



Convention on Biological Diversity

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SUBSIDIARY BODY ON SCIENTIFIC, TECHNICAL AND TECHNOLOGICAL ADVICE

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Item 12 of the provisional agenda*

NEW AND EMERGING ISSUES RELATING TO THE CONSERVATION AND SUSTAINABLE USE OF BIOLOGICAL DIVERSITY

Note by the Executive Secretary

I. INTRODUCTION

1. In decision IX/29, the Conference of the Parties to the Convention on Biological Diversity provided guidance on the procedure for the identification of new and emerging issues and on the review of proposals, specified the kind of information that should be provided in support of a proposal and listed criteria that should be applied in evaluating the proposals.
2. In the same decision, the Executive Secretary was requested to invite Parties and relevant organizations after each meeting of the Conference of the Parties to submit proposals for new and emerging issues and to compile these in the form in which they are received. Parties and relevant organizations should then be notified of the opportunity to contribute relevant information and views related to the proposals, taking into account the criteria and the Executive Secretary was requested to prepare a document compiling the original submissions and the information and views received for consideration by the Subsidiary Body on Scientific, Technical and Technological Advice.
3. In paragraph 5 of decision XI/11, the Conference of the Parties requested the Executive Secretary, in line with decision IX/29, to include, with the compilation of original submissions and the information and views on each proposed new and emerging issue relating to the conservation and sustainable use of biodiversity, a review of information applying the criteria contained in paragraph 12 of decision IX/29, where this had not otherwise been provided, with a view to enabling the Subsidiary Body on Scientific, Technical and Technological Advice to consider the proposals.
4. Accordingly, the Executive Secretary invited, through notification 2015-017, the submission of proposals for new and emerging issues relating to the conservation and sustainable use of biodiversity and the fair and equitable sharing of benefits arising from the use of genetic resources. In response, two submissions were received: one from a Party (Australia) and one from an organization (Peruvian Society for Environmental Law (SPDA)). The submissions are available online at: <https://www.cbd.int/emerging/>.
5. Australia recommended that no new and emerging issue should be added to the agenda of a meeting of the Subsidiary Body on Scientific, Technical and Technological Advice during this round of submissions. The SPDA submission recommended adding an item relating to consideration of “jurisdiction shopping”. Accordingly, section II of the present document contains a summary of the SPDA proposal for a new and emerging issue, including information on the application of the criteria in

* UNEP/CBD/SBSTTA/20/1/Rev.1.

paragraph 12 of decision IX/29. Section III contains a conclusion on the proposal as a possible new and emerging issue and a recommendation for the consideration of the Subsidiary Body on Scientific, Technical and Technological Advice.

II. PROPOSAL FOR A NEW AND EMERGING ISSUE

6. SPDA characterized its proposal for a new and emerging issue as “preventing “jurisdiction shopping” for transboundary resources in a non-Party: the case of Puerto Rico”. They provided information according to the categories in paragraph 11 of decision IX/29 and applied the criteria in paragraph 12 of decision IX/29 to the proposed issue. Their submission described the situation of a research project on genetic resources in Puerto Rico, which is a territory of the United States of America, a non-Party to the Convention. SPDA suggested that, if genetic resources are understood as “natural information”, then the genetic resources of Puerto Rico are largely transboundary throughout the neotropics. It also suggested that other countries that are Parties to the Convention and/or the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization and that have access and benefit-sharing obligations would not share the benefits of utilization of the transboundary resources being accessed from the United States.

7. SPDA maintained that the research project was frustrating Article 1 (“Objectives”) of the Convention on Biological Diversity as well as Article 1 (“Objective”) and Article 5 (“Fair and Equitable Benefit-Sharing”) of the Nagoya Protocol. They also referred to Article 11 (“Transboundary Cooperation”) of the Nagoya Protocol and suggested that there is a gap in the Protocol because it does not address instances in which the same genetic resource is found *in situ* in the territory of a Party and a non-Party. In this context, SPDA noted that Article 24 of the Nagoya Protocol calls upon Parties to encourage non-Parties to adhere to the Protocol and to contribute appropriate information to the Access and Benefit-sharing Clearing-House.

8. In applying the criteria in paragraph 12 of decision IX/29, SPDA noted that “jurisdiction shopping” touched particularly on the Convention’s objective of fair and equitable sharing of the benefits arising out of the utilization of genetic resources. The authors provided statistics for the number of plants that “jurisdiction shopping” might affect if these organisms can be accessed without ABS obligations in a non-Party. They indicated that this could affect a significant number of Parties in Latin America and the Caribbean and would undermine incentives for the conservation in Parties of these transboundary resources.

III. CONCLUSION AND SUGGESTED RECOMMENDATION

9. The proposal of SPDA draws attention to one specific initiative on bioprospecting taking place in a non-Party. The crux of the issue raised by the submission is the lack of universal membership of the Convention on Biological Diversity. This issue is not unique to the Convention and does not fall within the purview of the Subsidiary Body on Scientific, Technical and Technological Advice.

10. It may also be noted, and it is pointed out in the submission, that the issue of digital genetic resource information was raised in the context of the Ad Hoc Technical Expert Group on Synthetic Biology (see, in particular, UNEP/CBD/SYNBIO/AHTEG/2015/1/3, paragraph 66(i))¹ as well as in discussions on Article 10 of the Nagoya Protocol (see the synthesis document prepared for the Expert Meeting on Article 10 of the Nagoya Protocol on Access and Benefit-sharing, UNEP/CBD/ABS/A10/EM/2016/1/3).²

11. Accordingly, the Subsidiary Body on Scientific, Technical and Technological Advice may wish to recommend that the Conference of the Parties decide not to add to the agenda of the Subsidiary Body in the coming biennium a new and emerging issue pursuant to the procedure established through decision IX/29.

¹ Available at: <https://www.cbd.int/doc/meetings/synbio/synbioahteg-2015-01/official/synbioahteg-2015-01-03-en.doc>.

² Available at: <https://www.cbd.int/doc/meetings/abs/abs-a10em-2016-01/official/abs-a10em-2016-01-03-en.doc>.