

ICNP 2 HIGHLIGHTS: THURSDAY, 5 JULY 2012

ICNP 2 plenary met in morning, afternoon and evening sessions to finalize draft recommendations on: the ABS clearing-house; capacity building; future work; and a global multilateral benefit-sharing mechanism. Delegates also agreed to defer to an ICNP 3 or COP/MOP 1 substantive discussion on a programme budget for the biennium following the Protocol's entry into force, and rules of procedures and a draft provisional agenda for COP/MOP 1. The contact group on a global multilateral benefit-sharing mechanism met during lunchtime, and the group on compliance met in the afternoon and evening.

PLENARY

ABS CLEARING-HOUSE: The PHILIPPINES reiterated his proposal to consider reaching common understanding on the unresolved issues on the ABS clearing-house, taking into account the preliminary results of its pilot phase. He clarified that the unresolved issues refer to those included in the annex of the report of the expert meeting on the modalities of operation of the ABS clearing-house (UNEP/CBD/ICNP/1/2), including: the need for common understanding on notification of permits or their equivalent; updating of internationally recognized certificates of compliance; third party transfers; the need for a common understanding on the extent to which the Protocol's intent is to track access, use and/or transfers of genetic resources; identification of subject matter or genetic resource covered by the certificate; and confidential information. CANADA preferred referring to points that may require further consideration. Following informal consultations, delegates agreed to request COP/MOP 1 to take into account the points that may require further consideration for the ABS clearing-house, and suggest ways to reach common understanding on these points, informed by lessons from the pilot phase. They also agreed to include a footnote elaborating that these points refer to paragraph 7 of the annex in the expert meeting report.

Delegates discussed preambular language proposed by the EU recognizing the importance of developing the Nagoya Protocol ABS clearing-house as an integral part of the CBD Clearing-house Mechanism. BRAZIL, PERU and Uganda, for the AFRICAN GROUP, favored including language on the mechanism serving as a means for sharing information related to ABS and specific reference to Article 14 (ABS Clearing-House and Information-Sharing). CANADA, supported by INDIA, suggested a chapeau was not needed. Following informal

consultations, delegates agreed to stress the importance of developing the ABS clearing-house as an integral part of the operation of the Nagoya Protocol and the CBD Clearing-house Mechanism, serving as a means for sharing information related to ABS, in accordance with Article 14 of the Protocol and without prejudice to its operational independence and efficacy. BRAZIL suggested that the Secretariat consult parties when it explores opportunities for collaboration with partners and other data providers in the development of the ABS clearing-house once progress is made in the implementation of the pilot phase.

CAPACITY BUILDING: Delegates addressed a draft recommendation submitted by the Co-Chairs (UNEP/CBD/ICNP/2/CRP.5). The EU suggested that a request to the Secretariat to organize an expert meeting to develop a draft strategic framework be performed, taking into account not only the synthesis of views and information on domestic needs and priorities (UNEP/CBD/ICNP/2/10), but also the wealth of experiences and lessons learned from existing ABS-related capacity-building and development initiatives and ABS-related bilateral development cooperation. He also suggested that this request and an invitation to parties to provide financial support for the organization of the expert meeting be addressed to COP 11.

On text recognizing the wealth of experiences and lessons learned, and instruments and methodologies that have been developed under various ABS capacity development initiatives, the EU suggested adding reference to the ABS Capacity Development Initiative that has expanded from Africa to other regions. He also made proposals regarding an annexed table containing an overview of measures to build or develop capacity to effectively implement the Protocol based on the needs and priorities of parties and ILCs, including: adding a reference to research and taxonomic studies related to conservation of biodiversity, sustainable use of its components and bioprospecting; and referring to business and researchers as specific stakeholders.

FUTURE WORK: Delegates addressed a draft recommendation submitted by the Co-Chairs (UNEP/CBD/ICNP/2/CRP.6). The Philippines, for the LMMC, proposed inviting CBD parties to take the necessary administrative, policy and legal steps at the earliest possible time before the entry into force of the Protocol or at the time of the ratification, including the appointment or designation of checkpoints and of competent national authorities that will pursue the implementation of specific obligations under the Protocol, including the ABS

clearing-house. He also proposed requesting the Secretariat to start preparatory work on a proposal for the procedure and timeframe for the handling and recognition of the internationally recognized certificates and the establishment of unique identifiers, including their recognition upon presentation at specified checkpoints, for COP/MOP 1 consideration. Following concerns expressed by the EU and Brazil, PERU suggested, and delegates eventually agreed, to ask the Secretariat to request information from parties on outstanding issues they believe should be addressed, for further discussion at ICNP 3 or COP/MOP 1.

The EU suggested preparing a draft agenda for ICNP 3 to be considered by COP 11. Stressing the need for an additional ICNP meeting, GHANA suggested preparing a table indicating progress achieved in each activity under the work programme as well as outstanding tasks. Following clarification from the Secretariat, delegates agreed to add a paragraph requesting the Executive Secretary to make available for the information of COP 11 an overview of the status of the issues considered by ICNP as set out in its work plan in Annex 2 of Decision X/1 (ABS).

MULTILATERAL BENEFIT-SHARING MECHANISM:

In the evening, delegates considered and agreed to a draft recommendation prepared by the contact group (UNEP/CBD/ICNP/2/CRP.7) with no amendments.

CONTACT GROUPS

MULTILATERAL BENEFIT-SHARING MECHANISM:

At lunchtime, delegates considered a revised non-paper outlining the process for continuing consideration of Article 10 (Global Multilateral Benefit-Sharing Mechanism) and a revised list of possible questions to facilitate consultation and discussions. Delegates debated at length the process, agreeing that: targeted views be sought not only from governments, organizations and ILCs but also from “all interested stakeholders”; and these views be based not only on the indicative list of questions, but also on “other perspectives on the matter.”

Following exchanges on the revised list of questions, delegates eventually agreed to annex to a draft recommendation to COP 11 two lists of questions, differentiating between the previous list of questions included in the initial version of the non-paper and additional questions resulting from their exchanges in the contact group on Wednesday.

COMPLIANCE: In the afternoon, delegates considered a revised non-paper in order to streamline text for consideration by a possible ICNP 3 or COP/MOP 1. Delegates discussed, among other issues: whether to keep references to: “voluntary,” “positive” and “non-judicial” compliance procedures; common but differentiated responsibilities; and paying particular attention to the “needs,” rather than the “roles,” of ILCs.

They agreed that a compliance committee should comprise 15 members, three from each UN region, nominated by parties and endorsed by the regional groups. Delegates then addressed the question of ILC participation in the compliance committee on the basis of two options referring to the participation of ILC representatives as observers or the participation of one ILC representative as a full member. Some delegates raised the concern that ILC observers would create an imbalance in the committee.

Many participants said it should be left to the parties to nominate ILC representatives as their proposed members of the committee. Others highlighted the low probability of such nominations to materialize, stressing that traditional knowledge is an integral part of, and ILCs are awarded special rights by,

the Protocol. Emphasizing the unique status of ILCs under the Protocol, a developing country suggested that the compliance committee consult with relevant ILC bodies as identified by ILCs in matters related to associated traditional knowledge and genetic resources over which ILCs have rights to grant access, as an alternative solution to ILC representation among the committee members. Delegates debated whether this proposal should be considered under the functions of the committee or under information and consultation, eventually deciding not to include it.

Delegates debated, without reaching agreement, whether compliance committee members should be party representatives or serve in their personal capacity. Delegates then discussed whether the compliance committee should meet “as necessary” or at least once per intersessional period, and whether its meetings should be subject to funding availability. One developed country noted that the modalities of the Biosafety Protocol compliance committee should not necessarily be replicated in the context of the Nagoya Protocol. Delegates agreed that the committee develops its own rules of procedures, subject to the COP/MOP approval.

Delegates could not agree whether the compliance committee should reach agreement on matters of substance only by consensus, or also by majority voting as a last resort. A developed country suggested that in case the committee decide by consensus, if a committee member has the nationality or was nominated by the party concerned, the member should be excluded from the formation of consensus. Delegates were then unable to find agreement on whether certain compliance committee meetings should be public.

IN THE CORRIDORS

Hours before the close of the meeting, plenary proceeded swiftly with finalizing recommendations on the ABS clearing-house, capacity building and the multilateral benefit-sharing mechanism, setting the ground for further work in preparation for the Protocol’s implementation and entry into force. Meanwhile, the pace of the contact group on compliance was not equally rapid. “At least we have agreed to set up a compliance committee; that’s a basic first step,” one participant commented optimistically. Others, however, voiced concerns on the fundamental issue of participation of indigenous and local communities, both in the development and in the operation of the compliance mechanism. “The Protocol is also about traditional knowledge, it affirms community rights,” said one delegate, highlighting the need for including autonomous indigenous voices in the future compliance committee. Lack of funding and visa issues, though, have apparently affected community participation in the Delhi meeting. “I didn’t hear any indigenous voices in the compliance discussions,” an observer noticed, expressing hope that the CBD will retain its good record of inclusiveness and participation.

ENB SUMMARY AND ANALYSIS: The *Earth Negotiations Bulletin* summary and analysis of ICNP 2 will be available on Monday, 9 July 2012 online at: <http://www.iisd.ca/biodiv/icnp2/>