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ACCESS TO GENETIC RESOURCES AND THE FAIR
AND EQUITABLE SHARING OF BENEFITS
ARISING FROM THEIR UTILIZATION

Third meeting

Pyeongchang, Republic of Korea, 24-28 February 2014

Item 4.2 of the provisional agenda*

**INFORMATION AND VIEWS ON THE DEVELOPMENT, UPDATING AND USE OF
SECTORAL AND CROSS-SECTORAL MODEL CONTRACTUAL CLAUSES, VOLUNTARY
CODES OF CONDUCT, GUIDELINES, BEST PRACTICES AND STANDARDS**

Note by the Executive Secretary

INTRODUCTION

1. Articles 19 and 20 of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits arising from their Utilization (the Protocol) require Parties to encourage, as appropriate, the development, updating and use of sectoral and cross-sectoral model contractual clauses, voluntary codes of conduct, guidelines and best practices and/or standards (Articles 19(1) and 20(1)). The two articles also require the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol (COP-MOP) to periodically take stock of the use of such tools (Articles 19(2) and 20(2)). The COP-MOP is also to consider the adoption of specific codes of conduct, guidelines and best practices and/or standards (Article 20(2)).

2. At its eleventh meeting, the Conference of the Parties invited Parties, other Governments, international organizations, indigenous and local communities and relevant stakeholders to submit information to the Executive Secretary on model contractual clauses, codes of conduct, guidelines and best practices and/or standards. The Executive Secretary was requested to make this information available through the pilot phase of the Access and Benefit-sharing (ABS) Clearing-House and to compile, analyse and structure this information for consideration by the third meeting of the Open-ended Ad Hoc Intergovernmental Committee for the Nagoya Protocol (Intergovernmental Committee) (decision XI/1 A, paragraphs 5 and 6).

3. In notification 2013-003 (ref. No. SCBD/SEL/ABS/VN/BG/81188) of 17 January 2013, as well as in reminders issued on 16 May and 2 August 2013, the Executive Secretary invited the submission of

* UNEP/CBD/ICNP/3/1.

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views and/or relevant information on Articles 19 and 20. In response, submissions were received from seven Parties: China, Ethiopia, the European Union (EU), Guinea Bissau, India, Japan and Nigeria; one intergovernmental organization: the World Intellectual Property Organization (WIPO); and six organizations: Bioversity International; the International Chamber of Commerce; Plantwise; the Royal Botanic Gardens, Kew; the Union for Ethical BioTrade (UEBT) and the Université catholique de Louvain.

4. As part of its submission, the EU included information it had solicited from relevant stakeholders and users regarding any developments in their respective areas of work concerning the development, updating and use of sectoral and cross-sectoral model contractual clauses, voluntary codes of conduct, guidelines, best practices and standards. Accordingly, the EU submission also included information from: the Consortium of European Taxonomic Facilities (CETAF); the Association of the European Self-Medication Industry; the German Herbal Industry; the German Research Foundation (DFG); the European Seed Association; the German Biotechnology Industry Association; the Association of Research-Based Pharmaceutical Companies in Germany; the European Federation of Pharmaceutical Industries and Associations and the International Federation of Pharmaceutical Manufacturers and Associations; the Microbial Resource Research Infrastructure; the International Plant Exchange Network; the Royal Botanic Gardens, Kew; and the Union for Ethical BioTrade (UEBT).

5. The submission from Japan included information on the Informal Meeting for the Implementation of Articles 19 and 20 of the Nagoya Protocol that it had organized in March 2013. This included a study by the United Nations University – Institute for Advanced Studies (UNU-IAS) that was prepared for the meeting as well as the report of the meeting. These have been made available as information documents (UNEP/CBD/ICNP/3/INF/2 and UNEP/CBD/ICNP/3/INF/3). The study included an overview of a number of different model contractual clauses, codes of conduct, guidelines, best practices and standards.

6. The submissions will be made available at <http://www.cbd.int/icnp3/submissions/> and actual examples of model contractual clauses, voluntary codes of conduct, best practices and standards that were submitted will be made available through the ABS Clearing-House.¹

7. The content of the submissions can generally be divided into two categories: information on model contractual clauses, codes of conduct, guidelines, best practices and standards on the one hand, and views on how COP-MOP should undertake the mandate it has been given in Articles 19 and 20 on the other. Accordingly, section I of this document summarizes the information submitted on these different types of tools, while section II synthesizes the views expressed on the role of COP-MOP with regard to paragraph 2 of Articles 19 and 20. Section III suggests some issues for consideration by the third meeting of the Intergovernmental Committee.

I. INFORMATION ON MODEL CONTRACTUAL CLAUSES, CODES OF CONDUCT, GUIDELINES, BEST PRACTICES AND STANDARDS

8. A number of the submissions included examples of model contractual clauses, voluntary codes of conduct, best practices and standards. These were as follows:

(a) “Agreement on access to, and benefit-sharing from, ... genetic resources between the Institute of Biodiversity Conservation of the Federal Democratic Republic of Ethiopia and ...”;

(b) “Code of Conduct to Access Genetic Resources and Community Knowledge and Benefit-Sharing in Ethiopia”;

¹The tools will be made available through the virtual library section of the ABS Clearing-House: <http://absch.cbd.int/>.

- (c) “A Guide to Access to Genetic Resources and Community Knowledge and Benefit Sharing in Ethiopia”;
- (d) “Guidelines on Access to Genetic Resources for Users in Japan”;
- (e) “CETAF Code of Conduct and Best Practice for Access and Benefit-Sharing”;
- (f) “Guidelines for International Federation of Pharmaceutical Manufacturers and Associations Members on Access to Genetic Resources and Equitable Sharing of Benefits Arising out of their Utilization”;
- (g) “Micro-Organisms Sustainable Use and Access Regulation International Code of Conduct”;
- (h) “STD01 – Ethical BioTrade Standard – 2012-04-11” (UEBT);
- (i) “UEBT Principles on Patents and Biodiversity”;
- (j) “Fair and Equitable Benefit-sharing: Manual for the assessment of policies and practices along natural ingredient supply chains” (UEBT);
- (k) “MicroB3 Model Agreement on Access to Marine Microorganisms and Benefit Sharing”; and
- (l) “Guidelines: Access and Benefit Sharing in Research Projects” (Bioversity International).

9. A number of submissions also referred to existing tools. India indicated that its Biological Diversity Rules provide for four kinds of forms: (a) application for access to biological resources and associated traditional knowledge; (b) application for transferring research results; (c) application for applying for intellectual property rights; and (d) application for third party² transfer.

10. As part of the EU submission, the German Research Foundation referred to its “Guidelines for Funding Proposals Concerning Research Projects within the Scope of the Convention on Biological Diversity”.

11. The submission from WIPO pointed to the WIPO Database of Biodiversity-related Access and Benefit-sharing Agreements as a tool for sharing information on intellectual property contractual terms.³ They indicated that the database contains 39 model and actual agreements.

12. The submission from Kew noted a number of tools that the organization has developed: (a) a Policy on ABS, including a commercialization policy;⁴ (b) an intranet staff guide on ABS setting out best practices for collecting, use and supply of genetic resources and working with traditional knowledge and indigenous and local communities; (c) template international and bilateral agreements including Access and Benefit-sharing Agreements (for governmental partners) and Memoranda of Understanding (for institutional partners) to outline the terms of long-term collaborative projects; (d) policies for visiting

² Please note that in this document, “party” refers to one of the principals in a contract whereas “Party” refers to a state or a regional economic integration organization that has ratified or acceded to the Convention on Biological Diversity or the Protocol, depending on the context.

³ See www.wipo.int/tk/en/databases/contracts/index.html.

⁴ See www.kew.org/conservation/docs/ABSPolicy.pdf.

researchers;⁵ (e) a policy for DNA data, images and information harvesting;⁶ and (f) model documents, including a donation form (to be signed by a provider when genetic material is sent to Kew) and a material supply agreement for transferring Kew material to third parties. It was also indicated that Kew participates in activities to build a harmonized approach to ABS in the botanic gardens and taxonomic communities through, for example, the Common Policy Guidelines and Principles on ABS of Botanic Gardens Conservation International and ongoing work of CETAF.

13. The submission by Plantwise referred to its “Policy Statement on the International Transfer of Biological Specimens for Identification”.⁷

14. The submission from the European Seed Association referred to the standard Material Transfer Agreement used under the International Treaty on Plant Genetic Resources for Food and Agriculture. They indicated that it is widely used in the breeding sector for all plant breeding activities.

15. A number of submissions pointed to Articles 19 and 20-type tools that are under development. China indicated that it is organizing the formulation of such tools in accordance with its national situation while India stated that its National Biodiversity Authority has prepared drafts of guidelines for access and for benefit-sharing that are currently open for public consultation.

16. Included in the EU submission was a document from the German Herbal Industry with a proposal for a best practice guide for the industry’s implementation of the proposed EU regulation on the Nagoya Protocol. The information from the German Research Foundation noted that its working group on CBD/ABS is currently preparing a document with model clauses and is also working to update the current version of its guidelines in line with the expected European and German regulations and law. The information from the European Seed Association indicated that the European plant breeding sector has begun to elaborate best practices in the sector with the long-term goal of determining a practice that could become the standard worldwide. They noted that they expect to finalize the work by mid-2014. The information provided by the German Biotechnology Industry Association pointed to agreement on some preliminary basic principles for the acquisition of genetic resources.

17. The EU submission also contained information from the Microbial Resource Research Infrastructure (MIRRI). In addition to the “Micro-Organisms Sustainable Use and Access Regulation International Code of Conduct” (MOSAICC) as referred to in paragraph 8 (g) above, MIRRI outlined other ongoing work. This included the establishment of MIRRI, which is currently focusing on the preparation of a legal operational framework for a new research infrastructure for microbial collections, including a new common policy for ABS and intellectual property rights for microbial genetic resources. They also indicated that review of MOSAICC has begun in order to make it consistent with the Nagoya Protocol. Furthermore, the World Federation of Culture Collections has developed the TRUST initiative (TRansparent User-friendly System for Science & Technology), which aims to create an effective global system of trusted sources for microbiology. As they explained, the system will use electronic markers known as “Globally Unique Identifiers” to organize transfers of microbiological material, tracking the flow of resources and related information.

18. Japan noted that its Ministry of Agriculture, Forestry and Fisheries has launched a five-year project to promote the utilization of crop genetic resources (2012-2016). They explained that the project aims to develop memoranda of understanding for cooperative work between foreign countries/organizations and Japanese organizations in which good practices for mutual use of crop

⁵ See, for example, www.kew.org/collections/herb_conditions.html.

⁶ See www.kew.org/science-conservation/help-habitats/share-data/.

⁷ See www.plantwise.org/uploads/file/PW_Policy_ALL_28May2013.pdf.

genetic resources specific to the agricultural and horticultural sectors will be developed in the form of model contractual clauses.

19. WIPO noted that its Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore has worked towards guidelines on the intellectual property aspects of mutually agreed terms that concern access to genetic resources and the equitable sharing of benefits from the use of accessed resources. They indicated that WIPO's work on the guidelines has been aimed at producing a resource to draw the attention of custodians of genetic resources to the practical issues that arise when they elect to enter into agreements on access and benefit-sharing. The submission included the consultation draft of the "WIPO Draft Intellectual Property Guidelines for Access to Genetic Resources and Equitable Sharing of the Benefits arising from their Utilization".⁸

20. The UNU-IAS study noted the mandate from the Fourteenth Regular Session of the Commission on Genetic Resources for Food and Agriculture for the Commission's Secretary "to invite stakeholder groups to report on voluntary codes of conduct, guidelines and best practices, and/or standards in relation to access and benefit-sharing for all subsectors of genetic resources for food and agriculture, and to compile them for consideration by the intergovernmental technical working groups and for review by the Commission at its Fifteenth Regular Session, while acknowledging that voluntary measures should not undermine legally binding provisions developed as part of domestic legislative, administrative or policy measures" (para. 40 (ix) of CGRFA-14/13/Report). The Commission has also mandated a process for the development of Draft Elements to Facilitate Domestic Implementation of Access and Benefit-Sharing for Different Subsectors of Genetic Resources for Food and Agriculture, which would be voluntary tools to assist national governments, not new international access and benefit-sharing instruments. The Draft Elements are to be provided to the next session of the Commission for its consideration (para. 40 (xv) of CGRFA-14/13/Report).

21. A few of the submissions also provided some information on experiences with the use of Articles 19 and 20 tools. Ethiopia mentioned that it has used its model contractual clauses (see the instruments referred to in paragraphs 8 (a) and (b) above) in access and benefit-sharing agreements with different users. Japan noted that its National Institute of Technology and Evaluation collaborates with the governments or national institutes of other Asian countries on joint research and development activities based on memoranda of understanding (MOUs) and project agreements (PAs). The submission explained that under these schemes, researchers for academia, private companies, etc., can participate in activities by simply applying together as the participation of the researchers is clearly provided for beforehand in the MOUs and PAs. Japan indicated that such arrangements are quite useful both for providers and users of genetic resources as they can reduce the burden on both sides of having to negotiate individually.

22. DFG noted that users of its guidelines had found them to provide important initial guidance for the process of requesting access to biological and genetic material in accordance with CBD requirements. They stated that the guidelines had contributed to highlighting the objectives of the CBD and ABS and accompanying legal obligations. DFG also indicated that it is working to gather more information about the use of its guidelines.

23. Kew noted that in 2013, it had 63 active agreements that were based on its template agreements for use with governmental partners and institutional partners (see paragraph 12 above).

24. The submissions and, in particular, the study prepared by UNU-IAS, helped to identify a number of points that are commonly addressed in model contractual clauses (Article 19):

⁸ The draft guidelines are also available at: www.wipo.int/export/sites/www/tk/en/resources/pdf/draft_guidelines_feb_2013.pdf.

- (a) Identification of parties to the agreement;
- (b) Duration of the agreement;
- (c) Definition of terms;
- (d) Scope of the agreement;
- (e) Statements as to commercial or non-commercial intent and process to be followed when intent changes from non-commercial to commercial;
- (f) Specification of the exact material and/or traditional knowledge to which the agreement applies and the intended process of analysis;
- (g) Status of unused material;
- (h) Requirements upon transfer of material or research information to third parties;
- (i) Statement as to any related instruments to be complied with or requirements that must be met;
- (j) Evidence of the prior informed consent (PIC) of the providing party;
- (k) Statement of principle that benefits are to be shared;
- (l) Statements as to intellectual property rights;
- (m) Statements as to fixed benefits to be shared;
- (n) Description of variable benefits to be shared;
- (o) Traditional knowledge;
- (p) Provisions for the user to report on its activities to the provider;
- (q) Applicable law and jurisdiction;
- (r) Dispute resolution; and
- (s) Compliance and termination.

25. The UNU-IAS study also includes an overview of elements that are commonly found in codes of conduct, guidelines, best practices and standards (Article 20):

- (a) Summaries of the goals and principles of the Convention and the Nagoya Protocol, and, in some cases, other relevant instruments;
- (b) Background on the history and development of ABS agreements, and research practice involving access and benefit-sharing across sectors;
- (c) Guidance on appropriate conduct, including behavioural and ethical guidelines, such as in seeking prior informed consent from local and indigenous communities and in liaising with national focal points;

- (d) Guidance on the principles and practicalities involved in establishing prior informed consent ;
- (e) Guidance on considerations involved when seeking to access and/or use traditional knowledge within a research process;
- (f) Guidance on ensuring sustainable use in the process of collection and use, consistent with the Convention and the Nagoya Protocol;
- (g) Guidance on supporting the technology transfer provisions of the Convention and the Protocol;
- (h) Explanation of requirements to enter into formal contractual benefit-sharing agreements on mutually agreed terms, and noting benefit-sharing options, including monetary and non-monetary benefits;
- (i) Explanation of requirements to comply with national ABS measures, including any requirements for obtaining prior informed consent or permits to remove materials found *in situ*; and
- (j) Guidance on intellectual property rights issues and options.

26. As can be seen from the above information, there is a wide variety in the types of tools that may fall under Articles 19 and 20 of the Protocol. These include tools developed by Governments and public sector institutions, by intergovernmental organizations or through inter-governmental processes as well as by industry, academia and other organizations. The UNU-IAS study included an analysis of both model contractual clauses and codes of conduct, guidelines, best practices and standards. Some of the points raised included that:

- (a) These tools apply across a range of sectors, including pharmaceuticals, biotechnology, agriculture, plant science, trade in natural products generally, and in non-commercial research, including taxonomy, ecology, conservation biology, among other basic research fields;
- (b) Model agreements may be:
 - (i) Authored by a public or private sector institution not expected to be a party to the agreement, and take the form of a broad template designed to be adapted and applied across sectors or in a given context, and applicable across jurisdictions;
 - (ii) Authored by a potential party to the agreement, such as a research or collection institution, and possibly setting out the terms of a research collaboration between the provider and user institution;
 - (iii) Restricted to non-commercial or commercial research, or may apply to both;
 - (iv) Covering either *ex situ* or *in situ* resources or both;
 - (v) Accompanied by a code of conduct, guideline, best practice or standard resulting in a limited distinction between tools that may be considered model contractual clauses under Article 19 of the Nagoya Protocol versus those that may be considered codes of conduct, guidelines, best practices or standards in the terms of Article 20 of the Protocol;

- (vi) Actual agreements, from a range of sources and applicable to a range of contexts, that have been made model contracts retrospectively through the removal of the names of one or both parties to the agreement;
- (c) Governments may develop model agreements, guidelines or explanatory documents that serve as implementation tools as they assist users and others to undertake their activities consistent with national ABS legislative, policy or administrative measures;
- (d) Article 20 tools may be intended to support compliance with ABS legislative, policy and administrative measures and may also be designed to support ABS agreements consistent with the Convention and the Nagoya Protocol where no national ABS measures have been developed but where parties to an ABS agreement want to be confident that they are respecting established international principles;
- (e) Codes of conduct, guidelines, best practices and standards can support the different components that may be part of negotiating access and benefit-sharing, e.g. material transfer agreements, export permits, research permits or research collaboration agreements, agreements with indigenous and local communities;
- (f) Codes of conduct, guidelines, best practices and standards may be relevant to the process of negotiation, the content of agreements, or both;
- (g) Following the provisions or requirements of Articles 19 and 20 tools may become necessary if the tools are referred to in an ABS agreement, are a condition of a research grant or are a requirement for membership in an organization;
- (h) While some of these model contracts offer various optional clauses that represent different ways of approaching a given issue, many do not, and most model contractual clauses are provided within the context of a complete contract that has been designed to work as an integrated whole;
- (i) Most model agreements are nonetheless based on the premise that there is still some room to negotiate;
- (j) Revision of existing model contractual clauses in light of the Protocol may be warranted where such revisions have not already been undertaken. Note, however, that a number of model contracts were developed as a way of implementing national legislation or regulations. In such cases any revision of a given model contract in light of the Protocol might need to follow from policy and/or legislative reforms that implement the Protocol in that jurisdiction;
- (k) As Article 20 tools tend to be quite broad in focus and provide a general background on the source of international ABS obligations, the revision of these tools in light of the Protocol is likely to result in substantive additions, particularly around issues on which the Protocol provided significantly further definition such as its provisions on traditional knowledge;
- (l) Differences between model contracts tend to go more to issues such as whether the research is expected to be commercial or non-commercial in nature than to the specific sector of application. The sector of research, and, by implication the research practices used within a given sector, tend to be more relevant to issues such as the type or quantity of genetic samples required, the duration of the agreement, the range and quantity of benefits to accrue to the provider, and whether traditional knowledge is accessed as part of the research process, than to the basic structure of the model contract. In other words, these issues go more to the particulars to be agreed upon between parties when an actual agreement is executed, rather than to the basic structure of a model agreement;
- (m) For Article 20 tools, there are significant substantive similarities across the different tools. The main difference tends to be one of emphasis, and that tends to be informed by the needs of the stakeholder who will be using the tool and the context and sector in which it will be applied; and

(n) A number of tools related to traditional knowledge are related to and overlap with Article 20 tools. While often not focused solely on ABS, these complement Article 20 tools by providing guidance to users and providers of genetic resources on specific issues relating to ABS when it concerns the traditional knowledge, innovations and practices of indigenous and local communities. For example, such tools may provide guidance on what constitutes ethical behaviour in the process of seeking consent, conducting research and negotiating benefit-sharing agreements with indigenous and local communities. Community protocols developed by indigenous and local communities for their own use may play a role in assisting communities to understand and assert their rights and interests during ABS negotiations, and to communicate their expectations and processes to those seeking access.

27. The report from the Informal Meeting for the Implementation of Articles 19 and 20 observed that codes of conduct, guidelines, best practices and standards can provide a practical opportunity to draw out the links between the three objectives of the Convention, by assisting users and providers to frame ABS arrangements in a way that also contributes to the conservation and sustainable use of biodiversity. As such, it was suggested that these tools are an important intermediary between the broad goals of Parties as articulated by the Convention and Protocol, and implementation of those goals in real circumstances.

28. The report from the Informal Meeting also included a number of relevant points in its summary of the discussions that took place. Some of the points raised include the following:⁹

(a) Model contractual clauses, codes of conduct, guidelines, best practices and standards can serve to promote consistency, legal certainty, transparency, traceability and may reduce transaction costs;

(b) While the tools addressed by Articles 19 and 20 are important, they are not sufficient in and of themselves. Broader capacity and systems are required for effective implementation of the Nagoya Protocol;

(c) Articles 19 and 20 tools can provide capacity-building assistance for those actors with a role in monitoring and enforcing ABS arrangements;

(d) Articles 19 and 20 tools should be used to help parties build trust and develop a shared and comprehensive understanding of the terms of an agreement;

(e) Further attention could be given by Parties as to how best to encourage model clauses to be developed by indigenous and local communities in the context of benefit-sharing arising from the utilization of traditional knowledge associated with genetic resources, as provided for under Article 12 of the Protocol;

(f) There are a range of views on the advantages and disadvantages of standard and consistent Articles 19 and 20 tools versus diverse tools within and across sectors and countries. On the one hand, a more consistent approach may support certainty, lower transaction costs and even out bargaining power between parties. On the other, different sectors have different requirements and operate in different contexts, and Articles 19 and 20 tools need to reflect the diversity of national approaches and legislative regimes;

(g) The proliferation of model contracts can create practical challenges such as where two institutions, each with their own model, attempt to enter into an agreement;

(h) Questions remain as to how to address any possible inconsistency between model contractual clauses and national legislation; and

⁹ The full summary of the discussions is contained in section H of document UNEP/CBD/ICNP/3/INF/3.

(i) Guidelines and other tools can play an important awareness-raising role in sectors whose activities are relevant to ABS but where there is currently low awareness of Nagoya Protocol obligations.

29. Nigeria noted that codes of conduct, guidelines, best practices and standards can be of benefit for developing countries with limited skills and low awareness of ABS. They suggested that these types of voluntary norms enhance the ease of use of domestic legislation. They also felt that guidelines define best practices to adopt in the acquisition and utilization of genetic resources thereby discouraging misappropriation and creating transparency and equity.

II. VIEWS ON PARAGRAPHS 2 OF ARTICLES 19 AND 20

30. Three Parties submitted views on how the COP-MOP should take up the mandate it has been given in paragraph 2 of both Article 19 and Article 20.

31. One Party indicated that for the purposes of paragraph 2 of Article 20, the Secretariat should elaborate a draft regarding codes of conduct, guidelines, best practices and/or standards for discussion by a future meeting of COP-MOP. The Party also recommended that the review of the use of codes of conduct, guidelines and best practices by COP-MOP should be no more frequent than once every four years due to the fact that the effectiveness of such tools could only be assessed after a certain period of practice.

32. Another Party expressed the view that the third meeting of the Intergovernmental Committee would need to elaborate a proposal to COP-MOP on the purpose of the periodic stocktaking of model contractual clauses pursuant to paragraph 2 of Article 19, especially when compared to the language of paragraph 2 of Article 20. With regard to the adoption by COP-MOP of specific codes of conduct, guidelines, best practices or standards, the Party indicated that this would require further consideration at later COP-MOPs since the adoption would need to follow the development of experience in implementing the Protocol as well as an informal common understanding prior to a possible formal adoption.

33. Another Party suggested that the periodic stocktaking of the use of voluntary norms on ABS should include the Bonn Guidelines.

34. An organization noted that options for having sectoral standards and best practices accepted at the international level would be a strong incentive for their development and would facilitate their use significantly.

35. The study by UNU-IAS as well as the report from the Informal Meeting also raised some points that may be relevant to paragraph 2 of both Articles 19 and Article 20:

(a) There could be a need to share information regarding actual use, user and provider experience and lessons learned from Articles 19 and 20 tools;

(b) Development of detailed sector-specific case studies on the role of Articles 19 and 20 tools in supporting ABS – including with reference to whether within each of the sectors examined, a more diverse or standardized approach would be more useful – could assist COP-MOP with its role regarding Article 20;

(c) The potential role of these tools in supporting the conservation and sustainable use of biodiversity (including the implementation of Article 9 of the Protocol) would benefit from further consideration;

(d) Information sharing on how different types of tools can articulate and provide guidance on the issue of the transition from non-commercial to commercial use would be useful;

(e) There would be value in requesting authors of tools who have revised or who intend to revise a tool to submit information on the nature and reason for the revisions made, including for the purposes of the stocktaking that COP-MOP is to undertake; and

(f) The requirement in paragraph 2 of Article 20 for COP-MOP to consider the adoption of specific codes of conduct, guidelines, best practices or standards could be operationalized in a number of different ways, including that any such specific tools that may be adopted could remain voluntary but represent verification that the tool is in accordance with the Protocol.

III. CONCLUSIONS AND ISSUES FOR CONSIDERATION

36. From the information that was submitted on Articles 19 and 20 and summarized in section I of this document, it is clear that a wide range of tools have been developed and a lot of activity is ongoing with regards to model contractual clauses, codes of conduct, guidelines, best practices and standards both by Governments and organizations. At the same time, while there are many tools that have been developed relevant to Articles 19 and 20, only a few of them have been revised or developed following the adoption of the Nagoya Protocol.

37. The views that were submitted regarding the mandate provided to COP-MOP in paragraph 2 of both Articles 19 and 20 include a number of different aspects. One aspect is the timing and frequency of the stocktaking exercise. It was suggested that the stocktaking exercise should not occur more frequently than once every four years in order to gain experience with these tools and with implementation of the Protocol. If the first stocktaking were to occur four years following the entry into force of the Protocol, this would coincide with the first assessment and review of the Protocol (Article 31) and consideration could be given to how these two exercises could complement one another.

38. Another aspect to paragraph 2 of both Articles 19 and 20 is the purpose of the stocktaking exercise. As summarized above, possible purposes for the stocktaking exercise could be to share information on the actual use of Articles 19 and 20 tools, lessons learned and ways that the tools can address and support implementation of certain aspects of the Protocol. Other possible purposes could be to undertake analysis of specific aspects of such tools, e.g., consideration of the advantages and disadvantages of diverse versus standardized approaches to Articles 19 and 20 tools within and across sectors and countries; the potential role of such tools in supporting the conservation and sustainable use of biodiversity; how such tools could articulate and provide guidance on the issue of the transition from non-commercial to commercial use; or how Articles 19 and 20 tools have been revised in light of the Nagoya Protocol.

39. The specific question of paragraph 2 of Article 20 was also raised, i.e., the purpose of the possible adoption of specific codes of conduct, guidelines, best practices and/or standards. While it was noted that adoption of such tools at the international level would create incentives for their development and use, it was also indicated that adoption of specific tools would require greater experience with the implementation of the Protocol so should be deferred to later meetings of COP-MOP.

40. Thus while a number of suggestions were made regarding the possible purpose of the stocktaking exercise in paragraph 2 of both Articles 19 and 20, it may be preferable to defer consideration of the specific purpose of the stocktaking exercise until closer to the time when the exercise is actually to be initiated in light of the need expressed for more experience with the use of such tools and with implementation of the Protocol.

41. In this light, the Intergovernmental Committee may wish to consider:

(a) Encouraging authors of model contractual clauses, codes of conduct, guidelines, best practices and standards to make these tools available through the ABS Clearing-House;

(b) Encouraging the updating of Articles 19 and 20 tools that were developed prior to the Nagoya Protocol;

(c) Recommending that the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol take stock of the use of model contractual clauses, codes of conduct, guidelines, best practices and standards four years following the entry into force of the Protocol and in conjunction with the first assessment and review of the Protocol.
