

The Nagoya Protocol on Access and Benefit-Sharing

Bert Visser

Centre for Genetic Resources, the Netherlands

This presentation

- History
- Major elements
- Consequences for AnGR
- Agenda of the FAO Commission on Genetic Resources for Food and Agriculture

The full name

- Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity
- Annex I to a Decision of the 10th Conference of the Parties to the CBD
 - adopted at October 29, 2010

History

- 1992: Adoption of the Convention on Biological Diversity (CBD)
 - Concept of access and fair and equitable sharing of the benefits (ABS) established
 - Article 15 of the CBD
- 2002: Adoption of the Bonn Guidelines (CoPVI)
 - Voluntary guidelines elaborating the concept of ABS
- 2002: World Summit on Sustainable Development
 - Calling for international regime on ABS

ABS negotiations

- 2004: establishment of Ad Hoc Open-ended Working Group on Access and Benefit-sharing
- Various WG meetings (10)
- Additional meetings (expert and small meetings)

Decision in CoPX (preambular text)

- *Recognizing* that the international regime is constituted of the Convention on Biological Diversity, the Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of the Benefits Arising from their Utilization, as well as complementary instruments, including the International Treaty on Plant Genetic Resources for Food and Agriculture and the Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising Out of Their Utilization,

Decision in CoPX (preambular text)

- *Recognizing* that the objectives of the International Treaty on PGRFA are the conservation and sustainable use of PGRFA and the fair and equitable sharing of the benefits arising out of their use, in harmony with the CBD, for sustainable agriculture and food security,
- *Recognizing* further the progress made by many intergovernmental forums in addressing access and benefit sharing related issues,
- *Noting with appreciation* the resolution 18/2009 of the Conference of the FAO on policies and arrangements for access and benefit-sharing for genetic resources for food and agriculture,

Decision in CoPX

- 18. *Requests* the Executive Secretary to collect and make available on the clearing-house mechanism sectoral and cross-sectoral model contractual clauses for mutually agreed terms;
- 19. *Also requests* the Executive Secretary to collect and make available on the clearing-house mechanism existing guidelines and codes of conduct related to access and benefit-sharing;

The Protocol elements (preambular text)

- *9. Recognizing* the importance of providing legal certainty with respect to access to genetic resources and the fair and equitable sharing of benefits arising from their utilization,
- *10. Further recognizing* the importance of promoting equity and fairness in negotiation of mutually agreed terms between providers and users of genetic resources,

The Protocol elements (preambular text)

- 14. *Recognizing* the special nature of agricultural biodiversity, its distinctive features and problems needing distinctive solutions,
- 15. *Recognizing* the interdependence of all countries with regard to GRFA as well as their special nature and importance for achieving food security worldwide and for sustainable development of agriculture in the context of poverty alleviation and climate change and acknowledging the fundamental role of the International Treaty on PGRFA and the FAO Commission on GRFA in this regard,

The Protocol elements (preambular text)

- *17. Acknowledging* ongoing work in other international fora relating to access and benefit-sharing,
- *18. Recalling* the Multilateral System of Access and Benefit-sharing established under the International Treaty on Plant Genetic Resources for Food and Agriculture developed in harmony with the Convention,
- *19. Recognizing* that international instruments related to access and benefit-sharing should be mutually supportive with a view to achieving the objectives of the Convention,

Objective

■ Article 1

- The objective of this Protocol is the fair and equitable sharing of the benefits arising from the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding, thereby contributing to the conservation of biological diversity and the sustainable use of its components.

Relationship with other international instruments

■ Article 3bis

- 2. Nothing in this Protocol shall prevent the Parties from developing and implementing other relevant international agreements, including other specialised access and benefit-sharing agreements, provided that they are supportive of and do not run counter to the objectives of the Convention and this Protocol.
- 4. This Protocol is the instrument for the implementation of the access and benefit-sharing provisions of the convention. Where a specialised international access and benefit-sharing instrument applies that is consistent with, and does not run counter to the objectives of the convention and this protocol, this protocol does not apply for the party or parties to the specialised instrument in respect of the specific genetic resource covered by and for the purpose of the specialised instrument.

Transboundary Cooperation

■ Article 8

- In instances where the same genetic resources are found *in-situ* within the territory of more than one Party, those Parties shall endeavour to cooperate, as appropriate, with the involvement of indigenous and local communities concerned, where applicable, with a view to implementing this Protocol.

Compliance with domestic legislation on ABS

■ Article 12

- 1. Each Party shall take appropriate, effective and proportionate legislative, administrative or policy measures to provide that genetic resources utilized within its jurisdiction have been accessed in accordance with prior informed consent and that mutually agreed terms have been established, as required by the domestic access and benefit-sharing legislation or regulatory requirements of the other Party.

Monitoring the utilization of genetic resources

■ Article 13

- To support compliance, each Party shall take measures, as appropriate, to monitor and to enhance transparency about the utilization of genetic resources.
- An internationally recognized certificate of compliance shall serve as evidence that the genetic resource which it covers has been accessed in accordance with prior informed consent and that mutually agreed terms have been established, as required by the domestic access and benefit-sharing legislation or regulatory requirements of the Party providing prior informed consent.

Model contractual clauses

■ Article 15

- 1. Each Party shall encourage, as appropriate, the development, update and use of sectoral and cross-sectoral model contractual clauses for mutually agreed terms.
- 2. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall periodically take stock of the use of sectoral and cross-sectoral model contractual clauses.

Codes of conduct, guidelines and best practices

and/or standards

■ Article 16

- 1. Each Party shall encourage, as appropriate, the development, update and use of voluntary codes of conduct, guidelines and best practices and/or standards in relation to access and benefit-sharing.
- 2. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall periodically take stock of the use of voluntary codes of conduct, guidelines and best practices and/or standards and consider the adoption of specific codes of conduct, guidelines and best practices and/or standards.

Consequences for AnGR

- AnGR fall in the scope of the CBD and the Nagoya Protocol
- Specific measures may be framed within the Nagoya Protocol
 - Not run counter to the objectives of the CBD
- Responsibility of Parties to the Nagoya Protocol

Agenda of the FAO Commission on AnGR

- Multi-Year Programme of Work
 - Cross-sectoral issues
 - Includes Access and Benefit-Sharing
- Issue scheduled for CGRFA-13
 - July 2011
- Output of this workshop may be reported to CGRFA?