

The LMMC : Challenges Past and Future & the Way Forward

Philippines

LMMC Chair – 2011-2012

LMMC Meeting, Canada, 13 Oct 2013

OVERVIEW

- The LMMC pre-Nagoya Protocol
- The LMMC post-Nagoya Protocol adoption
- Challenges Hurdled in ICNP1
- What Remained to be Resolved after ICNP2
- Forthcoming Issues in ICNP3

The LMMC pre-Nagoya Protocol

- India – ably led the LMMC in the ABSWG 3 & 4 meetings in Bangkok and Granada (2005-2006)
- Kenya – assume LMMC Presidency in 2007-2008
- Brazil – prepared the group well for the intensification of the negotiations of what was then called the International Regime (2009-2010)

The LMMC post-Nagoya Protocol adoption

Cheers upon the adoption of the Nagoya Protocol, 30 Oct 2010, from <http://iisd.ca>, 10 Oct 2013



- Due to the pace of negotiations till the closing of the COP, there was no clear hand-over of the LMMC Presidency during COP 10
- Hand-over came later, in early 2011, after some internal exchanges among Asian LMMCs and Philippines became Chair, after China, Malaysia and Indonesia declined

Early Initiatives of Philippines as LMMC Chair

- Started the process of drafting a Resolution Urging Early Ratification of the Nagoya Protocol
 - *became irrelevant when it became clear Nagoya Protocol cannot be ratified by COP 11*
- Started the process of reviewing the 2003 Rules of Procedure
 - *the 2003 Rules were circulated to members but more time was requested to further conduct internal consultations*

Challenges Hurdled in ICNP 1 (5-10 June 2011, Canada)

Participants to the ICNP 1, opening day plenary,
from <http://iisd.ca>, 10 October 2013



- LMMCs exchanged views but did not take group positions on the floor except for the opening and closing statements
- Pushed for clear recommendations on ABS clearinghouse, capacity-building, compliance mechanism

What remained to be resolved after ICNP 2 (2-6 July 2012, India)

The dais in the closing plenary of ICNP 2, from <http://iisd.ca>, 10 October 2013



- Art. 10 Global Multilateral Benefit-Sharing Mechanism discussions started, agreement on process and next steps secured
- Draft text on compliance mechanism procedures for further discussion in the next ICNP and to be approved by COP-MOP1
- Launching of pilot phase of ABS clearinghouse; LMMC position on unresolved issues, now called “points that may require further consideration” sent to COP-MOP 1

Pilot Phase of the ABS Clearinghouse

Points that may require further consideration

- *(found in par. 7 of the Annex to document UNEP/CBD/ICNP/1/2 identified by the Expert Meeting on the Modalities of Operation of the ABS Clearing-House which met last 11-14 April 2011 in Montreal, Canada, as follows:
 - *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*
 - *Confidential information*
- **PHILIPPINES' VIEW** – delaying this will affect the over-all development of the monitoring mechanism and the internationally recognized certificate of compliance under art. 17 of the NP; therefore COPMOP should resolve this soon.

Forthcoming Issues of ICNP 3

- highlighted items are IMPORTANT

- **Outstanding issues for consideration by the Intergovernmental Committee in accordance with its work plan (decision X/1, annex II):**
 - 1) Development of a programme budget for the biennium following the entry into force of the Protocol;
 - 2) Consideration of rules of procedure for the Conference of the Parties serving as the meeting of the Parties to the Protocol (Article 26, paragraph 5);
 - 3) Elaboration of a draft provisional agenda for the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol (Article 26, paragraph 6);
 - 4) **The need for and modalities of a global multilateral benefit-sharing mechanism** (Article 10);
 - 5) **Modalities of operation of the Access and Benefit-sharing Clearing-House** (Article 14, par. 4);

Forthcoming Issues of ICNP 3

- highlighted items are IMPORTANT

- 6) Measures to assist in capacity-building, capacity development and strengthening of human resources and institutional capacities in developing countries, in particular the least developed countries and small island developing States amongst them, and Parties with economies in transition, taking into account the needs identified by the Parties concerned for the implementation of the Protocol (Article 22);
- 7) **Cooperative procedures and institutional mechanisms to promote compliance with the Protocol and to address cases of non-compliance, including procedures and mechanisms to offer advice or assistance, where appropriate (Article 30).**

Forthcoming Issues of ICNP 3

- highlighted items are IMPORTANT

- Additional issues identified in decision XI/1:
 - 1) **Monitoring and reporting** (Article 29);
 - 2) Exchange of views on the development, updating and use of sectoral and cross-sectoral model contractual clauses, voluntary codes of conduct, guidelines and best practices and/or standards (Article 19 and 20);
- Exchange of views on the state of implementation of the Nagoya Protocol

Developments in Other Negotiating Arenas

WIPO-IGC

- Mandate to work for the 2014-2015 Biennium was recently approved by the WIPO General Assembly last 30 September
- 3 Meetings set in 2014; the IGC is tasked to submit the text(s) of the international legal instruments that will ensure the legal protection of genetic resources (GR), traditional knowledge (TK) and traditional cultural expressions (TCE)
- the 52nd session of the Assembly in 2014 will take stock and consider the progress made on the text(s) and decide on convening a Diplomatic Conference. It will also consider the need for additional meetings.

OBSERVATION : given the divergence of views among WIPO member-states, it is doubtful if they can agree to start the Diplomatic Conference in 2014; for developing countries, the Nagoya Protocol remains the viable forum thus far to tackle issues relating to genetic resources and traditional knowledge, particularly on benefit-sharing from their utilization

Developments in Other Negotiating Arenas

International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) 5th Governing Body (GB5) meeting

- GB5 meeting last 24-29 September in Muscat, Oman decided to review the Treaty's Multilateral System (MLS), which could lead to changes in the treaty's ABS system
- Crops that are not inside the MLS are subject to the Nagoya Protocol
- EU favors the MLS, including expanding the crops covered by it, but developing countries want to fix the MLS first before adding on the list of crops covered by the MLS

OBSERVATION : LMMCs should be mindful on how this development may limit the scope of the Nagoya Protocol, though how each member will deal with the interface between NP and ITPGRFA lies more on how it pursues its national interests and national policy

WAYS FORWARD (1)

- LMMC should prioritize the key issues where it wishes to have a common position on, from Art. 10 (Global Multilateral Benefit-Sharing Mechanism), to compliance mechanism, to ABS clearinghouse
- Discussions in other negotiating arenas (WIPO-IGC, ITPGRFA, etc.) should at least maintain the integrity of the key provisions of the NP – scope, definition of genetic resources, checkpoints, compliance mechanisms
- Strengthening of implementation efforts should continue nationally, including accession; awareness-raising and capacity-building goes hand in hand with these efforts

WAYS FORWARD

- If members wish to tackle non-ABS issues as LMMC, like what was proposed then by Guatemala, discussion should be on how and where LMMC can contribute best and have maximum impact
- Organizationally, confidence-building should continue, especially reaching out efforts to members who have not participated recently
- finalizing the Rules now may limit the flexibility of members who wish to opt out of current LMMC meetings but remain interested in the issues; what is important is having a clear position on the direction of Nagoya Protocol implementation and to fight hard for it during ICNP and COPMOP negotiations

Thank you for your continued support
and continuing unity as LMMC!