



## ISOC-1 HIGHLIGHTS TUESDAY, 29 JUNE 1999

ISOC-1 delegates discussed access to genetic resources and benefit sharing during morning and afternoon Plenary sessions. A contact group continued this discussion during the evening. A contact group on the review of the operations of the Convention met throughout the day.

### PLENARY

**REVIEW OF ACCESS TO GENETIC RESOURCES AND BENEFIT SHARING ARRANGEMENTS:** The Secretariat introduced the item on access to genetic resources and benefit-sharing (ABS) (UNEP/CBD/ISOC/1/Add.1). INDIA, DJIBOUTI and others said the issue of access was at the core of the Convention. BRAZIL and others said access must be in accordance with national legislation. Several speakers highlighted the importance of the International Undertaking on Plant Genetic Resources (IUPGR) in regard to this agenda item. Many speakers, including the EU, CÔTE D'IVOIRE and KENYA, stressed the importance of involving stakeholders, especially indigenous and local communities, on the Expert Panel on Access and Benefit Sharing. SWITZERLAND added the private sector. INDIA said the Panel should include representatives from a variety of international and regional organizations, including ASEAN. BULGARIA proposed inviting a representative from WHO. The REPUBLIC OF KOREA emphasized the importance of transparency.

Several speakers, including COLOMBIA, RUSSIA and MEXICO, suggested that the Panel distinguish between access and benefits derived from research and commercial uses. NORWAY agreed and suggested including information on material origin in patent applications. CHINA emphasized the importance of sustainable use and opposed use that is purely for commercial purposes. TURKEY recommended national legislation that distinguishes between research and commercial uses. ECUADOR said distinctions between research and commercialization cannot be made.

The EU said the Panel should explore measures to implement prior informed consent provisions. The G-77/CHINA proposed focusing on ABS, *ex situ* collections, and harmonization of intellectual property rights (IPR) and the CBD. INDIA suggested that the Panel discuss the parameters of equitable sharing of benefits and, with MALAYSIA, consider legal and policy measures in recipient and user countries. COLOMBIA identified several issues for the Panel, including examining the definition of access to genetic resources. CANADA said the

Panel should consider identifying: benefits of the use of genetic resources on a sectoral basis; mechanisms currently used to share these benefits, particularly capacity-building; and the need for new and improved measures and their implementation.

ARGENTINA recommended that the Panel identify training areas to be funded by the GEF, such as negotiating capacity on ABS arrangements. SWITZERLAND suggested that it focus on case studies not yet addressed in other international fora. The US recommended that the Panel consider best practices for contractual arrangements based on mutually agreed terms.

INDONESIA suggested that the Panel consider the pros and cons of the regional approach and analyze case studies on ABS. MADAGASCAR suggested that it review equitable benefit sharing at national and international levels and protection of the rights of communities and source countries. BRAZIL said the Panel should consider transfer of technology and access to and development of technologies. AUSTRALIA suggested that it consider transparent administration and regulatory practices and mechanisms for monitoring and enforcing contracts and permits. RAFI suggested that the Panel examine the flaws in bioprospecting "models," isolation of source countries and communities from end users, and experimentation on local communities. COSTA RICA, with SWITZERLAND and supported by PERU, proposed establishing an *Ad Hoc* Executive Committee, which would, among other things, elaborate a working agenda and choose experts for the Panel from the Secretariat's list.

DJIBOUTI emphasized the need for provision of financial resources for genetic resource issues. BOLIVIA added the need to identify derived benefits of genetic resources. SOUTH AFRICA stressed a focused action plan at the national and regional level, as well as an effective CHM at the national level. SINGAPORE emphasized the need to harmonize access to resources at the regional level. MADAGASCAR expressed concern for the rights of source countries and local communities over their traditional knowledge.

On behalf of the African Group, MALI said national legislation alone will be insufficient and recommended initiating a process to develop a protocol along the lines of the IUPGR regarding: ABS; protection of indigenous and local communities; recognition of the origin of resources; and biopiracy. The EU emphasized that implementation of CBD ABS provisions should be examined regularly in the long-term work program and must consider the diversity of practices and the perspectives of providers and users.

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### **EX SITU COLLECTIONS ACQUIRED PRIOR TO THE ENTRY INTO FORCE OF THE CBD AND NOT ADDRESSED BY THE CGRFA:**

The Secretariat introduced the documentation on this item, UNEP/CBD/ISOC/4 and UNEP/CBD/ISOC/Inf.1. ETHIOPIA, on behalf of the African Group, supported bringing *ex situ* materials collected prior to the CBD's entry into force under CBD provisions. He also supported strengthening and establishing gene banks in developing countries and making GEF funding available. INDIA suggested that the COP recommend establishing unified guidelines for access to these resources. SOUTH AFRICA emphasized the complexity of the issue, such as whether to distinguish between commercial and other uses. The EU said information exchange about *ex situ* collections would be helpful and with NORWAY said the CBD had no retroactive effect regarding these collections. The EU recommended that COP-5 focus on the role and functions of the roster of experts on this issue.

BURKINA FASO opposed limiting consideration of *ex situ* collections to phylogenetic resources. AUSTRALIA wished to have noted in the ISOC-1 report that it has not changed its position on COP-4 Decision IV/8 (ABS). COLOMBIA suggested creating a forum to study mechanisms for *ex situ* collections, in particular plant genetic resources and micro-organisms. The UK considered the questionnaire to be useful. CANADA called for avoiding duplication of work of other sectors, such as botanical gardens, the food and agriculture sector and microbial collections. The THIRD WORLD NETWORK called on the Expert Panel to examine the experience of IPR as a mechanism for equitable benefit sharing.

**INTELLECTUAL PROPERTY RIGHTS AND TRIPs:** The Secretariat introduced documentation regarding the relationship between IPR, the TRIPs agreement and the CBD (UNEP/CBD/ISOC/5). CAMEROON, on behalf of the African Group and with INDIA, highlighted the potential for TRIPs to jeopardize Farmer's Rights and CBD application. He suggested requesting the TRIPs Council to defer decisions reviewing patent excludability until after COP-5 and recommended inviting the Council to address potential conflicts with the CBD including *sui generis* protection of plant varieties and the right of countries to exclude plants, animals, micro-organisms and any parts there-of and microbiological processes for animal and plant production.

INDIA, with NIGER and GUINEA, stressed that TRIP members should be allowed to exclude plants and animals from being patented for ethical and social reasons. INDIA said IPR are not the main mechanisms for realizing equitable benefit-sharing and the synergies between the CBD and TRIPs have not been adequately treated.

The EU noted that TRIPs provisions and CBD objectives are inter-related and attention should be given to the protection of knowledge and innovation of indigenous and local communities. ECUADOR recommended reaffirming the importance of *sui generis* systems in implementing the provisions of the CBD regarding equitable sharing and communicating its decision to the TRIPs Council. NORWAY noted it was premature to change TRIPs, and with TOGO and COLOMBIA, opposed granting patents for animals and plants. SOUTH AFRICA expressed concern that no provision is made in TRIPs to protect IPR relating to indigenous and local communities. BRAZIL called for the establishment of a permanent mechanism for information sharing with the CBD, WTO and World Intellectual Property Organization (WIPO) and stressed the need to develop text to protect traditional knowledge with IPR. The US noted that TRIPs establishes appropriate levels of protection for IPRs, including patents that can be supportive of the CBD. He recommended that the COP consider ways in which Parties could use existing forms of intellectual property to encourage development based on local biological resources and indigenous knowledge. CHINA stressed the importance

of technology transfer for benefit sharing. SWITZERLAND suggested that the intersessional working group on Article 8(j) consider the potential and options of IPR and *sui generis* systems to protect traditional knowledge. CANADA suggested that the Panel could identify legal cases related to IPR and genetic resources for a discussion paper, which could be prepared in cooperation with WIPO. MALAWI suggested that the COP should give the Executive Secretary clear guidance on how to tackle the interrelationship between the CBD and WTO.

COLOMBIA called for further studies on IPRs in relation to biodiversity, technology transfer, the protection of traditional knowledge and national, regional and international measures on ABS. MEXICO emphasized the importance of *sui generis* systems, biodiversity protection and sovereign rights over biological resources. WWF said exemptions under TRIPs need to be maintained until there has been adequate experience with *sui generis* systems. The THIRD WORLD NETWORK stressed the importance of CBD proactive participation in the TRIPs talks. A contact group chaired by Elaine Fisher (Jamaica) continued the discussion on ABS during the evening.

### **CONTACT GROUP I**

The Contact Group on the review of the Convention met at midday and continued throughout the afternoon revising a new version of the Chair's text. Delegates could not agree on the format of a mechanism to facilitate a review of the implementation of the Convention and a number of options remain. The text includes an expanded description of a subsidiary body on implementation as an option. Based on an intervention by one developing country delegate, the call for the Executive Secretary to "develop a strategic plan" now calls on the Executive Secretary to "develop a proposal for a strategic plan." A number of new proposals for the operation of SBSTTA were discussed and generally accepted, including a call to establish *ad hoc* technical expert groups. A new paragraph on reviewing the role of the Secretariat and institutional linkages was revised. Some developed country delegates said the original formulation touched on UN institutional sensitivities and was beyond the mandate of the group to consider. A reworked proposal on improving regional meetings and consultations remained in brackets.

### **CONTACT GROUP II**

Delegates considered draft text for a recommendation on the Expert Panel on Access and Benefit Sharing, which included elements detailing preparations for the Panel's meeting, its composition and operation and a possible agenda. Many delegates agreed that transparency, regional representation and inclusion of non-anglophones was crucial. Delegates debated on whether the Secretariat, the Bureau and/or an *Ad Hoc* Executive Committee should set the agenda, select a relevant roster of experts for the Panel, and develop criteria for selecting representatives of relevant regional organizations. Delegates continued deliberating into the night.

### **IN THE CORRIDORS**

The calls for a protocol on access and for a message to the TRIPs Council stimulated a flurry of interest in the corridors. Several delegates said they were keen to learn more about the protocol proposal, as well as to explore the details of what aspects of patent excludability were at stake. However, others thought the protocol idea was premature.

### **THINGS TO LOOK FOR TODAY**

**PLENARY:** Draft decisions on the review of the Convention and access and benefit sharing are expected to be considered for adoption during morning and afternoon Plenary meetings and the report of ISOC-1 is scheduled for adoption by the end of the day.