

UNCTAD Expert Meeting on Systems and National Experiences  
for Protecting Traditional Knowledge, Innovations and Practices

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**Traditional Knowledge, Innovations and Practices**

Prepared by

**Executive Secretary  
Secretariat of the Convention on Biological Diversity**

**CBD**

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## TRADITIONAL KNOWLEDGE, INNOVATIONS AND PRACTICES

### Information document

#### I. INTRODUCTION

1. This note is based on the possible topics to be addressed at the UNCTAD expert meeting as provided by the UNCTAD Secretariat in document TD/B/COM.1/EM.13/2. The purpose of this note is to inform the expert meeting of the progress made so far under the Convention on Biological Diversity to promote understanding of the role of traditional knowledge (TK) in the conservation and sustainable use of biological diversity, and to assist discussions of the UNCTAD expert meeting by drawing attention to the relevant decisions of the Conference of the Parties (COP) to the Convention.

2. In line with past decisions, at its fifth meeting held in Nairobi, in May 2000, the Conference of the Parties reiterated its call for collaboration with a number of relevant intergovernmental organizations and institutions. The CBD Secretariat continues to liaise closely with the World Intellectual Property Organization on matters relating to the protection of the traditional knowledge of indigenous and local communities, and collaborates with other organisations such as the World Trade Organization, the Commission on Human Rights, the Food and Agriculture Organization, the Intergovernmental Forum on Forests and the United Nations Conference on Trade and Development in their activities relating to the need to respect, preserve and maintain the traditional knowledge, innovations and practices of indigenous and local communities, and in their recognition and promotion of the role that such communities and their traditional knowledge play in the conservation and sustainable use of biological diversity. The expert meeting provides a good opportunity for exchange of information and experience on Article 8(j) and related provisions.

3. The Executive Secretary wishes to acknowledge the important work being undertaken by the UNCTAD in its activities relating to recognising and promoting the role that indigenous and local communities and their traditional knowledge play in the conservation and sustainable use of biological diversity. The expert meeting exemplifies the ongoing collaboration between the CBD and UNCTAD.

4. In terms of developing further interagency cooperation with regards to the work of the CBD, such cooperation is particularly sought in facilitating indigenous and local community participation, and particularly the participation of women from indigenous and local communities, at international forums which deal with issues related to the conservation and sustainable use of biological diversity, and in the development of international programmes and policies intended to enhance the involvement of indigenous and local communities in biodiversity-related activities.

5. The note provides background information on Article 8(j) and related provisions under the Convention and the Executive Secretary invites the expert meeting to contribute to the issues the COP has identified for further elaboration.

6. The Executive Secretary particularly invites the expert meeting to consider possible contributions which could be made, particularly to the implementation of the programme of work on Article 8(j) endorsed by the Ad Hoc Open-ended Intersessional Working Group on Article 8(j) and Related Provisions under decision V/16, the first phase of which is to be addressed at its second meeting in February 2002.

7. As in UNCTAD document TD/B/COM.1/EM.13/2, the term "traditional knowledge" (TK) will be used to refer to "the knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles" referred to in Article 8(j), as well as "indigenous and traditional technologies" referred to in Article 18.4.

8. In this note, the term "protection of traditional knowledge, innovations and practices" is interpreted to not only mean the protection of such knowledge, innovations and practices through the application of legal and other appropriate means of protection, but also to respect, preserve and maintain such knowledge, innovations and practices in accordance with Article 8(j) of the Convention.

## II. TRADITIONAL KNOWLEDGE AND THE CONVENTION ON BIOLOGICAL DIVERSITY

### A. Traditional knowledge-related provisions of the Convention

9. Attention is drawn to a number of provisions of the Convention that are relevant to the work of the expert meeting. These provisions concern:

(a) The objectives of the Convention, namely, the conservation of biological diversity, the sustainable use of biological resources and the equitable sharing of benefits from the use of these resources (Article 1);

(b) The importance of *in-situ* conservation in achieving the Convention's objectives (Preamble paragraph 10);

(c) Recognition of the close dependence of indigenous and local communities on biological resources (Preamble paragraph 12);

(d) Recognition of the vital role that women play in the conservation and sustainable use of biological diversity and the need for their full participation at all levels of policy-making and implementation (Preamble paragraph 13);

(e) The undertaking of Parties to respect, preserve and maintain traditional knowledge, innovations and practices relevant to the conservation and sustainable use of biological diversity; and promote their wider application with the approval and involvement of the holders of such knowledge; and encourage the equitable sharing of benefits arising from the application of such knowledge, innovations and practices (Article 8(j));

(f) Customary use of biological resources in accordance with traditional cultural practices should be protected and encouraged (Article 10(c));

(g) The exchange of information relevant to the conservation and sustainable use of biological diversity to include, *inter alia*, indigenous and traditional knowledge (Article 17.2); and

(h) In cooperation for the development and use of technologies, such technologies are to include indigenous and traditional technologies relevant to the pursuance of the objectives of the Convention (Article 18.4).

#### B. COP decisions on Article 8(j) and related provisions

10. Since the entering into force of the Convention on 29 December 1993, the COP has made a number of decisions on the implementation of Article 8(j) and its related provisions, namely Articles 10(c), 17.2 and 18.4, and has addressed the implementation of these provisions as a cross-cutting issue in relation to other thematic and sectoral areas addressed under the Convention. The principal decisions of the COP that address Article 8(j) and related provisions are decisions III/14, IV/9 and V/16.

11. Decision III/14: This decision established an intersessional process that included a five-day workshop on Traditional Knowledge and Biological Diversity that took place in Madrid, Spain, in November 1997. The workshop produced two important outcomes: the development of a set of options for a work programme on the implementation of Article 8(j) for the consideration of COP IV; and the need to establish a body to specifically address the implementation of Article 8(j).

12. Also of importance is Decision III/17 paragraph 1(d), which concerns the need to consider the role of intellectual property rights in the implementation of the Convention. The COP decided that the need to provide protection for the traditional knowledge, innovations and practices of indigenous and local communities must also be considered and that a common appreciation of their relationship with provisions under other agreements, such as the World Trade Organization's Agreement on Trade-related Aspects of Intellectual Property, needed to be developed.

13. Decision IV/9: At the COP IV meeting in Bratislava, Slovakia in May 1998, a number of decisions were taken recognising the importance of traditional knowledge, innovations and practices of indigenous and local communities and for their involvement in the work of the Convention. Among the key elements of Decision IV/9 were the establishment of the *Ad Hoc* Open-ended Intersessional Working Group on Article 8(j) and Related Provisions; an invitation to submit case studies; and the development of a programme of work.

14. The *Ad Hoc* Working Group on Article 8(j), at its first meeting in Seville, Spain in March 2000, discussed a number of issues concerning the application and development of legal and other forms of protection for traditional knowledge; prioritisation of the programme of work; the participation of indigenous and local communities in the work of

the Convention; and strengthening cooperation among indigenous and local communities.

15. Decision V/16: The fifth COP meeting was held in Nairobi, Kenya from 15-26 May 2000. Decision V/16 is the principal decision concerning the implementation of Article 8(j) and related provisions. The main elements of this decision concern:

- (a) The extension of the mandate of the Ad Hoc Open-ended Intersessional Working Group on Article 8(j) and related provisions established by decision IV/9;
- (b) The adoption of a programme of work for the Working Group;
- (c) Promotion of the full and effective participation of indigenous and local communities, and particularly that of women, in the implementation of the Convention; and
- (d) Protection of the traditional knowledge, innovations and practices of indigenous and local communities relevant to the conservation and sustainable use of biological diversity;

Copies of Decision V/16 have been made available for this meeting.

16. Decisions III/14, IV/9 and V/16 emphasize the development of appropriate and effective mechanisms for the protection of the traditional knowledge, innovations and practices of indigenous and local communities. This has been suggested through a number of processes:

- (a) The call for case studies on the influence of international instruments, intellectual property rights, current laws and policies on the protection of traditional knowledge;
- (b) Recognition of the potential importance of *sui generis* and other systems of protection;
- (c) Assessment of the effectiveness of existing legal and other forms of protection;
- (d) Exchange of information and sharing of experiences regarding national legislation and other measures for the protection of traditional knowledge; and
- (e) Development of registers of traditional knowledge.

17. In order to facilitate the full and effective participation of indigenous and local communities in the implementation of the Convention, in decision V/16 the COP urged Parties and Governments and, as appropriate, international organizations, and organizations representing indigenous and local communities, *inter alia*, to provide case studies on methods and approaches that contribute to the preservation of traditional knowledge, innovations and practices, including through their recording where appropriate, and that support, control and decision-making by indigenous and local communities over the sharing of such knowledge, innovations and practices.

18. The COP also:

(a) Takes into account the importance of the proposals for action on traditional forest-related knowledge of the Intergovernmental Panel on Forests/Intergovernmental Forum on Forests as an important part of the programme of work;

(b) Encourages the participation of indigenous and local communities in the work of the *Ad Hoc* Open-ended Working Group on Access and Benefit Sharing on the development of guidelines and other approaches to ensure the respect, preservation and maintenance of traditional knowledge, innovations and practices;

(c) Invites Parties and Governments to exchange information and share experiences regarding national legislation and other measures for the protection of traditional knowledge, innovations and practices; and

(d) Recognizes that the maintenance of traditional knowledge, innovations and practices is dependent on the maintenance of cultural identities and the material base that sustains them.

19. The programme of work: Most importantly, decision V/16 adopts and prioritises a programme of work, which is laid out in the annex to the decision and for which 17 tasks have been identified. These tasks are to be undertaken in two phases. The first phase involves 9 of the 17 tasks; the second phase addresses the remaining 8. The programme of work covers participatory mechanisms, status and trends, traditional cultural practice, equitable sharing of benefits, exchange and dissemination of information, monitoring and legal matters. Steps are now being taken to implement the first phase of the work programme.

20. The attention of the Expert Group is also drawn to a number of tasks included in the work programme, particularly as they relate to activities to be undertaken at the second meeting of the *Ad Hoc* Working Group on Article 8(j). The COP has requested the Working Group at this meeting to prepare advice and recommendations on the following:

(a) The development of guidelines for the development of mechanisms, legislation and other appropriate initiatives with regard to equitable sharing of benefits; prior informed consent; and the identification of the obligations of countries of origin, as well as Parties and Governments where traditional knowledge, innovations and practices of indigenous and local communities and associated genetic resources are used (Task 7);

(b) The development of guidelines for the conduct of cultural, environmental and social impact assessments regarding any development proposed to take place on sacred sites and on lands or waters occupied or used by indigenous and local communities (Task 9); and

(c) The development of guidelines to assist Parties in the development of legislation or other mechanisms to implement Article 8(j) and related provisions (Task 12).

21. The Working Group will also undertake an assessment of existing sub-national, national and international instruments relevant to the protection of traditional knowledge,

innovations and practices with a view to identifying synergies between these instruments and the objectives of Article 8(j) (Task 11).

### C. The Convention on Biological Diversity and Trade

22. The text of the Convention does not explicitly refer to trade measures. Nor does the Convention generally prescribe specific measures. The provisions of the Convention, with a few exceptions, set goals. The specific measures required to achieve these goals are largely the prerogative of the Parties.

23. The Convention does, however, contain a number of provisions that are generally understood to require measures by Parties that could have consequences for trade. Provisions of the Convention often characterized in this way include:

- a) Article 6(b), which calls upon Parties to “[I]ntegrate, as far as possible and as appropriate, the conservation and sustainable use of biological diversity into relevant sectoral or cross-sectoral plans, programmes and policies”;
- b) Article 7(c), which calls upon Parties to “[I]dentify processes and categories of activities which have or are likely to have significant adverse impacts on the conservation and sustainable use of biological diversity, and monitor their effects”. Article 8(l) then provides that Parties shall as far as possible “regulate or manage the relevant processes and categories of activities” so identified;
- c) Article 10(b), which provides that Parties shall “[a]dopt measures relating to the use of biological resources to avoid or minimize adverse impacts on biological diversity”;
- d) Article 11, which calls upon Parties to “adopt economically and socially sound measures that act as incentives for conservation and sustainable use of components of biological diversity”;
- e) Article 14, which requires Parties to introduce environmental impact assessment procedures;
- f) Article 15, which establishes a basis for the regime for access to genetic resources based on the fair and equitable distributions of the benefits arising from their use, and
- g) Articles 16 and 19, which require Parties to take measures to promote transfer of relevant technologies.

### D. Incorporating Article 8(j) into consideration of thematic and sectoral issues under the Convention

24. A number of other important decisions were made, in addition to V/16, at the fifth meeting of the COP relevant to the implementation of Article 8(j) and related provisions. A number of these contain additional activities related to trade measures. These include:

- (a) Forest biological diversity (decision V/4);

- (b) The programme of work on agricultural biological diversity (decision V/5);
- (c) The ecosystem approach (decision V/6);
- (d) Incentive measures (decision V/15);
- (e) Financial mechanism and guidance to the Global Environment Facility (decisions V/12 and V/13);
- (f) Biological diversity and tourism (decision V/25); and
- (g) Access to genetic resources (decision V/26):
  - A. Access and benefit sharing arrangements; and
  - B. The relationship between intellectual property rights and the relevant provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights.

This ensures that the implementation of Article 8(j) is an integral part of all the work programmes and thematic areas under the Convention.

25. Forests: Under Decision IV/7 a programme of work was adopted for forest biological diversity, the objectives of which include the identification of:

- (a) Traditional forest systems of conservation and sustainable use of forest biological diversity and promotion of the wider application, use and role of traditional forest-related knowledge in sustainable forest management and the equitable sharing of benefits, in accordance with Article 8(j) and other related provisions of the Convention; and
- (b) Mechanisms that facilitate the financing of activities for the conservation, incorporation of traditional knowledge and sustainable use of forest biological diversity, taking into account that activities should be complementary to, and should not duplicate, existing efforts.

27. The COP invited Parties, countries, international organizations, institutions and processes and other relevant bodies, as well as indigenous and local communities and non-governmental organizations to provide relevant information on the implementation of the work programme through, *inter alia*, case studies, entries in national reports and other means, as appropriate.

28. Agriculture: Decision III/11, on conservation and sustainable use of agricultural biological diversity, establishes a multi-year programme of activities. The aim of this programme is to promote the positive effects and mitigate the negative impacts of agricultural practices on biological diversity. It also hopes to promote the conservation and sustainable use of genetic resources of actual or potential value for food and agriculture and the fair and equitable sharing of benefits arising out of the use of genetic resources. In this decision, the COP acknowledged the importance that trade measures will play in achieving these aims. Accordingly, the COP encouraged the WTO, through its Committee on Trade and Environment, to consider developing a better appreciation of the relationship between trade and agricultural biodiversity. At its fourth and fifth

meetings, the COP reconfirmed the importance of trade measures by requesting the Secretariat to apply for observer status in the WTO Committee on Agriculture.

29. The COP, indicated that identification of appropriate marketing and trade policies in the context of incentives that enhance positive and mitigate impacts of agriculture will be an important activity for the programme of work. Furthermore, the COP requested the Executive Secretary to collaborate with relevant organizations to gather information and case studies on this topic.

30. The COP recognized, the need to understand better the implications with respect to intellectual property rights of genetic use restriction technologies and how they might relate to Farmers' Rights and the implementation of Article 8(j) on the knowledge, innovations and practices of indigenous and local communities. The COP also emphasizes the linkages between its work on agriculture and that relating to access to genetic resources, and particularly the ongoing revision of the FAO International Undertaking on Plant Genetic Resources intended to bring the latter into harmony with the Convention.

31. In this decision, the COP recognized the importance of indigenous and local communities in the conservation and sustainable use of plant genetic resources according to Article 8(j) of the Convention, and taking into account the revision of the International Undertaking on Plant Genetic Resources for Food and Agriculture, requests the Executive Secretary to discuss with those organizations with the relevant expertise, and representatives of indigenous and local communities, the potential impacts of the applications of genetic use restriction technologies on those communities and on Farmers' Rights in keeping with the revision of the aforementioned International Undertaking to keep, use, exchange and sell seed or propagating material and to prepare a report to be considered by the COP.

32. Ecosystem approach: The COP, endorses the description of the ecosystem approach and operational guidance contained in sections A and C of the annex to the present decision, recommends the application of the principles contained in section B of the annex, as reflecting the present level of common understanding, and encourages further conceptual elaboration and practical verification.

33. Of the 12 complementary and interlinked principles that together comprise the ecosystem approach, principle 11 states that the ecosystem approach should consider all forms of relevant information, including scientific and indigenous and local knowledge, innovations and practices.

34. In paragraph 3 the COP invited Parties, other Governments and relevant bodies to identify case studies and implement pilot projects, and to organize, as appropriate, regional, national and local workshops, and consultations aiming to enhance awareness, share experiences, including through the clearing-house mechanism, and strengthen regional, national and local capacities on the ecosystem approach.

35. Incentive measures: The Convention recognizes that to achieve its objectives, developing countries need to be able to participate fully and effectively in the Convention's processes. Because of capacity restraints, most developing country Parties need assistance to ratify the Convention, implement its provisions and participate in its decision-making processes.

36. The fact that most biological diversity resides within developing countries has meant that the Convention contains an extensive array of provisions addressing these needs. For example, the Convention contains provisions addressing: transfer of technology (Articles 16 and 19); market incentives (Articles 10 and 11); capacity building (Articles 12 and 18); financial support for implementing the Convention (Articles 20 and 21); as well as participating in decision-making (Decision IV/17); awareness-raising (Article 13); scientific and technical cooperation (Article 18); research and training (Article 12); exchange of information (Article 17); sustainable use of biological diversity (Article 10); and incentive measures (Article 11).

37. In paragraph 4 of Decision V/15, the COP decides to integrate actions on incentives in thematic work programmes and ensure synergy with activities on sustainable use, noting that incentive measures are essential elements in developing effective approaches to conservation and sustainable use of biological diversity especially at the level of local communities.

38. Financial mechanism: The Convention contains numerous mechanisms and provisions intended to assist developing country Parties to implement the Convention. An important aspect of these commitments is the financial resources provided by the financial mechanism to developing country Parties. Article 5 of the Convention provides that Parties shall cooperate either directly or through competent international organizations.

39. The financial mechanism plays an important role in addressing the capacity building needs of indigenous and local communities. In Decision IV/8, paragraph 4(d), the COP requested the financial mechanism to give special emphasis to the following programme priorities to fund initiatives by eligible Parties, *inter alia*, within biodiversity projects, other specific benefit-sharing initiatives such as support for entrepreneurial developments by local and indigenous communities, facilitation of financial sustainability of projects promoting the sustainable use of genetic resources and appropriate targeted research components. This decision is also restated with regard to the Global Environment Facility in Decision IV/13, paragraph 8.

40. The COP, in decision V/13, decides to provide additional guidance to the Global Environment Facility in the provisions of financial resources in conformity with decisions I/2, II/6, III/5 and IV/13 of the Conference of the Parties. In this regard, the Global Environment Facility shall provide financial resources to developing country Parties for country-driven activities and programmes, consistent with national priorities and objectives, recognizing that economic and social development and poverty eradication are the first and overriding priorities of developing countries. The GEF, as

the institutional structure operating the financial mechanism should provide support, *inter alia*, for the implementation of the priority activities identified in the programme of work on Article 8(j) and related provisions, in accordance with decision V/16.

41. Biological diversity and tourism: In paragraph 1 of decision V/25, the COP endorses the assessment of the inter-linkages between biological diversity and tourism contained in the annex to the decision, which includes:

- (a) The economic importance of tourism and its interrelationship with the conservation and sustainable use of biological diversity; and
- (b) The potential impacts of tourism on biological diversity, including economic, social and environmental impacts.

42. In paragraph 4, the COP recommends to Parties, Governments, the tourism industry and relevant international organizations, in particular the World Tourism Organization, to consider this assessment as a basis for their policies, programmes and activities in the field of sustainable tourism and encourages them to pay particular attention to, *inter alia*:

- (a) The unique role of eco-tourism - that is, tourism that relies on the existence and maintenance of biological diversity and habitats - and the need to develop clear strategies to develop sustainable eco-tourism sectors which provides for full and effective participation and viable income-generating opportunities for indigenous and local communities;

- (b) The need to develop, with all the potential stakeholders, strategies and plans, based on the ecosystem approach and aiming at a balance between economic, social, cultural and environmental concerns, while maximizing opportunities for the conservation and sustainable use of biological diversity, the equitable sharing of benefits and the recognition of traditional knowledge, in accordance with Article 8(j) of the Convention, and seeking to minimize risks to biological diversity;

- (d) Tangible benefits to the local economies, such as job creation and the sharing of benefits arising from the sustainable use of biological diversity for tourism purposes. In this regard, small and medium-sized enterprises can play a major role;

- (g) The fact that, in order to contribute to the sustainable use of biological diversity through tourism, there is a need to implement a flexible mix of instruments such as integrated planning, multi-stakeholder dialogue that includes indigenous peoples, zoning in land-use planning, environmental impact assessments, strategic environmental assessment, standards, industry performance-recognition programmes, recognized accreditation bodies, eco-labelling, codes of good practice, environmental management and audit systems, economic instruments, indicators and limits regarding the carrying capacity of the natural areas;

- (h) The importance for the involvement and the need for the participation of indigenous and local communities and their interface with other sectors in the development and management of tourism, as well as their monitoring and assessment, including cultural and spiritual impacts; and

(i) The importance of the understanding of the values and knowledge of use of biological diversity held by the indigenous and local communities and opportunities that these offer for sustainable tourism and the support of local tourism.

43. In paragraph 7, the COP encourages Parties, Governments, the tourism industry and relevant organizations to undertake activities including local capacity building.

Access to genetic resources:

44. Part A: Access and benefit-sharing arrangements: In paragraph 11 of Decision V/26, the COP decides to establish an *Ad Hoc* Open-ended Working Group composed of representatives, including experts, nominated by Governments and regional economic integration organizations, with the mandate to develop guidelines and other approaches for submission to the COP and to assist Parties and stakeholders in addressing the following elements as relevant to access to genetic resources and benefit-sharing, *inter alia*: terms for prior informed consent and mutually agreed terms; roles, responsibilities and participation of stakeholders; relevant aspects relating to *in situ* and *ex situ* conservation and sustainable use; mechanisms for benefit-sharing, for example, through technology transfer and joint research and development and means to ensure the respect, preservation and maintenance of knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant to the conservation and sustainable use of biological diversity, taking into account, *inter alia*, work by the World Intellectual Property Organization on intellectual property rights issues.

45. In order to build capacity for access and benefit-sharing, the Open-ended Working Group shall consider issues of capacity-building, the COP noting in paragraph 14, that further development of capacities regarding all aspects of access and benefit-sharing arrangements as required for all stakeholders including, *inter alia*, indigenous and local communities, and that key capacity-building needs to include means for the protection of traditional knowledge associated with genetic resources.

46. The COP also noted in paragraph 15 that the Panel of Experts on Access and Benefit-Sharing, established by Decision IV/8, was not able to come to any conclusions about the role of intellectual property rights in the implementation of access and benefit-sharing arrangements and that the panel developed a list of specific issues that require further study.

47. The expert meeting may wish to consider the following information from the Report of the Panel of Experts on Access and Benefit-Sharing (doc. UNEP/CBD/COP/5/8) of which paragraphs 130 and 131 are of particular relevance.

48. The Panel considers that, in relation to the protection of traditional knowledge, the COP should consider how to facilitate progress in relation to the following issues:

(a) How to define relevant terms including subject matter of traditional knowledge and scope of existing rights;

(b) Determining whether existing intellectual property rights regimes can be used to protect traditional knowledge; and

(c) Options for the development of *sui generis* protection of traditional knowledge rights.

49. The Panel also felt that there was:

(a) A need to study the relationship between customary laws governing custodianship, use and transmission of traditional knowledge, on the one hand, and the formal intellectual property systems, on the other;

(b) A need for pilot projects by means that holders of traditional knowledge, including indigenous peoples, may test means of protection of traditional knowledge based on existing intellectual property rights, *sui generis* possibilities, and customary laws;

(c) A need to ensure that granting intellectual property rights does not preclude continued customary use of genetic resources and related knowledge;

(d) A need to take into account the work of all other relevant bodies, including at the community, national, regional and international levels, and in particular the work of bodies under the Convention on Biological Diversity such as the Ad Hoc Open-ended Working Group on Article 8(j) and Related Provisions and the clearing-house mechanism, and the work of other international organizations such as the United Nations Educational, Cultural and Scientific Organization (UNESCO), WIPO, the World Trade Organization (WTO) and the FAO.

50. The COP, in Decision V/26, invited Parties and relevant organizations to submit to the Executive Secretary information on a set of specific questions regarding the role of intellectual property rights issues by 31 December 2000 and requests the Executive Secretary (see document UNEP/CBD/COP/5/8, paragraphs 127 to 138), on the basis of these submission and other relevant material, to report on these issues to the second meeting of the Panel of Experts on Access and Benefit-Sharing, or the first meeting of the Ad Hoc Open-Ended Working Group.

51. Part B: IPRs and the TRIPs Agreement: The Conference of the Parties emphasized that further work is required to help develop a common appreciation of the relationship between intellectual property rights and the relevant provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights and the Convention on Biological Diversity, in particular on issues relating to technology transfer and conservation and sustainable use of biological diversity and the fair and equitable sharing of benefits arising out of the use of genetic resources, including the protection of knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity.

52. The COP has repeatedly stressed the need to ensure consistency in implementing the CBD and the WTO Agreements, including the TRIPs Agreement, with a view to promoting increased mutual supportiveness and integration of biological diversity

concerns and the protection of IPRs. In this regard, the COP specifically invited the WTO, in Decision IV/15, to consider how to achieve these objectives in light of Article 16, paragraph 5, of the CBD, taking into account the planned review of Article 27.3(b) in 1999 of the TRIPs Agreement. As in Decision V/16, in Decision V/26 paragraph 1, the COP reaffirmed 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 arising from its use. In these decisions, the COP also requested the Executive Secretary to transmit these decisions and its findings to the secretariats of WTO and WIPO. In Decision V/26, in paragraph 2, the COP also invited the World Trade Organization to acknowledge relevant provisions of the CBD and to take into account the fact that they are interrelated with the provisions of the TRIPs Agreement and further explore this interrelationship.

### III. ISSUES FOR ATTENTION

53. There is a close linkage between the issues before the expert meeting and the programme of work adopted by COP V under its various decisions. The possible issues identified in document TD/B/COM.1/EM.13/2, paragraphs 72-74, to stimulate the discussion of experts are noted, as are the questions for elaboration outlined in document TD/B/COM.1/EM.13/1 for country-focused papers by experts. These issues and questions are relevant to the work programmes and requests for information identified in this Note.

54. The Executive Secretary looks forward to the outcomes of the discussions on these issues and questions, as well as others on which the expert meeting may wish to focus.

55. The Executive Secretary wishes the experts a fruitful meeting and looks forward to receiving the outcomes of the meeting, confident that they will also contribute to the programmes of work currently being undertaken under the Convention on Biological Diversity.