mechanism related to ABS. He further suggested referring to national "and regional" awareness-raising strategies.

MALAYSIA expressed concern that text on a transitional clause in the eligibility criteria for funding under the financial mechanism could result in more restrictions for access to funding. Following informal consultations, MALAYSIA reported that delegates agreed to delete reference to the "political commitment" of CBD parties towards becoming parties to the Protocol and instead refer to "clear intentions" in the form of written assurances.

On building the capacity of parties to negotiate MAT to promote equity and fairness in the development and implementation of ABS, the EU suggested mentioning the example of assisting in understanding product development business models and other related issues.

Delegates addressed a list of programme priorities for 2014-2018 to be funded by the GEF, for COP 11 consideration. On supporting countries in raising awareness of the importance of genetic resources and traditional knowledge associated with genetic resources, NIGER proposed adding reference to the development and "implementation" of national awareness-raising strategies.

On building party capacity to develop, implement and enforce domestic ABS measures, the EU suggested adding reference to the contribution of ABS to the conservation and sustainable use of biodiversity.

On the establishment of institutional arrangements and administrative systems to provide access to genetic resources, ensure benefit-sharing, support compliance with PIC and MAT and monitor the utilization of genetic resources, THAILAND recommended adding reference to support for the establishment of checkpoints.

Delegates discussed a clause recommending that funds from the Nagoya Protocol Implementation Fund (NPIF) be used to support projects that will "facilitate" early entry into force of the Protocol. BRAZIL, opposed by the EU and Senegal, for the AFRICAN GROUP, preferred that such projects "emphasize" early entry into force. Delegates eventually agreed to refer to projects that will "assist" early entry into force.

Delegates then debated language requesting that GEF expedite access to NPIF funds, with the AFRICAN GROUP, emphasizing the need for simplified criteria. GHANA and the EU suggested recommending that the GEF expedite procedures for access to funds from the NPIF.

SWITZERLAND proposed deleting text calling for the continuation of the NPIF beyond GEF 5 and, following informal consultations, delegates agreed. BRAZIL proposed that the private sector's contributions to the NPIF assist also the Protocol's "early entry into force" in addition to implementation.

RESOURCE MOBILIZATION: Delegates addressed a draft recommendation presented by the Co-Chairs (UNEP/CBD/ICNP/2/CRP.2). On language encouraging parties to direct domestic resources in accordance with national circumstances to the Protocol's implementation, the Philippines, for the LMMC, suggested deleting a specific reference to the resources generated through the successful implementation of ABS agreements. The EU and CUBA opposed and the paragraph remained in brackets.

On text encouraging governments and others to establish or enhance funding, BRAZIL suggested encouraging government and others to provide, in accordance with their capabilities, financial resources.

AWARENESS RAISING: Delegates addressed and agreed to a draft recommendation presented by the Co-Chairs with no amendments (UNEP/CBD/ICNP/2/CRP.3).

ABS CLEARING-HOUSE: Delegates addressed a draft recommendation submitted by the Co-Chairs (UNEP/CBD/ICNP/2/CRP.4). The EU suggested text that stresses the importance of developing the ABS clearing-house as an integral part of the CBD Clearing-house Mechanism. He added that certain recommendations should be specifically addressed to COP 11, including on: deciding that the informal advisory committee hold one meeting and report on the outcomes to a future meeting of the ICNP or COP/MOP 1; inviting parties and organizations to provide financial support for the organization of a meeting of the committee; and requesting the Secretariat to further refine the draft modalities of operation of the clearing-house, taking into account views expressed at ICNP 2 and submitting them at a future meeting of the ICNP or the COP/MOP.

The LMMC proposed language on considering the matter of reaching common understanding on unresolved issues related to the ABS clearing-house, taking into account the preliminary results of the pilot phase. The EU requested clarification on this proposal. Discussions on the item will continue.

CONTACT GROUPS

MULTILATERAL BENEFIT-SHARING MECHANISM:

An afternoon contact group addressed a list of questions on Article 10 included in a non-paper. Following discussions on the process forward, including the need for broad stakeholder consultation, participants raised questions related to the: difference between transboundary situations under Article 10 (Global Multilateral Benefit-Sharing Mechanism) and Article 11 (Transboundary Cooperation), and between transboundary genetic resources and transboundary traditional knowledge; possible contribution from the private sector to the mechanism; role of national legislation or bilateral alternatives when it is not possible to obtain PIC; role of capacity building in supporting countries in dealing with situations under Article 10; relevance of existing international process and instruments; need to remain within the scope of the Nagoya Protocol; links between migratory species and transboundary situations; possible implications for the principle of national sovereignty over natural resources; avoidance of disincentives to the implementation of the Protocol; status of transfers of genetic resources and traditional knowledge to third parties; need to ensure that the mechanism be used as a last resort; possible application of the mechanism to pre-CBD, pre-Protocol and post-Protocol collections, as well as to new and continuing uses of pre-CBD collections; status of national legislation regulating access to pre-CBD collections; possible problems and solutions that the mechanism could create for user and provider countries respectively; and need for a global mechanism. The Co-Chairs proposed to prepare a revised non-paper for further discussion in the contact group.

COMPLIANCE: In the evening, delegates considered a non-paper on compliance. MEXICO and ECUADOR, opposed by CANADA, supported ILC-proposed text on the operation of the compliance mechanisms paying particular attention to "the role of ILCs." ECUADOR also supported reference to the principle of "non-discrimination" proposed by ILCs. The PHILIPPINES, opposed by the AFRICAN GROUP, proposed reference to the

"*sui generis* mechanisms of ILCs, taking into account their customary laws, norms and practices in accordance with national legislation."

The EU requested bracketing references to Protocol Articles 15-18. The AFRICAN GROUP, opposed by CANADA and the EU, requested reference to the compliance mechanisms being "legally binding." The EU requested bracketing text on public oral hearings of the compliance committee.

MALAYSIA, opposed by the AFRICAN GROUP, supported an ILC proposal on the committee considering information acquired through formal submissions or "other sources." BRAZIL preferred that the Secretariat forward to the committee submissions only from parties or the COP/MOP. COLOMBIA recommended that submissions from ILCs to the committee be "supported by the party in whose national territory the ILC is located."

The EU proposed bracketing reference to the "party that made the submission" participating in the consideration of the submission by the compliance committee. The US, supported by CANADA, suggested allowing parties to participate in the consideration of the submission "at all stages of the process." The PHILIPPINES, opposed by CANADA, recommended that the compliance committee consider "information generated under Articles 15.2 and 16.2" (non-compliance with domestic ABS measures).

COLOMBIA, supported by CHINA, suggested that the committee take into account possible conflicts of interest when seeking expert advice. BRAZIL preferred to notify to the COP/MOP only cases of "repeated," but not "grave," non-compliance, for it to decide the appropriate measures according to international law.

Under measures to promote compliance and address non-compliance, the PHILIPPINES, opposed by ECUADOR, suggested to "require the party concerned to take action and after appropriate procedures, apply sanctions against those in non-compliance with Articles 15.2 and 16.2 within their jurisdictions." CANADA opposed a proposal that the COP/MOP, upon the recommendations of the committee, may recommend suspension of specific rights and privileges. CHINA bracketed a proposal that the COP/MOP publish cases on non-compliance.

The AFRICAN GROUP proposed that the committee establish an ABS ombudsman to provide assistance to developing countries and ILCs to identify instances of non-compliance and make submissions to the committee. A revised non-paper will be prepared.

IN THE CORRIDORS

Outstanding concerns on financing for preparing for ratification and implementation of the Nagoya Protocol arose again on Wednesday, as delegates slowly worked through draft recommendations to COP 11 on guidance for the financial mechanism. African countries in particular repeatedly stressed their inability to access GEF financing to support capacity building and facilitate the Protocol's early entry into force. One delegate pointed out that the Nagoya Protocol Implementation Fund (NPIF) seems to be the only available financing source until 2015, when GEF-6 is scheduled to start, at least for the huge majority of countries who "missed the train" of GEF-5. Another delegate then highlighted the narrow priorities of NPIF funding, which apparently favor the conclusion of ABS contracts rather than national capacity-building activities towards ratification. "If expedited access to already available funding is not ensured, ratifying the Protocol before 2014 will remain a dream for many developing countries," he commented skeptically.