

**TAKING FORWARD THE CANCUN
DECLARATION
OF LIKE-MINDED MEGADIVERSITY
COUNTRIES**

South Africa

LMMC Chair – 2012-2014

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Presentation Overview

- Brief Overview of the Cancun, Mexico Declaration
- Nagoya Protocol on ABS: *Importance of Ratification by the LMMCs*
The LMMC post-Nagoya Protocol adoption
- Key Issues for the LMMCs
- Developments in Other Negotiating Arenas
WIPO-IGC (refer: Philippines Presentation)
- Way Forward towards ICNP-3

SELECTED PREAMBULAR TEXT OF THE CANCUN DECLARATION OF LMMCs

“The Ministers in charge of the Environment and the Delegates of Brazil, China, Colombia, Costa Rica, Ecuador, India, Indonesia, Kenya, Mexico, Peru, South Africa and Venezuela, assembled in Cancun, Mexico, on February 18, 2002:”

Selected Preambular Text of the Cancun Declaration of LMMCs (Con'd)

- **Acknowledging** our important natural heritage, which represents nearly 70% of the planet's biological diversity, associated with our cultural wealth and diversity, and which must be preserved and utilized in a sustainable manner;
- **Reaffirming** the sovereign rights of the States over their own natural resources and according to the provisions of the Convention on Biological Diversity and our commitment to meet its objectives, in particular Articles 8(j), 15, 16 and 19;
- **Underlining** the need to guide our actions based on a new ethic, where equity prevails in relations among nations and between men and women, and where responsible attitudes must ensure the conservation and sustainable use of biological diversity, taking into consideration the precautionary principle;

Selected Preambular Text of the Cancun Declaration of LMMCs (Con'd)

- Seek the creation of an international regime to effectively promote and safeguard the fair and equitable sharing of benefits arising from the use of biodiversity and its components. This regime should contemplate, *inter alia*, the following elements: certification of the legal provenance of biological materials, prior informed consent and mutually agreed terms for the transfer of genetic material, as requirements for the application and granting of patents, strictly in accordance with the conditions of access agreed by the countries of origin;
- Promote, in a spirit of cooperation and for our mutual benefit, with other countries, the private sector and other stakeholders, actions that show they respect the natural heritage of megadiverse countries and can contribute to the conservation, sustainable use and benefit-sharing of genetic resources, according to the Rio Principles and the Convention on Biological Diversity;

The Key Decision of the Cancun Declaration

WE DECIDE:

- To create the “Group of Like-Minded Megadiverse Countries” as a mechanism for consultation and cooperation to promote our interests and priorities related to the preservation and sustainable use of biological diversity, with the following objectives:
 - (a) Coordinate our efforts in order to present a common front at international fora dealing with biodiversity;

The Key Decision of the Cancun Declaration (Con'd)

- (b). Promote *in situ* and *ex situ* conservation of biodiversity in the countries of origin and develop joint projects to make inventories of their resources and invest in the development and use of endogenous technologies that support the conservation of genetic materials and economic activities sustainable at the local level;
- (c) Jointly combat the illegal acquisition of genetic resources, by exchanging information about negative practices by private or academic institutions, and develop mechanisms to control the final use of the genetic resources of the countries of origin.

The Moment of Truth – *Quo Vadis Nagoya Protocol?*



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

Nagoya Protocol on ABS: *Importance of Ratification*

- Most of the biological and genetic resources and associated TK are found in the LMMC.
- Thus early entry into force of the Nagoya Protocol on ABS is beneficial to the LMMC just as it was important to the LMMC to have the legally-binding International Instrument to promote and safeguard the fair and equitable sharing of benefits arising from the utilisation of biological and genetic resources and associated TK.

Nagoya Protocol: *Importance of Ratification (Con'd)*

- Important to note that the LMMC never had a formal recognition during the negotiation leading up to the adoption of the Nagoya Protocol on ABS...(negotiations followed the tradition of six (6) UN Regions).
- However, LMMCs would consult and issue statements, provide input and guidance at the critical stages of the negotiations which was always considered favourably by the Parties.
- It is therefore important for the LMMC to continue with its united force and approach in moving forward into the implementation of the Nagoya Protocol on ABS.

Key Issue: Global Multilateral Benefit Sharing Mechanism

- This was the African Group's proposal that sought to address the dilemma of benefits sharing in as far as they relate to scope of the Nagoya Protocol on ABS.
- Notable divergent views on this issue. Therefore, the LMMC can be a better forum to lobby these countries for alignment.
- This topic is part of the main agenda items for the ICNP-3
- The LMMCs should already start engaging on its position.

Key Issue: Compliance Mechanism

- At the moment, Parties have not reached an agreement on the text proposed in the draft framework for Cooperative procedures and institutional mechanisms to promote compliance with the Protocol and to address cases of non-compliance,
- Expert Group Meeting was held early last year
- This topic is part of the main agenda items for the ICNP-3
- The LMMCs should already start engaging on its position.

Key Issue: Article 19 & 20: *Model Contractual Clauses, Standards and Guidelines*

- Other like-minded groupings have started to exchange views on the development, updating and use of sectoral and cross-sectoral model contractual clauses, guidelines and best practices and/or standards.
- This topic will be also be considered during the ICNP-3 as additional item. Considering the fact that the majority of the LMMCs have national measures relevant to the Nagoya Protocol on ABS which have been implemented even prior to the adoption of the Nagoya Protocol on ABS.
- It is crucial that the LMMCs takes a front stage in exchanging views and experience in a coordinated manner during the ICNP-3.

Other Key Issues

- Clearing House Mechanisms
- Capacity Building
- User Measures e.g. national legislation; *Sui generis systems*
- Etc, etc.

Developments in Other Negotiating Arenas

WIPO-IGC (*re: Philippines Presentation*)

- 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 (*re: Philippines Presentation*)

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

Way Forward (*re: Philippines Presentation [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

Way Forward (*re: Philippines Presentation [2]*)

- 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 (Malaysia, Iran, Bolivia, Ecuador, Colombia, Venezuela, Dem. Rep of Congo, Madagascar)
- 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

Way Forward (re: South Africa Input)

- Like Mexico, other countries after if like Brazil ably led this LMMC Group prior to the adoption of the Nagoya Protocol; India – ably led the LMMC in the ABSWG 3 & 4 meetings in Bangkok and Granada (2005-6)
- Kenya – was supposed to but did not fully assume LMMC Presidency due to internal political situation at home (2007-8)
- Brazil – prepared the group well for the intensification of the negotiations of what was then called the International Regime (2009-10)

Way Forward (re: South Africa Input) Con'd

- We need to end up with key issues for the LMMC Ministerial engagement. The report of the session will thus be key in this regard.
- An idea for the LMMC to consider is that following this meeting a paper is drafted on the LMMC key issues on Nagoya Protocol which will be our legacy and contribution to the global discourse.
- South Africa may perhaps consider hosting an inter-sessional session in preparation for INCP-3? **NB:** *Funding being issues*
- We need to also agree on the date/process for ministerial meeting. **NB:** *At UNGA next year or the CBD COP12?*

La lucha Continua!

**CANCUN DECLARATION
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Thank You LMMC!