
Session G: CBD, Nagoya Protocol, EU regulations



GPL 1: Why and how did the Nagoya Protocol evolve?

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In 1992 the Convention on Biological Diversity (CBD) was adopted as the first international binding instrument on biodiversity, based on a new paradigm, i.e. national sovereignty over genetic resources. The concept of access and benefit-sharing was based on this new principle of sovereign rights. It assumed that access to genetic resources should be provided on conditions mutually agreed between the providing country and the recipient. The principle of sovereign rights was motivated by the increasing use of intellectual property rights to protect biodiversity-based products, mainly by users in developed countries.

In implementing the concept of access and benefit-sharing, provider countries soon discovered that it was difficult for them to follow up the use of the provided genetic resources upon their export to foreign countries, and hence it was impossible to monitor if users complied with the agreed obligations. This weakness was one of the reasons why the number of agreed international exchanges of genetic resources remained small, and access as well as benefit-sharing was not substantially realised, in conflict with the objectives of the CBD. Therefore, at the World Summit on Sustainable Development in Johannesburg in 2002 it was decided to negotiate within the framework of the CBD an international regime to promote and safeguard the fair and equitable sharing of benefits arising out of the utilization of genetic resources. In 2010 the Nagoya Protocol on Access and Benefit-sharing was adopted, creating a role for Parties to the Protocol to monitor compliance with agreed obligations by users of genetic resources in their countries, in addition to more explicit obligations of Parties to provide rules for access and for users to respect such rules. Furthermore, the Protocol contains similar provisions on accessing traditional knowledge associated with genetic resources as for the genetic resources themselves.

Whereas membership of the CBD is currently almost universal, the number of Parties to the Nagoya Protocol, in force since 12 October 2014, is rapidly increasing, now standing at 71. The Nagoya Protocol is binding to states, the Parties, whereas the EU Regulation 511/2014 is binding to all users in the European Union.