

Canadian Submission on Definitions, preambular text and operational text left in abeyance for ABSWG9.

Preambular text

Recalling the sovereign rights of States over their natural resources and that the authority to determine access to genetic resources rests with the national governments and is subject to national legislation

Further recalling decision VI/24 of the Conference of the Parties adopting the Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of Their Utilization

Further recalling that each Contracting Party shall endeavour to create conditions to facilitate access to genetic resources for environmentally sound uses by other Contracting Parties and not impose restrictions that run counter to the objectives of the Convention

Further recalling that Article 15(5) of the Convention provides that access to genetic resources shall be subject to the prior informed consent of the Contracting Party providing such resources, unless otherwise determined by that Party; and in this context *recognizing* that each Contracting Party may determine that access to its genetic resources will not be subject to prior informed consent in the context of Article 15 of the Convention on Biological Diversity

Further recalling that Article 15(4) of the Convention provides that Contracting Parties shall take measures to ensure that access, where granted, is on mutually agreed terms

Further recalling that in accordance with Article 15(7) of the Convention the fair and equitable sharing of benefits arising from the commercial and other utilization of genetic resources shall be upon mutually agreed terms as decided between the provider and user.

Noting that Parties have differing legal systems, and accordingly have chosen to implement the access and benefit-sharing provisions of the Convention according to their national conditions.

Recognizing that the fair and equitable sharing of benefits can only be realized after access to genetic resources has been granted and when they have been used to generate benefits.

Recognizing that benefit-sharing on mutually agreed terms may include monetary and/or non-monetary benefits

Recognizing that benefit sharing measures under this regime are effective tools contributing to the eradication of poverty and the promotion of economic and social development

Recognizing the importance of providing legal certainty to the various stakeholders involved in the conservation, sustainable use and the fair and equitable

sharing of benefits derived from the use of genetic resources and associated traditional knowledge

Recognizing that intellectual property rights play an important role in the fair and equitable sharing of benefits arising from the use of genetic resources and associated traditional knowledge, and that these rights need to be supportive of and do not run counter to the objectives of the Convention

Recognizing the importance of promoting equality in negotiations of mutually agreed terms between providers and users of genetic resources

Taking into account the need to ensure compliance with access and benefit-sharing national legislations, regulations and requirements, with the aim of ensuring the fair and equitable sharing of benefits arising from the commercial and other utilization of genetic resources and associated traditional knowledge

Noting that customary law provides a sub-set of existing rules related to access and benefit-sharing of genetic resources, and measures to comply with such rules

Emphasizing that both providers and users of genetic resources benefit from the availability of model clauses for potential inclusion in material transfer agreements and inventories/catalogues of typical utilizations of genetic resources since the use of such clauses and inventories will raise legal certainty, may lower transaction costs and will contribute to creating a level playing field between provider and user when negotiating mutually agreed terms.

Definitions

Misappropriation

Misappropriation of a genetic resource means to acquire a genetic resource in violation of the provisions of domestic access and benefit-sharing legislation of a Party providing the genetic resource by failing to:

- a. obtain prior informed consent of the Party or any competent authority designated by the Party to provide such consent, OR
- b. enter into mutually agreed terms on access and benefit-sharing arising from the commercial or other utilization of genetic resources.

The submission of this definition is without prejudice to whether a definition will be necessary in the regime and whether Canada would ultimately be in a position to agree to a compliance measure associated with any definition of misappropriation.

Operational Texts Left in Abeyance for Consideration at the Next Meeting of the Working Group

Article XX
Relationship to Other Instruments

Nothing in the international regime/protocol shall be interpreted as implying any change in the rights and obligations of a party under any existing international agreement.

Nothing in the international regime/protocol will prevent the development, recognition and accommodation of intergovernmental agreements relating to access and benefit sharing that achieve the objectives of the Convention and are consistent with the provisions of the international regime.

Article XX
Financial Mechanism and Resources

1. In considering financial resources for the implementation of this international regime, the Contracting Parties [shall][should][will] take into account the provisions of Article 20 of the Convention.
2. The financial mechanism established in Article 21 of the Convention [shall][should][will], through the institutional structure entrusted with its operation, be the financial mechanism for the international regime.
3. Regarding the capacity-building referred to elsewhere in the international regime, the governing body of the [international regime][Protocol] will provide guidance with respect to the financial mechanism referred to in paragraph 2 above, for consideration by the Conference of the Parties, and [shall][should][will] take into account the need for financial resources by developing country Parties, in particular the least developed and the small island developing States among them.
4. In the context of paragraph 1 above, the Contracting Parties [shall][should][will] take into account the needs of the developing country Parties, in particular the least developed and the small island developing States among them, and of the Parties with economies in transition, in their efforts to identify and implement their capacity-building requirements for the purposes of the implementation of this international regime.
5. The guidance to the financial mechanism of the Convention in relevant decisions of the Conference of the Parties, including those agreed before the adoption of this [Protocol][international regime], [shall][should][will] apply, *mutatis mutandis*, to the provisions of this section.
6. The developed country Parties may also provide, and the developing country Parties and the Parties with economies in transition avail themselves of, financial and technological resources for the implementation of the provisions of this [international regime][Protocol] through bilateral, regional and multilateral channels.