

# synthèses

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## COP 10 in Nagoya: a success for global biodiversity governance?

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**T**he Tenth Conference of the Parties (COP 10) to the Convention on Biological Diversity (CBD), held in Nagoya, Japan, from 18 to 29 October, achieved – at least formally – the three inter-linked goals it had set: the adoption of a protocol on access to genetic resources and the sharing of benefits arising from their use (ABS); the definition of a new Strategic Plan to halt biodiversity loss by 2020; and a resource mobilisation strategy aimed particularly at increasing current levels of official development assistance in support of biodiversity.

COP 10 in Nagoya was the high point of the International Year of Biodiversity, which was marked by several major international meetings: among others, the Global Forum on Oceans, Coasts and Islands (May 2010); the Third Intergovernmental Meeting on the Intergovernmental Science-policy Platform on Biodiversity and Ecosystem Services (IPBES), which came out in favour of its creation (June 2010); the United Nations General Assembly Special Session on Biodiversity (22 September); and, finally, the Fifth Meeting of the Parties to the Cartagena Protocol on Biosafety,

which adopted a supplementary protocol on liability and redress<sup>1</sup>.

This busy agenda helped creating a positive setting for the Nagoya meeting, where the delegations were determined to reach an agreement in order to avoid the “Copenhagen syndrome”. But this formal success must not disguise the fact that many uncertainties remain regarding the undertaken commitments. Therefore, if biodiversity loss is to be halted, tough decisions at various levels will need to be taken when implementing the bundle of decisions and commitments that have come out of COP 10.

### The protocol on access and benefit-sharing

“The fair and equitable sharing of the benefits arising out of the utilization of genetic resources...” (ABS) is one of the three objectives of the CBD. Under negotiation since the World Summit on Sustainable Development in Johannesburg in 2002, the Nagoya Protocol on ABS – a key text for the negotiations between “Northern” and “Southern” countries in

1. Serdaroglu, S. 2010. *Le protocole de Cartagena : entre commerce et environnement, un positionnement délicat dans la Convention sur la diversité biologique*, Idées pour le débat N°06/2010. IDDRI, 2010. 20 p.

Nagoya, is intended to: help put an end to the misappropriation of genetic resources (biopiracy); increase incentives and financial means to protect and sustainably use biodiversity; protect the biocultural rights of indigenous and local communities; and provide legal certainty to companies and research institutions that make use of genetic resources and associated traditional knowledge<sup>2</sup>. This new protocol will be open for signature from February 2011 and will enter into force three months after its 50<sup>th</sup> ratification.

Ardently supported by the megadiverse countries (those endowed with rich biodiversity) such as Brazil, the protocol proposes an international framework to ensure that the benefits arising from the use of genetic resources (i.e. “the conduct of research and development on the genetic and/or biochemical composition of genetic resources”) are shared with the countries of origin, based on prior informed consent and mutually agreed terms with the Party providing such resources. With a view to linking the three objectives of the Convention, the protocol encourages Parties to use the income generated by this mechanism to fund activities aimed at the conservation and sustainable use of biodiversity. The ABS protocol thus responds to the concerns of the countries of origin, but also to those of the user countries, in that it establishes a clear, stabilised framework for access.

The agreement reached on this protocol is the result of a proposal made by the Japanese presidency on the last night of negotiations in Nagoya, and may be considered to be a good compromise given that the negotiations seemed to be going very badly. However, since it was a matter of “take it or leave it”, the final text is less ambitious than the version that failed to produce a consensus. Consequently, a certain number of controversial issues have been removed from the text or defined in sufficiently general terms to achieve a consensus. The key points that have remained vague include:

- the scope of the protocol, particularly where products derived from genetic resources (i.e. “derivatives”) are concerned;
- the details of a “global multilateral benefit-sharing mechanism” to ensure the sharing of benefits arising from the use of genetic resources and associated traditional knowledge for which it is not possible to give or obtain prior informed consent;
- the relationship with other international instruments and “relevant ongoing work or practices” dealing with the exchange of genetic materials and

benefit sharing, such as the World Health Organization’s ongoing negotiations on the sharing of influenza viruses;

- the cooperation procedures and institutional mechanisms to foster compliance with the provisions of the Protocol and to address any breach of national law, including implementation of mandatory disclosure requirements in patent applications.

To some extent, the ABS negotiations resulted more into an agreement on the general principles than in truly operational rules. On the one hand, the future Parties to the Nagoya Protocol have been given a mandate to continue negotiations in order to define certain operational mechanisms in more detail. Thus, for many countries the Protocol is a good basis for future work that is necessary to consolidate the progress made so far, rather than the final outcome of multilateral efforts towards international equity under the CBD. On the other hand, the ABS protocol leaves considerable room for interpreting key obligations. Therefore, national implementing laws will help clarifying the scope of key Protocol’s provisions and will play a critical role in defining the protocol’s potential contribution to global biodiversity governance.

### The Strategic Plan 2011-2020<sup>3</sup>

Following the failure to meet the target set by the CBD in 2002 (“to achieve by 2010 a significant reduction of the current rate of biodiversity loss at the global, regional and national level”), a new Strategic Plan has been defined for the 2011-2020 period. The plan has little legal force and proposes 20 new targets that will serve first and foremost to guide national and international biodiversity protection efforts, but was nevertheless a nice surprise at Nagoya. Indeed, for the first time, it provides a strong translation of the CBD strategy consisting in influencing the sectors of activity that have the greatest impact, with targets relating to the “underlying causes of biodiversity loss” and to “pressures on biodiversity”, including:

- target 3, which states that economic incentives (including subsidies) that are harmful to biodiversity must be “eliminated, phased out or reformed”;
- target 6, which requires the sustainable management of all fisheries;

3. For a detailed analysis of the global biodiversity targets, see: Billé, R., Le Duc, J.-P., Mermet, L. 2010. *Global biodiversity targets: Vain wishes or significant opportunities for biodiversity governance?* In E. Broughton (Ed.), “Global governance of biodiversity: New perspectives on a shared challenge”. IFRI, December, pp.45-85.

2. Chiarolla, C. 2010. *Making Sense of the Draft Protocol on Access and Benefit Sharing for COP 10*, Idées pour le débat N°07/2010. IDDRI, 2010. 12 p.

- target 8 on pollution from nutrients;
- and target 11 on protected areas: 17% of terrestrial and inland water areas and 10% of coastal and marine areas must be protected, compared to 13% and 1% respectively today. Furthermore, at least 15% of degraded ecosystems must be restored.

Once again, for the sake of an international compromise, the scope of a number of targets has been reduced, or considerable room for interpretation has been left. For example, uncertainty remains as to the real influence of target 3 on the substantial subsidies granted to the fisheries sector, especially in Europe, which are largely responsible for the overfishing of numerous species.

The different targets are organised according to strategic themes corresponding to the drivers of biodiversity loss; reducing pressures on biodiversity; setting up safeguard clauses; enhancing the benefits provided by biodiversity; and building the capacities of operators. In this new approach to the targets of the Convention, we can see the influence of the Millennium Ecosystem Assessment (MA), which categorised ecosystem services and stressed the need to halt the driving forces behind the degradation of these services. Generally speaking, there is no doubt that the MA process played a positive role in the long run in boosting the CBD dynamics.

Be that as it may, in two years' time the Parties to the CBD will have to translate this Plan into their national biodiversity strategy and their plans of action.

### Financing the implementation of the Convention

The strategy for resource mobilisation, the third pillar of the Nagoya "package deal", calls for a substantial increase in funding for biodiversity by 2020 for the effective implementation of the Strategic Plan. The total amount of this pledge as well as the details of the financing mechanisms must be clarified by the next Conference of the Parties to the CBD (COP 11) in Hyderabad in 2012.

As expected, this financial pillar is indisputably the weakest part of the agreement. Finance is very often one of the most problematic debates during major environmental conferences: there are no robust estimations of the funding needed or accurate assessments of the already available budgets for the protection of biodiversity. Not to mention that promises of official development assistance are generally not kept, or are subject to financial gymnastics such as the "greening" of official development assistance, for example.

Since nothing has yet been decided regarding the implementation of innovative financial mecha-

nisms, the strategy is still primarily based on voluntary public funding. Some promises were made during the Nagoya conference. Japan, in particular, announced funding of two billion dollars over three years. France, on the other hand, plans to double its funding within the framework of official development assistance by 2012, meaning a sum of over 200 million euros annually for biodiversity. From 2014,

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this amount should go up to 500 million euros per year, equivalent to the sum proposed by Germany. Finally, over 120 million dollars pledged by the European Union should be allocated to the CBD LifeWeb initiative to strengthen protected areas. By way of comparison, different estimations put current spending in protected areas at between 6.5 and 10 billion dollars per year<sup>4</sup>, whereas effectively managing these protected areas would cost around 14 billion per year<sup>5</sup>.

### Strategic issues

In addition to these three major pillars of the Nagoya deal, a number of other strategic concerns and "issues for in-depth consideration" were addressed during the conference: technology transfer, education and public awareness, cooperation with the other conventions, engagement of stakeholders, inland waters biodiversity, marine biodiversity, biodiversity and climate change, agricultural biodiversity, forest biodiversity, biofuels, and invasive species, etc. These subjects will be on the agenda of future Conferences of the Parties and reflect the CBD's intention to put its stamp on these issues.

Moreover, some of the questions addressed were not directly linked to the CBD agenda, but nevertheless strike a chord at the international level where biodiversity is concerned. Thanks to the report on the Economics of Ecosystems and Biodiversity (TEEB)

4. Gutman, P., Davidson, S. 2007. *A Review of Innovative International Financial Mechanisms for Biodiversity Conservation, with a Special Focus on the International Financing of Developing Countries' Protected Areas*. WWF – MPO.

5. IUCN. 2010. *Saving Biodiversity, an Economic Approach: Why Invest? How Much? Who Pays?* World Conservation 40(1).

first of all, discussions now include the issue of economic assessments, which are pushed by Europeans but rejected by some developing countries, especially those belonging to the Bolivarian Alliance for the Peoples of Our America (ALBA), which were very active in the Nagoya negotiations. Next, the Intergovernmental Science-policy Platform on Biodiversity and Ecosystem Services (IPBES). Although this mechanism is independent of the CBD, the Parties discussed its creation during COP 10 and called for the United Nations General Assembly to make a deci-

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sion regarding the mandate for its establishment by the end of 2010<sup>6</sup>. In this respect, it should be noted that the CBD could have taken umbrage at the IPBES project, which is partly based on the observation of the shortcomings of the CBD’s scientific body, the SBSTTA (Subsidiary Body on Scientific, Technical and Technological Advice). On the contrary, the Convention positively welcomed this project as being capable of helping the SBSTTA to fulfil its mission more effectively.

### The conditions for success

The conclusion of an agreement in Nagoya was first the result of the general willingness shown by the parties present; an agreement largely fostered by the negotiating procedures put in place by the Japanese presidency. The European Union also served as mediator between the different interests present, especially thanks to the role of coordinator played by

Janez Potocnik, the European Commissioner for the Environment.

Moreover, the absence of the United States (which are not party to the CBD) during negotiations and the notable discretion of China made it possible to avoid a sterile confrontation between the two superpowers. The other side of the coin is that the United States are not bound by the texts adopted in Nagoya.

The very nature of the negotiations also encouraged the conclusion of an agreement. For example, the Nagoya Protocol on ABS is just as important for the “South” (benefit sharing) as for the “North” (access): this helped ensuring that points of view converged and made political concessions possible where, for instance, at the climate conference in Copenhagen, many could forgo an agreement<sup>7</sup>. Another difference is that there is no possible comparison between the ambition and potential impact of the Nagoya package deal and what was expected from Copenhagen, meaning a development path change. Moreover, aside from the provisions of the Nagoya Protocol, the Nagoya package deal lays down soft law rules, which are non-binding and are not accompanied by sanction mechanisms.

Finally, the Nagoya conference proved that the multilateral environmental system within the United Nations framework still functions: it remains an appropriate forum for global regulation in which all those concerned feel legitimate, responsible and valued. But the fact remains that the foundations laid in Nagoya will not be enough in themselves to halt the global biodiversity loss, in other words to profoundly influence the main drivers of this loss, such as land conversion, overexploitation, pollution and climate change. Above all, the conference enabled progress to be made on some highly technical issues, while the remainder is still to be decided and negotiated not only within the CBD, but also in other fora and at other levels of governance. The current reforms of European agricultural and fisheries policy are key examples of this. ■

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6. On 1st December 2010, the UN General Assembly responded to this call by adopting a resolution on establishing an IPBES. See <http://www.iddri.org/L%27iddri/IPBES-implementing-an-expert-panel-on-biodiversity>

7. Guérin, E. 2010. *La coopération internationale sur le climat après Copenhague*. Études, volume 412/4, April.