



# United Nations Environment Programme

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ПРОГРАММА ОРГАНИЗАЦИИ ОБЪЕДИНЕННЫХ НАЦИЙ ПО ОКРУЖАЮЩЕЙ СРЕДЕ

## Report by Group No 2: Intellectual Property and the Environment

**Moderator:** Francisco Cannabrava (Embassy of Brazil in Mexico)

**Rapporteur:** Mindahi C. Bastida Muñoz

*Key issues:* The relationship between TRIPS and the CBD, Access, benefits sharing and transfer of technology.

The moderator presented the document, *'Intellectual property and the Environment: the link between the Convention on Biodiversity (CBD) and the Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement).'* The following points were raised:

- The intrinsic link between TRIPS and the CBD. Also, the on-going discussions within WIPO on this issue.
- The promotion and transfer of technology (the aims of TRIPS).
- Prior informed consent, benefit sharing (CBD goals).
- The Doha Ministerial Declaration's reference to the need to examine the relationship between TRIPS and the CBD. The CBD, WIPO and WTO should work together on practical issues such as technology transfer and the effects of Intellectual Property Rights (IPRs) as well as on policy matters and legislation (access and benefits) and deal with potential conflict.
- The importance of joint proposals from developing countries concerning TRIPS and access to genetic resources. Reference was made to the requests for amendments on the basis of the discussion of the CBD and provision of information, prior informed consent, and the importance of the Traditional Knowledge (TK) element in inventions.
- The group heard that the Bonn Guidelines on Access and Benefit Sharing suggest that the TRIPS Agreement should respect the objectives of the CBD. It was noted that the WSSD called for taking into account the Bonn Guidelines, particularly with regard to access to genetic resources, benefit-sharing, protection of TK, prevention of bio-piracy, positive protection through specially designed systems, and developing new mechanisms to protect TK.
- Reference was also made to the importance of the WIPO working group on IPRs, TK and Folklore, and the debate on allowing patents for TK was raised.

Other general remarks were made concerning capacity building and the link between trade and environmental programmes. Reference was made to the specific committees dealing with this issue such as the WTO's Committee on Trade and Environment.

It was also stated that the theme of intellectual property is possibly one of the only themes, within the domain of trade and the environment, where developing countries are clearly the ones who want something to be done. Similarly, there are strategies in developing countries that are presenting joint demands in the talks (India, Brazil, the Andean Community etc.). However, in some cases the process can be very swift and that considerably stretches the negotiating capacity. For example: talks on TK protection and negotiations on harmonising the international system of patents within WIPO.

Participants in the round-table then discussed possible solutions to the issues raised in the document, and in particular the following ones.

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- Key issues relating to the environment and Intellectual Property including the relationship between the CBD and TRIPS.
  - It was recalled that the key issues are genetic resources and traditional knowledge (TK), particularly those of indigenous peoples. In this case, granting of patents, prior informed consent, and sharing the benefits.
  - The issue of public health should be taken into account, based on the possibilities provided by bio-technology and the importance of its impact on the development of new drugs.
  - The main practical issues in environmental management and intellectual property rights concern the links between access and the sharing of benefits, TK, agricultural biodiversity, technology transfer, the link between benefit-sharing and conservation and taking serious account of the ethical aspects, and above all, applying the precautionary approach.
  - The link between Multilateral Environmental Agreements (MEAs) and the international trade system could be taken into account. However, the link between TRIPS and the CBD has specific characteristics that are not taken into account in the general discussion between MEAs and the WTO Agreements.
  - Increased coherence between the international fora and instruments could be achieved through inter-institutional dialogue amongst the IGOs, especially the WTO, CBD, WIPO, UNCTAD, UNEP and others.
  - The question of 'trade-offs' resulting from the WTO talks should also be discussed, with the aim of raising the negotiators' awareness of the possible negative impact of accepting issues that go against the interests of developing countries.
  - A new institutional arrangement is needed that recognises and promotes collective intellectual property rights over genetic resources and the TK of indigenous peoples.
  
- The needs and the goals of inter-institutional capacity building
  - A plethora of organisations are already providing capacity-building programmes in the field of trade and the environment, such as UNCTAD and ECLAC. However, specific programmes should be designed in the field of intellectual property and the environment.
  - Government negotiators and representatives of traditional and indigenous communities should benefit from capacity building.
  - Long-term capacity building should deal with practical issues, including environmental management and IPRs, access to and sharing of benefits, agricultural biodiversity, and technology transfer.
  - The main long-term need is for follow-up on the capacity-building programmes and ensuring that they are properly resourced.
  - At the national and regional level, capacities are under-developed. However, it was stated that some NGOs and communities are holding discussions on these issues and countries with similar interests are joining forces. Some indigenous peoples (in Guatemala, Costa Rica, Mexico etc.) are discussing these problems and bringing them to the attention of their governments. It was stated that, as part of capacity building, the National Institute for

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Industrial Property in Brazil offers occasional workshops on the link between TK and TRIPS to countries of Central America and the Caribbean.

- It is important to treat all regions and countries equally so as to increase institutional capacity in the area of environment and IPRs and meet the needs of the parties concerned.
  - Mention was made of the lack of capacity to ensure follow-up on what is happening with respect to TK.
  - Internal issues affecting the interested parties must be dealt with urgently. Negotiations must take place within countries through consultations for the direct benefit of the communities in which the resource and/or TK originate. Basic information is required as well as institution building.
  - The main long-term needs are: research, analysis and follow-up on capacity-building taking account of ethical principles.
  - The above will improve the negotiators' decision-making capacity. It was pointed out that transparency and participation are critical in capacity building.
- Approach and implementation mechanisms
    - The first requirement in capacity-building projects will be to collect information to assist governments and indigenous and local communities in negotiations at the national or international level.
    - The main implementation mechanisms could be in the form of seminars attended by governments, international organisations, civil society, NGOs and indigenous communities. It was suggested that manuals could be written.
    - Capacity-building programmes need to be carried out on a long-term basis. Also, a broad range of institutions should be involved in capacity building (UNEP, UNCTAD, WTO, WIPO and others), in order to generate synergy at the regional and local levels.
    - Seminars and conferences that bring together NGOs, governments, inter-governmental organisations and indigenous and local communities serve as a catalyst and provide an opportunity for other actors and relevant institutions to participate.
    - Holding periodic and regular seminars and conferences as well as assessments of lessons learned would be very useful for identifying, on an on-going basis, the needs and priorities with respect to intellectual property and the environment.
  - Partnerships
    - It is the role of governments, in coordination with IGOs, to promote and facilitate capacity-building projects, while aiming at broad participation by the relevant players (in particular indigenous and traditional communities). Amongst the government bodies that should participate are the ministries of trade, environment, economy, finance, science and technology as well as universities. The involvement of intellectual property offices is particularly important. They take account of the interest of public policies in defence of intellectual property rights and contribute expertise to assist in defining the interests of government negotiators as well as traditional and indigenous communities.

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- Regional and sub-regional institutions can help IGOs and governments in capacity-building. Some of the most relevant organisations are the OAS, ALADI, CARICOM, SELA, and Mercosur.
- Multilateral institutions play a central role in implementing capacity-building programmes. Amongst the most important here are UNEP, UNCTAD, CBD, UNDP, WTO, the World Bank and the OECD.
- Concluding remarks
  - It is essential that capacity-building projects bring tangible deliverables for the beneficiaries.
  - Participants found the document that was distributed for the working group discussions entitled, *'Intellectual property and the environment: the link between the Convention on Biological Diversity and TRIPS'* to be extremely useful.