

Developments in Access and Benefit Sharing under the Convention on Biological Diversity

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Timeline - more than 10 years negotiations

June 1992 "Earth Summit", Rio de Janeiro Signing of the CBD

December 1993 CBD came into force

May 1998 Establishment of a **Panel of Experts on ABS**

May 2000 COP* 5 establishes the **Working Group on ABS**

April 2002 COP 6 adopts the **Bonn Guidelines** on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of Their Utilisation



*COP = Conference of the Parties (to the CBD)

Timeline – towards an International Regime

September 2002 **Working Group on ABS mandated to elaborate an International Regime on ABS (World Summit on Sustainable Development)**

February 2004 WG ABS mandated with the aim of **adopting an instrument** to implement the provisions of Articles 15 and 8(j) and the three objectives of the CBD

March 2006 COP 8 extends the mandate of the Working Group until 2010 maximum



*COP = Conference of the Parties (to the CBD)

Nagoya protocol



COP 10 MDP 5
Nagoya, Japan 2010

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30 October 2010

COP 10 Adoption of the “Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization”

⇒ The Nagoya protocol is a necessary instrument BUT is only a part of the International Regime on ABS



International Regime on ABS

The International Regime on ABS is constituted of

- the Convention on Biological Diversity itself
- the Nagoya ABS Protocol
- complementary instruments including
 - International Treaty on Plant Genetic Resource for Food and Agriculture (ITPGR)
 - The Bonn Guidelines on ABS



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“masterpiece in creative ambiguity”

⇒ **Compromise text subject to interpretation**

- reflects what was agreed
- leaves unresolved details

⇒ **Details of its operationalisation** must be dealt with by the Intergovernmental Committee of the Protocol



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Article 2 : Use of terms

“Utilization of genetic resources” \supset “Biotechnology”

“Biotechnology” \supset “Derivative”

“Derivative” means a naturally occurring biochemical compound resulting from the genetic expression or metabolism of biological or genetic resources, even if it does not contain functional units of heredity.

\Rightarrow Open door to excesses because anything and everything can fall in the scope of the Protocol



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Article 6 Special Considerations for specific cases

- (a) to encourage research which contributes to the conservation and sustainable use of biological diversity,
⇒ **simplified measures on access for non-commercial research purposes,**
- (b) Present or imminent emergencies that threaten or damage human, animal or plant health,
⇒ **expeditious access** and fair and equitable sharing of benefits
- (c) **Exceptions** for genetic resources for food and agriculture



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One single mention of “*ex situ*”

In Annex “List of Monetary and Non-monetary Benefits”

(e) Admittance to *ex situ* facilities of genetic resources and to databases

⇒ **Implicit recognition of the value of *ex situ* preservation facilities**



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⇒ **One of the many**

It is not the “one off” legal framework ruling biological resources uses

Its implementation is one parameter of the more complex equation to solve when operating culture collections

Issues of similar importance are:

- quality
- biosecurity, biosafety
- R & D, exploitation of biological resources
- Property rights, including IP



Conclusions

- ⇒ Nagoya protocol is not perfect but it exists
- ⇒ Opportunity to set up effective measures to support sound research
- ⇒ Opportunity to get the role of *ex situ* preservation facilities recognised and supported
- ⇒ Risk of inappropriate measures should be compensated with recurrent assessment of measures

Comments: Human derived material is out of scope; but access to human pathogens could be regulated



Conclusions

Next steps for (non-commercial) research in the negotiations under the ICP*. Compliance measures may include:

- **standards for publication of scientific research e.g. disclosing the origin and circumstances of genetic material used in research**
- **conditions for funding of non-commercial research**
- **codes of scientific conduct in research including third party transfer of genetic material**
- **development of standardised documentation to streamline the handling of genetic material and improve traceability**



* Intergovernmental Committee of the Protocol