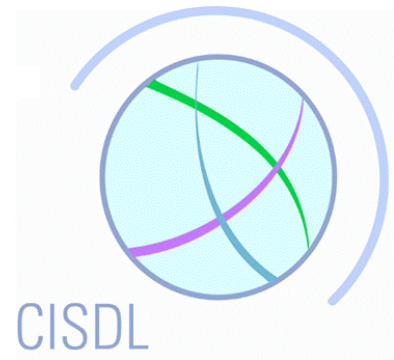


CISDL Doc. #: W1A-S1N.E	Session: Workshop 1A
Date & Time: 2002-06-14	Speaker: Ogolla
Rapporteur: Jen	Language: English



Montreal, 14 June 2002

Biodiversity Issues

1) Relationship between the CBD and TRIPS

- The main interest of the CBD in TRIPS stems from article 27. 3(b) of the TRIPS agreement. This section allows members to exclude plants and animals from patentability but allows for the protection of plant varieties via a *sui generis* system, which is currently being reviewed by the TRIPS council. There is concern that if the review process changes this article to allow for the patentability of plants and animals, there could be negative implications for access to genetic resources.
- There is a “serious limitation” in existing IPR regimes. They do not adequately protect IK. The character of IK creates a challenge for conventional IPR e.g., IK is often communally owned whereas IPR are granted to individuals.

2) The Cartagena Protocol

- This protocol embodies the precautionary approach when deciding to allow the entry of genetically modified organism (GMOs) into a country. The SPS bases its decisions to limit entry of GMOs on scientific evidence. However, the SPS’s use of the precautionary principle is provisional and cannot be maintained over a long time.

3) Dispute Avoidance and Mainstreaming Biodiversity Concerns in Agreements

- The academic discourse should focus on dispute avoidance, not settlement, in order to detect disputes before they arise. Mainstreaming biodiversity in agreements would aid in decreasing disputes especially if it was introduced in the form of biosafety concerns.
- The WTO settlement regime is not the right forum for settling environmental disagreements. The Biosafety protocol would be a more appropriate arena. TRIPS should also be looking at the CBD-TRIPS relationship.