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Item 23 of the provisional agenda*

ACCESS TO GENETIC RESOURCES

Note by the Executive Secretary

I. INTRODUCTION

1. The present note has been prepared to assist the Conference of the Parties in its consideration of item 23 of the provisional agenda, which deals with access to genetic resources. Under this item, the Conference of the Parties is also invited to consider recommendations 2,3 and 4 of the Inter-Sessional Meeting on the Operations of the Convention (ISOC), held in June 1999 (UNEP/CBD/COP/5/4, annex), and the report of the Panel of Experts on Access and Benefit-sharing, which met in San José, Costa Rica in October 1999 (UNEP/CBD/COP/5/8).

2. The note provides a brief review of relevant activities undertaken within the Convention process and how they relate to one another. It also provides information regarding the relevant activities of other organizations. Section II reports on the work carried out on developing access and benefit-sharing arrangements. Section III addresses the relationship between intellectual property rights and the relevant provisions of the Agreement on Trade-Related Aspects of the Intellectual Property Rights (TRIPs) and the Convention. Section IV considers implementation of paragraph 2 of decision IV/8, on ex situ collections acquired before the entry into force of the Convention and not addressed by the Commission on Genetic Resources for Food and Agriculture (CGRFA) of the Food and Agriculture Organization of the United Nations (FAO). In Section V, the note concludes with the elements of a draft decision for the consideration of the Conference of the Parties, which incorporates recommendations 2, 3 and 4 of the Inter-Sessional Meeting on the Operations of the Convention and the conclusions of the Panel of Experts on Access and Benefit-sharing.

II. ACCESS AND BENEFIT-SHARING ARRANGEMENTS

4. Achieving the aims of the Convention with respect to access and benefit-sharing arrangements and the fair and equitable sharing of benefits arising

* UNEP/CBD/COP/5/1.

from the utilization of genetic resources has proved to be a complex task. Best practice and effective mechanism and approaches are still rapidly evolving. The Conference of the Parties has considered the basic elements of access and benefit-sharing from different angles. Indeed, it was only at its fourth meeting that the Conference of the Parties was able to adopt a unified decision covering all aspects of the issue, namely, decision IV/8, entitled "Access and benefit-sharing".

5. Since the fourth meeting of the Conference of the Parties, there have been numerous developments of relevance to access and benefit-sharing arrangements. Within the Convention process key events include:

(a) The holding of the Inter-Sessional Meeting on the Operations of the Convention, which considered access and benefit-sharing as requested by the Conference of the Parties at its fourth meeting and made three recommendations addressing the issue (UNEP/CBD/COP/5/4, annex);

(b) The convening of the first meeting of the Panel of Experts on Access and Benefit-sharing;

(c) The roster of experts on access and benefit-sharing was developed; and

(d) Case-studies were further promoted, synthesized and disseminated through the clearing-house mechanism and at meetings within the framework of the Convention (see, for example, the review of options for access and benefit-sharing mechanisms prepared by the Executive Secretary for the ISOC meeting (UNEP/CBD/ISOC/3)).

6. Several other activities within the framework of the Convention have a significant bearing on the issue. These include: the first meeting of the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions of the Convention, to be held in Seville, Spain, from 27 to 31 March, which will consider the issues of access and benefit-sharing within the context of traditional knowledge; the preparation of the first national reports on measures taken by Parties to implement the Convention, which have been submitted to the Secretariat and disseminated through the clearing-house mechanism; the consideration of genetic use restriction technologies (GURTs) by SBSTTA, and recommendation IV/5 arising from this consideration; and the adoption of the Protocol on Biosafety, which will have a significant bearing on technology transfer, and the use of genetic resources along with the flow of benefits arising from this use.

7. Many Parties have undertaken further steps to implement relevant provisions of the Convention since the fourth meeting of the Conference of the Parties. The Executive Secretary has received submissions from the Governments of Bahrain, China, Kiribati, Morocco, Oman and Ukraine on matters relating to access and benefit-sharing. A brief outline of these measures was provided to ISOC in the above-mentioned review of options for access and benefit-sharing mechanisms (UNEP/CBD/ISOC/3). Since that report was prepared, the Executive Secretary has been informed of developments within the Organization of African Unity (OAU) and the Association of South-East Asian Nations (ASEAN). Further information is contained in many national reports.

8. Numerous significant developments outside the Convention process have also occurred since the last meeting of the Conference of the Parties. The

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Intergovernmental Forum on Forests finished its work (see UNEP/CBD/COP/5/INF/16), and its recommendations on technology transfer and traditional knowledge are of direct relevance to the subject matter of the present note. The negotiations to revise the International Undertaking on Plant Genetic Resources to harmonize it with the Convention have proceeded and are expected to be concluded in time for the next meeting of the FAO Council, in November 2000. ^{1/} The TRIPs Council undertook its review of Article 27.3(b) of the TRIPs Agreement in 1999. Developments within the United Nations Commission on Human Rights, especially with respect to its consideration of a "right to food", along with the 1999 study by the Economic and Social Council on this right, have relevance to the equitable sharing of benefits. Finally, the developing cooperation between the Secretariat and the World Intellectual Property Organization (WIPO) has resulted in WIPO actively seeking experience and views of relevance to traditional knowledge and intellectual property rights.

9. With regard to the consideration of the issue by the Conference of the Parties at its fifth meeting, the deliberations of the Panel of Experts and ISOC are of central importance.

10. The Panel of Experts on Access and Benefit-sharing was established by the Conference of the Parties in its decision IV/8. The mandate of the Panel is to develop a common understanding of the basic concepts and to explore all options for access and benefit-sharing on mutually agreed terms including guiding principles, guidelines and codes of best practices for access and benefit-sharing arrangements. Elements for the options are suggested in the annex to the decision and were further elaborated by ISOC.

11. In accordance with decision IV/8, and guidance from ISOC and the Bureau of the Conference of the Parties, the Executive Secretary selected members of the Panel from experts nominated by Governments.

12. As reflected in its report (UNEP/CBD/COP/5/8), the first meeting of the Panel of Experts focused on the following issues: mutually agreed terms and contractual approaches; benefit-sharing options and mechanisms; access legislation; the concept and procedure of prior-informed consent; intellectual property rights; regulatory and incentive measures; and related capacity-building aspects of these issues.

13. The Panel reached consensus on the basic principles that should govern access and benefit-sharing arrangements, and a common understanding of the key concepts such as prior-informed consent, mutually agreed terms, and fair and equitable benefit-sharing. The Panel also identified important information and capacity-building needs associated with access and benefit-sharing arrangements. Key recommendations of the Panel require action by Parties, Governments and the Conference of the Parties. In particular, the Panel recommended, first, that each Party and Government should establish a national focal point and one or more competent national authorities, as appropriate, for access and benefit-sharing arrangements and, secondly, that the Conference of the Parties may wish to consider the development of guidelines with respect to prior-informed consent and mutually agreed terms based on the common understandings reached at the meeting.

^{1/} See also the note by the Executive Secretary on agricultural biological diversity prepared for the fifth meeting of the Conference of the Parties (UNEP/CBD/COP/5/11).

14. The Panel also agreed that four of the most critical capacity-building needs in relation to access and benefit-sharing arrangements are:

- (a) Assessment and inventory of biological resources as well as information management;
- (b) Contract negotiation skills;
- (c) Legal drafting skills for development of access and benefit-sharing measures; and
- (d) Development of sui generis regimes for the protection of traditional knowledge associated with genetic resources.

15. At the request of the Panel, the Secretariat undertook consultations with the Secretariat of the Global Environment Facility (GEF) to consider ways and means to address these needs for the consideration of the Conference of the Parties. It will be recalled that, at its fourth meeting, the Conference of the Parties issued guidance of relevance to this topic (decision IV/13, para. 8). The GEF report to the Conference of the Parties at its fifth meeting (UNEP/CBD/COP/5/7) states that GEF has integrated this guidance into its existing operational modalities. In particular, GEF advises that it has implemented this guidance through modification of enabling activities criteria so as to provide an "opportunity to request financing for stock-taking activities related to access and benefit-sharing" and "within the context of projects or through short term response measures, the GEF will provide support for specific benefit-sharing initiatives such as policy, regulatory and institutional frameworks on mechanisms to facilitate access to genetic resources and benefit-sharing". In light of these amendments, GEF believes that it would be possible for eligible Parties, to obtain GEF assistance to assess their capacity-building needs in the areas listed in paragraph 14 above. Parties could also identify their capacity-building needs as a part of the GEF Capacity Development Initiative, which aims at the preparation of a comprehensive, longer-term strategy and action plan to meet the capacity-development needs of Parties. The Capacity Development Initiative is being developed with the assistance of regional and national experts and with extensive consultation with Parties. The resultant strategy and action plan is expected to be completed by mid-2001. In the meantime, Parties are encouraged to integrate capacity-building needs in the area of benefit-sharing into regular GEF projects. One example of such a project is the regional project in Algeria, Morocco and Tunisia on participatory management of plant genetic resources in oases of the Mahgreb, which includes the development of national capacities to negotiate genetic property rights through win/win partnerships. A comprehensive description of such projects and other relevant activities of the GEF are contained in information document UNEP/CBD/COP/5/INF/17.

16. The Panel considered the issue of intellectual property rights and acknowledged that such rights may have an influence on the implementation of access and benefit-sharing arrangements and a role in providing incentives for users to seek prior informed consent. The Panel was, however, unable to come to any conclusions on these issues, and therefore suggested to the Conference of the Parties to further consider them. To guide this further consideration the Panel developed a list of specific issues that require further study (UNEP/CBD/COP/5/8, paras. 127-138).

17. The Panel proved to be an effective mechanism for addressing the issue of access and benefit-sharing arrangements and considering the role of intellectual property rights in implementing the aims of the Convention. As is evident from the reports of ISOC and the Panel, measures currently being undertaken by Parties, as well as the attention that this issue is receiving in other international organizations and forums, access and benefit-sharing arrangements are in an area that is still rapidly evolving. Moreover, in line with the programme of work set out in annex II to decision IV/16, central aspects of the issue will be the subject of in-depth consideration by the Conference of the Parties at its sixth and seventh meetings. Consequently, the Executive Secretary proposes that there be two further meetings of the Panel. ^{2/} It is proposed that these meetings be of three days and that they be held annually. In light of the experience gained from the first meeting of the Panel and the recommendations arising from ISOC and the conclusions of the Panel it is also proposed that the first meeting of the Panel, in 2001, focus on developing the common understanding regarding prior informed consent and mutually agreed terms into guidelines and that at its second meeting, in 2002, the Panel consider the specific issues regarding the role of intellectual property rights that require further study identified in its report. This organization of work would allow time for Parties to submit information on intellectual property rights. It would also mean that the Panel would be better able to properly assess the outcome of key developments in other forums, such as the review of the International Undertaking on Plant Genetic Resources and the TRIPs Agreement.

18. In order to facilitate consideration of the issue, the Executive Secretary has prepared elements of a draft decision incorporating the recommendations of the Panel and ISOC. These elements are presented in section V below.

III. THE RELATIONSHIP BETWEEN INTELLECTUAL PROPERTY RIGHTS
AND THE RELEVANT PROVISIONS OF THE TRIPs AGREEMENT
AND THE CONVENTION

19. One aspect of intellectual property rights, not addressed in the report of the Panel of Experts on Access and Benefit-sharing but on which ISOC adopted a recommendation for the consideration of the Conference of the Parties, is the relationship between intellectual property rights and the relevant provisions of the TRIPs Agreement and the Convention. ISOC considered this issue on the basis of paragraph 10 of decision IV/15 of the Conference of the Parties, which emphasized the need for further work on this topic.

20. ISOC recognized the need to ensure mutual supportiveness between the TRIPs Agreement and the Convention and the need to promote synergy between the two agreements. It consequently underlined the importance and urgency for the Convention to achieve observer status in the TRIPs Council. An application for observer status has been pending since 1999.

21. ISOC also recommended that the Conference of the Parties recognize the importance of systems such as sui generis and others for the protection of traditional knowledge of indigenous and local communities and the equitable sharing of benefits from its use to meet the objectives of the Convention,

^{2/} See also the note by the Executive Secretary on the proposed budget for the programme of work for the biennium 2001-2002 (UNEP/CBD/COP/5/18)

taking into account the ongoing work on Article 8(j) and related provisions, and transmit its findings to the WTO and WIPO.

22. ISOC further recommended that the Conference of the Parties invite the WTO to acknowledge relevant provisions of the Convention and take into account the fact that the TRIPs provisions and the objectives of the Convention are interrelated, and to further explore this interrelationship.

23. ISOC also recommended that the Conference of the Parties further consider the issue and develop ways and options to closely follow the work of done by WIPO and the World Trade Organization (WTO) and provide inputs when relevant.

24. As acknowledged by ISOC, further consideration of the issue needs to be based on submissions from Parties. As much of this information will be forthcoming within the context of the consideration of the specific issues on intellectual property rights identified by the Panel, an appropriate mechanism for further consideration of this issue could be the Panel. In particular, the second inter-sessional meeting of the Panel, which would also be considering the more general issue of the role of intellectual property rights in achieving the aims of the Convention.

25. With respect to WTO, the Executive Secretary maintains regular contact with its secretariat. Relevant decisions have been transmitted on a timely basis. WTO documents are monitored by the Secretariat through the WTO home page on the World Wide Web. The Executive Secretary has also participated as observer in the WTO Committee on Trade and Environment and was represented at the most recent ministerial meeting of WTO. In addition to the TRIPs Council, the Executive Secretary has pending an application for observer status in the Committee on Agriculture. The Executive Secretary has on an ad hoc basis also approached the WTO Committee on Sanitary and Phytosanitary Measures. The Secretariat website includes various links to the WTO homepage. WTO participated in the Panel of Experts and ISOC. Documentation produced by the Executive Secretary containing issues of relevance is routinely produced in consultation with the WTO secretariat.

26. As part of the 1999 review of Article 27.3(b) of the TRIPs Agreement, the TRIPs Council requested the Executive Secretary, along with the International Union for the Protection of New Varieties of Plants (UPOV) and FAO, to provide a factual submission to the Council. This was duly prepared and distributed as document IP/C/W/130/Add.1. Members of the TRIPs Agreement that were in 1999 under an obligation to apply Article 27.3(b) were invited to provide information on how the matters addressed in this provision were presently treated in their national law. Other members were invited to provide such information on a best endeavours basis. While it was left to each member to provide information, as it would see fit, having regard to the specific provisions of Article 27.3(b), the WTO secretariat was requested to provide an illustrative list of questions relevant in this regard in order to assist Members to prepare their contributions. By the time of the last Council meeting in October 1999, information had been received from 33 members. The Council had had before it, in July, an informal note containing a structured summary overview of the information presented by these members, which the WTO secretariat had prepared in response to a request from the Council. Some members commented on the contents of this overview. Views were expressed on the present provisions of Article 27.3(b), including on their relation to the protection and use of biodiversity, and on possible changes to

these provisions that might be considered. In October, the Council received submissions from two members, had a further exchange of views and agreed to revert to the matter at its next meeting, taking into account the outcome of the Seattle Ministerial Conference. The next meeting of the TRIPS Council is planned for 21 to 22 March 2000. The Secretariat will continue to monitor the review and respond in a timely fashion to any queries from the Council or the WTO secretariat.

27. The Executive Secretary has placed great importance on the work of WTO. All avenues for cooperation are being explored. However, developing cooperation between WTO and the Convention needs to focus also on national level coordination of activities and positions within Parties.

28. In accordance with decisions IV/9 and IV/15, as well as the guidance of ISOC, cooperation has also been further developed with WIPO, although the focus of activity for the moment has been on the role of intellectual property rights in protecting traditional knowledge. Visits have been exchanged, and documentation of relevance is provided to WIPO for comment. WIPO also participated in ISOC and the Panel of Experts. With regard to the arrangements for cooperation, WIPO has indicated its preference for a project-based approach as opposed to the conclusion of a memorandum of understanding.

29. Section V below contains elements of a draft decision for each of the above points.

IV. EX SITU COLLECTIONS ACQUIRED BEFORE THE ENTRY INTO FORCE OF THE CONVENTION AND NOT ADDRESSED BY THE COMMISSION ON GENETIC RESOURCES FOR FOOD AND AGRICULTURE

30. In accordance with paragraph 2 of decision IV/8, ISOC considered ex-situ collections acquired prior to the entry into force of the Convention and not addressed by the Commission on Genetic Resources for Food and Agriculture (CGRFA). The Executive Secretary prepared for the ISOC meeting a report on the information on ex-situ collections in accordance with decision IV/8 (UNEP/CBD/ISOC/1/4), based on information obtained from Parties, Governments and relevant organizations. To this end, the Executive Secretary invited relevant bodies to provide the information requested by decision IV/8. Invitations were sent to national focal points, FAO, the centres of the Consultative Group on International Agricultural Research (CGIAR), botanical and zoological gardens, microbial collection centres and other relevant bodies. Although the Secretariat received some information, it was not sufficient to derive any meaningful conclusion.

31. ISOC considered the report and concluded that further work was needed. It advised the Conference of the Parties to request the Executive Secretary to continue to gather information on ex situ collections. It also provided guidance on the structure of the questionnaire. Based on the information-gathering exercise ISOC recommended that the Conference of the Parties might wish to consider the matter further.

32. ISOC recommended that the Conference of the Parties may wish to consider the application on a voluntary basis by the holders of ex situ collections the facilitation of capacity building and technology development and transfer for the maintenance and utilisation of ex situ collections. Capacity-building and technology transfer for ex situ collections has been indirectly addressed by the Conference of the Parties in several ways. The most important activity in

this regard with respect to collections acquired before the entry into force of the Convention is the Global Taxonomy Initiative. Progress with this Initiative was reviewed by SBSTTA at its fifth meeting, and recommendation V/3, which emerged from the discussion will be taken up by the Conference of the Parties at its fifth meeting under item 17.4 of the provisional agenda.

33. The support provided by GEF through enabling activities and guidance regarding access and benefit-sharing generally given by the Conference of the Parties at its fourth meeting are also directly relevant. Other organizations are actively involved in building capacities and transferring technologies for ex situ collections. For example, many botanical gardens in developed countries devote considerable resources to assisting their counterparts in the developing world. Botanic Gardens Conservation International (BGCI) provides a loose international framework for these activities. These issues have also received considerable attention within the context of plant genetic resources, the revision of the International Undertaking on Plant Genetic Resources, the CGIAR system.

34. The major limitation with regard to these voluntary activities is resources. As a result, the Conference of the Parties may wish to consider calls for further resources for such activities.

35. ISOC also recommended that the Conference of the Parties might wish to consider the application on a voluntary basis by the holders of ex situ collections the development on a sectoral basis of principles of access and benefit-sharing. Many examples of voluntary principles or codes for ex situ collections have been made available to the Secretariat and Parties.

36. Codes or principles involving commercially orientated activities can be found in the case studies submitted to the Secretariat on access and benefit-sharing (e.g., the case-studies of DIVERSA, Shaman Pharmaceuticals, National Cancer Institute (NCI) and International Cooperative Biodiversity Group (ICBG)). A case-study submitted by the Government of Switzerland (UNEP/CBD/COP/4/Inf.16) shows a survey in which companies and institutions that are users of genetic resources consider a voluntary code of conduct as the most promising instrument to implement incentives to further cooperation between providers and users of genetic resources and conclude that such a code constitutes the most practical approach. This study found that a restrictive policy of granting access to genetic resources was seen by experts from industry, as well as from universities, as having possibly negative effects for the transfer of technology and the attractiveness of natural substances, especially for the chemical and pharmaceutical industry.

37. Botanical gardens have made available examples of voluntary guidelines that are being used or developed. One such example are the common policy guidelines developed by a number of botanical gardens, circulated at ISOC (see document UNEP/CBD/ISOC/Inf.2) and also described in annex IV to the report of the Panel of Experts on Access and Benefit-sharing (UNEP/CBD/COP/5/8).

38. Other types of institutions housing public ex situ collections have also developed and submitted codes or principles. For example, the World Federation for Culture Collections (WFCC) has adopted guidelines for the establishment and operation of collection of cultures of microorganisms.

39. The Panel of Experts on Access and Benefit-sharing reviewed existing principles and codes and the experience gained from their use. It concluded

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that they played an important role in facilitating access and benefit-sharing arrangements, and promoting the use of ex situ collections in line with the aims of the Convention, especially in situations where there was not comprehensive legislative, administrative and policy measures in place. The common understandings identified by the Panel, and mentioned above, are understood to be relevant to existing holdings of ex situ collections to the extent that it is feasible, as well as any future holding obtained by ex situ collection and the maintenance, control, use of in situ genetic resources. Accordingly, the proposal for the Panel to develop these common understandings into guidelines, if agreed to by the Conference of the Parties, could provide an effective mechanism for the Conference of the Parties to consider this aspect of ISOC recommendation 4.

V. RECOMMENDATIONS

40. ISOC and the Panel of Experts on Access and Benefit-sharing made significant progress with respect to the clarification of key concepts and the development of basic principles. However, both concluded that further work remains to be done especially in relation to intellectual property rights, ex situ collections, and the development of guidelines for access and benefit-sharing. Consequently, several of the recommendations and conclusions from the meetings are process-oriented, requiring the Conference of the Parties to initiate a number of activities. In addition, however, a central element in the implementation of Article 15 and related provisions underlined by the Panel is domestic action by the Parties themselves. In this regard, a number of recommendations would require Parties to take appropriate measures to ensure compliance with the objectives of the Convention.

41. As a result, the Conference of the Parties is invited to consider the following elements of a draft decision, derived from the recommendations and conclusions of ISOC and the Panel of Experts, regarding further work and actions on access and benefit-sharing:

The Conference of the Parties

[Access and benefit-sharing arrangements]

1. Requests Parties to establish/designate a national focal point and one or more competent national authorities, as appropriate, to be responsible for access and benefit-sharing arrangements within its jurisdiction;

2. Requests Parties to notify the Executive Secretary of the names and addresses of its focal points and competent authorities;

3. Urges Parties to ensure that legislative, administrative and policy measures on access and benefit-sharing to be a component of their national biodiversity strategies and to ensure that such arrangements are linked to conservation and sustainable-use objectives;

4. Notes that legislative, administrative and policy measures for access and benefit-sharing need to promote flexibility, while balancing the need for sufficient regulation of access to genetic resources to promote the objectives of the Convention, and that flexibility in providing countries is related to the extent that user countries and organizations implement measures that provide incentives or establish control mechanisms in order to secure the interest of providers over their resources, and therefore urges Parties to pay

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particular attention to their obligations under paragraph 7 of Article 15 of the Convention;

5. Notes that legal certainty and clarity facilitates access to and use of genetic resources and contributes to mutually agreed terms in line with the aims of the Convention, and therefore urges Parties, in the absence of full and clear legislation and national strategies for access and benefit-sharing, to use voluntary measures, guidelines or government endorsement to help ensure they meet the objectives of the Convention;

6. Requests Parties in developing national legislation on access to take into account and allow for the development of a multilateral system to facilitate access and benefit-sharing for plant genetic resources for food and agriculture;

7. Endorses the common understandings of the Panel of Experts on Access and Benefit-sharing with respect to prior informed consent and mutually agreed terms as contained in paragraphs 156 to 165 of its report;

8. Decides that the Panel of Experts on Access and Benefit-sharing should develop guidelines with respect to prior informed consent and mutually agreed terms based on the common understandings referred to in paragraph 7 above;

9. Notes that information is a critical aspect of providing the necessary parity of bargaining power for stakeholders in access and benefit-sharing arrangements, and that, in this respect, there is a particular need for more information regarding:

- (a) User institutions;
- (b) The market for genetic resources;
- (c) Non-monetary benefits;
- (d) New and emerging mechanisms for benefit-sharing;
- (e) Incentive measures;
- (f) Clarification of definitions;
- (g) Sui generis systems; and
- (h) "Intermediaries";

10. Requests the Executive Secretary to compile the information referred to in paragraph 9 above and disseminate it through the clearing-house mechanism, relevant meetings and requests Parties and organizations to provide such information to assist the Executive Secretary;

11. Notes that further development of capacities regarding all aspects of access and benefit-sharing arrangements is required for all stakeholders, in particular, local governments, academic institutions, and indigenous and local communities, and agrees that four of the most critical capacity-building needs are:

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(a) Assessment and inventory of biological resources as well as information management;

(b) Contract negotiation skills;

(c) Legal drafting skills for development of access and benefit-sharing measures; and

(d) Development of sui generis regimes for the protection of traditional knowledge associated with genetic resources;

12. Recalling its guidance to the financial mechanism, urges those Parties for which this issue is a priority to initiate projects which will address these needs and urges the financial mechanism, Parties, other relevant organizations and the private sector to support such projects;

13. Noting that the Panel was not able to come to any conclusions about the role of intellectual property rights on the implementation of the access and benefit-sharing arrangements and that the Panel developed a list of specific issues that require further study (UNEP/CBD/COP/5/8, paras. 127-138):

(a) Requests Parties to submit to the Executive Secretary information on these issues by 31 December 2000;

(b) Further requests the Executive Secretary based on these submissions and other relevant material to make available for the second inter-sessional meeting of the Panel a report on these specific issues;

(c) Recalling ISOC recommendation 3, requests the Executive Secretary to prepare this report in consultation with the secretariat of the World Trade Organization and the World Intellectual Property Organization;

(d) Requests the Panel to advise the Conference of the Parties on these specific issues at its sixth meeting.

[The relationship between intellectual property rights and the relevant provisions of the TRIPs Agreement and the Convention]

Noting ISOC recommendation 3, on the relationship between the intellectual property rights and the relevant provisions of Agreement on Trade-Related Aspects of Intellectual Property Rights and the Convention,

1. Reaffirms the importance of systems such as sui generis and others for the protection of traditional knowledge of indigenous and local communities on the equitable sharing of benefits arising from its use to meet the provisions of the Convention, taking into account the ongoing work on Article 8(j) and related provisions;

2. Invites the World Trade Organization to acknowledge relevant provisions of the Convention and to take into account the fact that the provisions of the TRIPs Agreement and the Convention on Biological Diversity are interrelated and to further explore this interrelationship;

3. Requests the Executive Secretary to transmit the present decision to the Secretariat of the World Trade Organization and the World Intellectual Property Organization, for use by appropriate bodies of these organizations

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and to endeavour to undertake further cooperation and consultation with these organizations.

[Ex situ collections acquired prior to the entry into force of the Convention and not addressed by the Commission on Genetic Resources for Food and Agriculture]

1. Decides to continue the information-gathering exercise on ex situ collections acquired prior to the entry into force of the Convention and not addressed by the Commission on Genetic Resources for Food and Agriculture initiated by decision IV/8;
2. Requests the Executive Secretary to gather available information of the type described in annex I to the present decision, as appropriate;
3. Requests the Executive Secretary to gather information from Parties and relevant organizations and forums through a questionnaire, based on annex II to the present decision;
4. Invites relevant organizations and forums already involved in consideration of these issues to provide this information to the Executive Secretary;
5. Invites Parties, Governments and other organizations to provide capacity-building and technology development and transfer for the maintenance and utilization of ex situ collections acquired before the Convention entered into force;
6. Invites the Panel of Experts on Access and Benefit-sharing in its work on developing guidelines with respect to prior informed consent and mutually agreed terms based on the common understandings identified in the report of the Panel to the extent feasible to consider their application on a voluntary basis to the ex situ collection acquired prior to the entry into force of the Convention;
7. Requests the Executive Secretary to report the result of this exercise to the Conference of the Parties at its [sixth] meeting.

Annex I

ELEMENTS FOR A QUESTIONNAIRE ON EX SITU COLLECTIONS

A questionnaire to solicit the relevant information may contain the following elements:

1. Number, types and status, including legal status and institutional links, of relevant collections;
2. Approximate number of accessions acquired, prior to the entry into force of or not in accordance with the Convention on Biological Diversity (<100; >100; >1000; other);
3. Whether the following information is likely to be available: country of origin; name of depositor; date of deposit; terms of access under which the material is available (All available; Some available; None available);

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4. Any relevant policies regarding collections that are not addressed by the FAO Commission on Genetic Resources for Food and Agriculture, where appropriate, in particular those addressing the issue of access to the relevant collections, including matters relating to repatriation of information and repatriation of duplicates of germplasm collections;

5. Information regarding the number of requests for information and the exchange of germplasm;

6. Details of the benefits from shared germplasm and information on costs of maintaining such collections;

7. Any other relevant information.

Annex II

QUESTIONNAIRE ON EX SITU COLLECTIONS

Objective

To inform consideration of the implementation of the Convention on Biological Diversity by ex situ collections

1. Information on collections

	Number of accessions			
	Pre-Convention on Biological Diversity		Post-Convention on Biological Diversity	
	Public	Private	Public	Private
PLANT GENETIC RESOURCES seed gene banks: field collections: (e.g. botanic gardens and arboreta) other: (e.g. DNA, pollen in cold storage, tissue cultures, herbaria)				
ANIMAL GENETIC RESOURCES Whole animal collections: (e.g. zoological gardens; rare breed collections) other: (e.g. DNA, semen, ova in cold storage)				

	Number of accessions			
	Pre-Convention on Biological Diversity		Post-Convention on Biological Diversity	
	Public	Private	Public	Private
MICROBIAL GENETIC RESOURCES culture collections: other:				

2. Information on pre-Convention on Biological Diversity collections

(Information to be differentiated between plant genetic resources, animal genetic resources and microbial genetic resources.)

Is information available on:	For all accessions	For most accessions	For some accessions	For few accessions	For no accessions
country of origin					
name of depositor					
date of deposit					
user institution/ country					

3. Conditions/restrictions on access and use

(Information to be differentiated between plant genetic resources, animal genetic resources and microbial genetic resources.)

- a. Description of the main conditions/restrictions (including those contained in national law, those set by the collections themselves and those set by depositors) on access to and use of genetic resources identified separately, if appropriate, for pre-Convention on Biological Diversity and post-Convention on Biological Diversity material.
- b. What limitations, if any (legal or practical), are there on applying the provisions of the Convention on Biological Diversity to the supply of pre-Convention on Biological Diversity materials for collections in your country?

4. Use of collections

(Information to be differentiated between plant genetic resources, animal genetic resources and microbial genetic resources.)

Information on the number of requests for genetic resources and for information differentiated by type of collection (public/private) and by the source of the request (national/foreign; public/private).

5. Additional information

(Information to be differentiated between plant genetic resources, animal genetic resources and microbial genetic resources.)

Any additional relevant information on other key characteristics of collections, for example:

- Focus on medicinal plants, certain families/genera/species, emphasis on economic importance, certain ecosystems (e.g. drylands);
- Whether the accessions are duplicated elsewhere (for conservation purposes and to determine the genetic diversity of collections worldwide).
