Chapter 10. Implementation of the Nagoya Protocol in JUSCANZ Countries: The Unlikely Lot

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This chapter explores the role of the JUSCANZ group of countries in the negotiations of the Nagoya Protocol and in shaping its implementation. In particular, it shows the contribution to the final shape of the Protocol of lessons learned in the implementation of the Bonn Guidelines on access and benefit-sharing (ABS)\(^1\) by certain JUSCANZ Members. The chapter also shows JUSCANZ Members’ negotiating limitations derived from their individual domestic legal systems.

The chapter then assesses current implementation challenges flowing from JUSCANZ’s contribution. In doing so, it focuses on selected aspects of the Nagoya Protocol, namely the issue of ‘pure’ or non-commercial research,\(^2\) the use of indigenous peoples’ and local communities’ traditional knowledge associated with genetic resources, the resolution of the ‘derivatives’ issue and the creation of internationally recognized certificates of compliance.\(^3\)

The chapter begins by examining the make-up of JUSCANZ as a group, explaining how it functions and how it is perceived. It then describes its Members’ contribution to the above-mentioned four key features of the Protocol. It examines, in more detail, JUSCANZ Members’ approach to the issues of access for non-commercial research and traditional knowledge and outlines the challenges they face in implementing those aspects of the Protocol. In doing so it focuses in more depth on the five member countries more closely involved in traditional knowledge issues: Australia, Canada, Norway, New Zealand and the United States.

The chapter takes as its starting point that the disparate nature of JUSCANZ’s Members means that they have taken no cohesive or uniform
approach to issues but acknowledge that each, in its own way, has taken an approach with some striking underlying similarities. The chapter examines why this is so, the implications for implementing the Protocol and what challenges are to be overcome.

I. The Who and How of JUSCANZ

JUSCANZ stands for Japan, the United States, Canada, Australia and New Zealand. Within the context of the Convention on Biological Diversity (CBD) this grouping includes other developed countries: principally Norway and Switzerland. From time to time its meetings have also included Mexico, Korea, and Singapore. The group sits within the United Nations system of regional groupings as a sub-set of Western European and Others.4

JUSCANZ might be understood as those ‘western’, economically developed countries that are not part of the European Union (EU). This understanding helps explain the membership of Switzerland, Norway, Japan and Mexico. JUSCANZ does not consider itself a negotiating group but, rather, an information-sharing group. As such, its Members have the flexibility to support each other where a consensus negotiating position exists or to follow their individual national interests where it does not. Consequently, the coordination difficulties faced by the EU, the African Group or the Group of Latin American and Caribbean countries (GRULAC) in settling or changing a position during negotiations do not apply to JUSCANZ.

In understanding the role of JUSCANZ it should also be noted that the United States, the largest and usually most influential country in JUSCANZ, cannot directly participate in CBD negotiations. Although it is a signatory to the Convention, the United States did not ratify it and is, accordingly, confined to observer status under CBD processes. Thus the US is confined to lobbying countries, making statements at the end of formal discussions by CBD Parties and to relying on like-minded countries to advance shared positions during negotiations. As a result, developed country leadership largely rests with the 27-Member EU and the European Commission.

The CBD is distinctive among multilateral environmental treaties for the emergence of informal negotiating groups involved in negotiating major issues. These include: the group of developing countries (Group of 77 and China),5 the Association of Small Island States, and the Group of Like-minded

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4 The other groupings are Africa, Asia-Pacific, Central and Eastern Europe (CEE) and Latin American and Caribbean (GRULAC).

5 See: http://www.g77.org/ (accessed 14 June 2012) for examples of its collective positions.