Submission of Text on Definitions by Berne Declaration (EvB), Church Development Service (EED), Ecoropa, and Third World Networld Network (TWN)

A legally binding ABS Protocol must be clear and comprehensive in addressing its scope. Since the late 1980s, governments as well as industry and civil society stakeholders advocated numerous cases as “access to genetic resources” and by this way developed a common understanding of what “utilization of genetic resources” means. This includes for example the use of molecules extracted from plants and animals for the devopment and production of drug, genes and enzymes for industrial production processes or the development and production of cosmetics and neutraceuticals from animal or plant extracts. The overall political aim of - and measurement for success for - the ABS Protocol is to bring all these cases under the scope of the future ABS Protocol. This includes the utilization of living organisms and there parts (which all can be characterized as genetic material according to the CBD) eg. for the purposes of breeding; extraction and cloning of genes and extraction of biochemical molecules synthesised by the cells as the result of active "units of heredity" for use in the development and production of above mentioned drugs, cosmetics, nutraceuticals etc..

The ABS Protocol can fulfill this aim either through a specific set of definition or explicit formulation in the operational text or through a combination of both. In its notification 2010-008 from Jan 16, 2010, the SCBD asked for submissions on inter alia text for definitions to be considered at the CIIC and ABSWG-9. For this purpose, the NGOs Berne Declaration (EvB), Church Development Service (EED), Ecoropa, and Third World Networld Network (TWN) have developed text for definitions for the ABS Protocol und would lke to submit it to the SCBD.

According to the CBD definitions, genetic material - "any material of plant, animal, microbial or other origin containing functional units of heredity" - is turned into a genetic resource when "actual or potential value" is added to it. According to our understanding, any access to genetic material is the expression of adding value to this material through the user. Therefore any access to genetic material transforms it into a genetic resource under the CBD. The purpose of the definitions given below is to define the range of use of the genetic resource or associated traditional knowledge that triggers the application of the rules of the future ABS Protocol - specifically access, fair and equitable benefit-sharing and compliance. This approach avoids the renegotiation or additional interpretation of the CBD definitions which was regarded as not practical by the ABS-GTLE-01 and other meetings.

According to this understanding it is already the act of access to genetic resources that triggers the benefit sharing obligation under the CBD and a future ABS Protocol. Any MAT should cover benefit sharing milestones starting at the act of access and throughout the entire chain of creation of non-monetary and monetary profits through the actual use of the genetic resource.

The following definitions are set up in a way that intends to include in the ABS Protocol the access to genetic resources aiming at the use of biochemical molecules synthesised by living organisms and cells as the result of active "units of heredity". For this purpose the term "metabolite" has to be included in the definition section. The majority of all ABS cases put forward by different stakeholders and promoted as best practices are based on the use of biochemicals, eg. all cases related to the development of medicines. The direct use of the genes of organisms covered by the CBD only constitutes a minor case of ABS cases as explained in detail in the various NGO briefing papers made available to the delegates since ABSWG-3.

The following definitions also take into account that utilisation of genetic resources does not necessary mean using the tangible resource but also using the information and knowledge about the genetic resource, eg. which has been published as DNA sequence. In this context, the definition of the term "derivative" is of importance, especially with regard to a comprehensive coverage of the benefit-sharing provisions of a future ABS Protocol.

TEXT:

Definitions

"*Biological resources*" includes genetic resources, organisms or parts thereof, populations, or any other biotic component of ecosystems with actual or potential use or value for humanity.

[from the CBD]

"*Derivative*" means any organic compound that is produced by chemical alteration of naturally occuring nucleic acids, proteins and metabolites or by chemical synthesis based on information and knowledge about them.

[based on definitions by biochemistry textbooks as the Oxford Dictionary of Biochemistry and Molecular Biology or Organic Chemistry (McMurray)]

"*Genetic material*" means any material of plant, animal, microbial or other origin containing functional units of heredity.

[from the CBD]

"*Genetic resources*" means genetic material of actual or potential value.

[from the CBD]

"*Metabolite*" means any naturally occurring organic compound produced by processes of biosynthesis or biodegradation in living organisms based on the expression of the functional units of heredity.

[based on definitions by biochemistry textbooks as the Oxford Dictionary of Biochemistry and Molecular Biology or Biochemistry (Lubert & Stryer)]

"*Non-commercial research*" is characterised by specific mutually terms agreed between the provider and user of the genetic resource or the traditional knowledge associated with a genetic resource with the purpose to exclude their for-profit use and to subject any subsequent access by third parties and the application for any intellectual property rights by the user to a subsequent PIC and MAT with the provider.

[new definition]

"*Utilisation of genetic resources*" means adding actual or potential value to living organisms or parts thereof, containing functional units of heredity through, inter alia:

a) extraction of nucleic acids, proteins and metabolites;
b) propagation and cultivation with the aim of extracting nucleic acids, proteins and metabolites;
c) the subsequent use of these isolated nucleic acids, proteins and metabolites in their material form or in the form of information and knowledge about them;
d) breeding and selection; and
e) the use for conservation and research

for non-commercial and commercial purposes.

[based on the report of the ABS-GTLE-01 (Windhoek)]