Roundtable 4:
What can the IGC learn from the Nagoya Protocol?

Dr. Marco D’Alessandro
Swiss Federal Institute of Intellectual Property
TCE and Link to TK and GR

Alphorn blowing – a living Swiss tradition
## Beneficiaries

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<td>• indigenous and local communities for GR held by such communities, in accordance with domestic legislation ...</td>
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COP-MOP 2 Decision: Use of the term “indigenous peoples and local communities”
Inspirations for the IGC:

- Beneficiaries in the TCE/TK context: «indigenous peoples and local communities»

- «Local communities» → possible flexibility, where at national level no notion «indigenous peoples»?
## Misappropriation/Misuse

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Inspirations for the IGC:

- “Positive approach”: Appropriate use of TK/TCE within the IP system instead of misappropriation/misuse?

- Alt 3 Policy Objectives TK/TCE Drafts:
  
  “The objective of this instrument is to support the appropriate use and protection of traditional cultural expressions within the intellectual property system, in accordance with national law, recognizing the rights of [beneficiaries] [indigenous peoples and local communities].”
Existing Rights and Int. Instruments

New int. instrument for the protection of TCE

Existing rights (IPRs)

- Copy Right
- Trade Marks
- Patents
- Designs
- Geographical Indications

Existing int. instruments

- IP Conventions & Treaties
- UNDRIP
- CBD – 8j Tools
- Nagoya Protocol
- UNESCO Conventions
- others!
# Existing Rights and Int. Instruments

## Nagoya Protocol

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### Nagoya Protocol

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| • Recognizes existing rights in preamble, objectives, and operational provisions  
• Measure-based approach | • Recognizes other instruments in preamble  
• Relationship with International Agreements and Instruments (Art. 4):  
  ➢ E.g. not applicable to specialized int. ABS instruments  
• “International Regime on ABS”: CBD, Nagoya Protocol, Int. Treaty Plant GR for Food and Agriculture, and other complementary instruments |
Existing Rights and Int. Instruments

Inspirations for the IGC:

- Measure-based approach that recognizes existing rights?
  - Legislative measures can include rights

- Mutually supportive with existing international instruments!
Negotiation Dynamics Nagoya Protocol

....

1992 Adoption of **Convention on Biological Diversity** → general ABS provisions

....

1998 COP 4 Expert Panel on ABS

2000 COP 5 Ad-hoc Working Group on ABS

2002 COP 6 Adoption of **voluntary Bonn Guidelines on ABS**

2004 COP 7 Mandate to elaborate & negotiate international Regime on ABS

2006 COP 8 Permanent Co-Chairs, Expert Group on Certificate on Compliance

2008 COP 9 “Road map” to finalize international Regime on ABS until 2010:

- additional meetings of the **Working Group on ABS** (total 9 meetings)
- technical and legal expert group meetings
- technical studies
- Interregional Negotiation Group

2010 COP 10 Adoption of **Nagoya Protocol**
In 2009 still more than 3000 brackets
Inspirations for the IGC:

- **Text-based negotiations not always successful:**
  - Focus on key issues and conceptual discussions
  - Fact-based discussions, including national experiences

- **Work on technical level is crucial:**
  - Technical and legal expert groups and/or studies, informal discussions, capacity building workshops, etc.

- **Instrument(s) to provide benefits for all:**
  - Indigenous peoples and local communities: E.g. rights and interests
  - Users: E.g. legal certainty and support innovation
  - Governments: E.g. flexibility for national implementation
Thank You for Your Attention