

WIPO Seminar on Intellectual Property and Genetic Resources

Roundtable on Disclosure Requirements

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Those who fail to learn from history...

- After Second World War:
 - Formation of the United Nations (1945)
 - Universal Declaration of Human Rights (1948)
 - Cold War between capitalism and communism (1945-91?)
 - Struggles for independence; decolonization
 - Non-aligned movement; G77
 - Guiding concepts: “New International Economic Order”; “Permanent Sovereignty Over Natural Resources”
 - 1986: UN Declaration on the Right to Development

Meanwhile in the laboratory...

- DNA discovered 1896
- Role in genetic inheritance demonstrated in 1943
- Double helix discovered in 1953
- Revolutionized study of biology, created very powerful new technologies growing rapidly

1972 Stockholm Conference on Human Environment: *Action Plan Recommendations 39-45: Program to conserve the world's genetic resources.*

- International network to facilitate exchange of information and genetic material between countries
- International contact office for Plant Genetic Resources (CGIAR)
- Ex-situ and in-situ
- Inventory of the most endangered genetic resources
- Record of collections

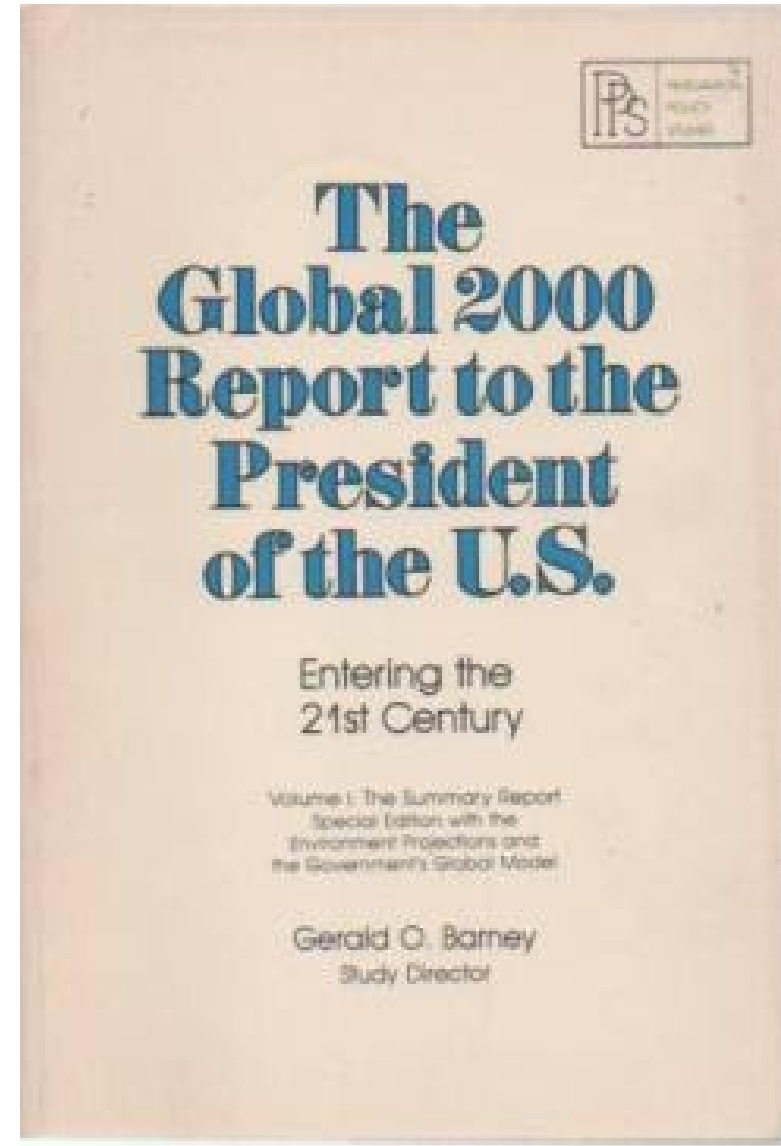
Global 2000 Report of the American Council to the President of the United States, 1980

Alert on genetic loss, indicates the extraordinary economic potential of unknown GR

(later a.k.a. “green gold”)

GR seen as new resources for:

- Food security
- Plant protection
- Pharmaceuticals
- Industrial processing
- etc...

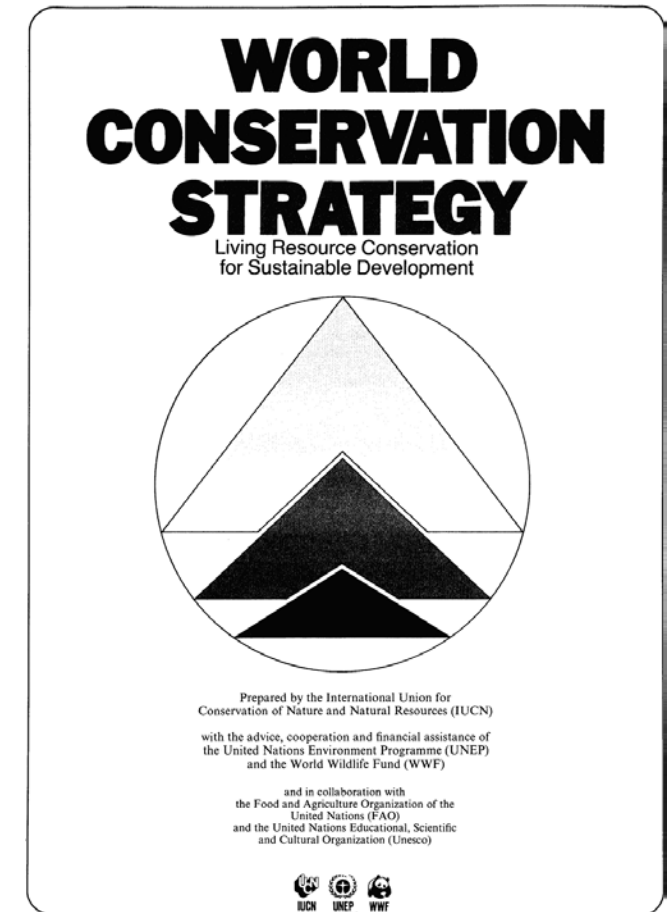


World Conservation Strategy, IUCN, UNEP, WWF, FAO, UNESCO, 1980

Living Resources Conservation for Sustainable Development

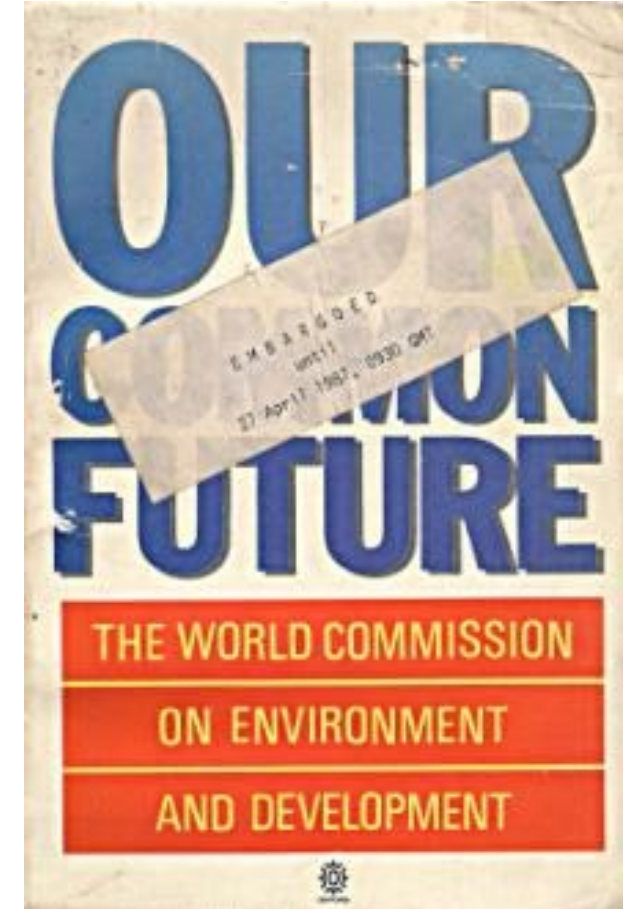
- Stabilization of ecological processes
- Conservation of genetic diversity
- Sustainable use of species and ecosystems
- “User” approach to protection
- Emphasizes traditional knowledge in managing BR
- Indicates the problems of the “green revolution”

Approach of linking conservation with sustainable GR
and use of nature protection > concept of CBD



Report of the World Commission on Environment and Development (Brundtland Commission, 1987)

- Recognition of the intrinsic and economic value of GR
- Biodiversity, GR and ecosystem processes are not considered sufficient
- Economic use > prevention of destruction
- Developing Countries should receive a share of the economic benefits generated by the use of GR
- Rights reform on the use of GR required
- Participation of indigenous peoples in the management their environment and GR





United Nations
Environment
Programme



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9 November 1989

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Ad Hoc Working Group of
Experts on Biological Diversity

First session
Geneva, 16-18 November 1988

REPORT OF THE AD HOC WORKING GROUP ON
THE WORK OF ITS FIRST SESSION

INTRODUCTION

1. By its decision 14/26, the Governing Council of the United Nations Environment Programme (UNEP) requested the Executive Director to establish an ad hoc working group of experts "to investigate the desirability and possible form of an umbrella convention to rationalize current activities in this field". Pursuant to that decision, the Executive Director convened the first session of the Ad Hoc Working Group of Experts on Biological Diversity at Geneva from 16 to 18 November 1988.

I. ORGANIZATION OF THE SESSION

A. Opening of the meeting

- 3x meetings of the Ad Hoc Working Group of Experts on Biological Diversity (Nov 88 – Jul 90)
- Sub-Working Group on Biotechnology (Nov 90)
- 2x meetings of Ad Hoc Working Group of Legal and Technical Experts on Biological Diversity (Feb – Jul 91)
- 5x meetings of Intergovernmental Negotiating Committee for a Convention on Biological Diversity (Jul 91 – May 92)
- Conference for the Adoption of the Convention on Biological Diversity (“Nairobi Final Act” – May 92)
- Opened for signature at UN Conference on Environment and Development/“Rio Earth Summit” (June 92) along with UNFCCC (negotiated under UNGA); Rio recommended negotiation of 1994 UNCCD

ABS in the CBD

- Original demand was for access to GR
- Benefit sharing agreed as compromise, made deal possible
- Closely linked to technology transfer, capacity building
- Affirmed sustainable use as basis for sustainable development
- Involvement of IPLCs and recognition of their rights
- Also recognised rights to technologies
- Based on international power architecture that ceased to exist in December 1991 with the dissolution of the Soviet Union
- Neoliberal world order failed to implement “user measures”
- 1995 TRIPS agreement sparked backlash against intellectual property being used as instrument of biopiracy

Nagoya Protocol implementation challenges

- Six years of negotiations culminating in “take it or leave it” text presented by Japanese CoP Presidency and adopted in October 2010
- Bilateral “provider-user” architecture based on PIC and MAT
- Article 10 undertaking to negotiate Global Multilateral Benefit Sharing Mechanism – no progress
- Legally binding international treaty, requires formal measures by States to become Parties
- Entry into force: 12 October 2014. October 2020: 128 Parties
- Many countries are struggling to finalize ABS laws and regulations – in some cases this creates a legal vacuum
- Despite capacity building efforts, the legal skills needed to negotiate Mutually Agreed Terms remain scarce
- Compliance measures in EU, Norway and Switzerland have raised awareness and changed user behaviour – most users now want to get PIC for access
- Where there is no national system for PIC and MAT commercial users will avoid GR due to legal uncertainty; basic scientific research on biodiversity is often frustrated
- IPLCs are still struggling to have their rights fully recognised and turned into real benefits

Effects of Nagoya Protocol on wider ABS

- FAO CGRFA negotiated *ABS Elements* (2015) to guide national implementation in the food and agriculture sector; more detailed sectoral guidance under development
- Efforts to expand WHO Pandemic Influenza Preparedness Framework (adopted in May 2008) to seasonal influenza and maybe other pathogens
- In 2013 ITPGRFA started process to enhance the functioning of its multilateral system of ABS by expanding its coverage and increasing the flow of benefits; process faltered in Nov 2019 due to lack of agreement on how to deal with Digital Sequence Information (DSI)

Unresolved ABS issues

- No progress on Nagoya Protocol Article 10 – Global Multilateral Benefit Sharing Mechanism – resulting in a lot of utilization occurring without any benefit sharing; undermines trust in the system, and between providers and users
- ABS for use of DSI has been on CBD agenda since 2016 but remains contentious; bilateral solutions appear unworkable
- DSI issue expected to be addressed in Post-2020 Global Biodiversity Framework (GBF)
- African position is that GBF will only be supported if it includes a solution for sharing the benefits derived from the use of DSI
- And, of course, still no agreement on disclosure requirement

Meanwhile back in the real world...

- 30 years of neoliberal world domination has devastated ecosystems
- 6th mass extinction event is well under way
- Climate crisis is accelerating out of control
- Global pandemic, toxic “vaccine nationalism”, more zoonotic outbreaks virtually guaranteed, global economy ravaged, national debts spiralling, rise of totalitarianism, retreat of multilateralism ...
- Serious doubts about ability of human civilization to survive
- Still no international commitment to mobilize resources at the scale required to address the multiple problems
- Paris Agreement and Post-2020 Global Biodiversity Framework “New Deal for People and Nature” – reasons to hope the tide might turn?

... are condemned to repeat it?

- Mandatory disclosure of origin in patent applications was intended to be a small but important part of ABS compliance
- Text-based negotiations in IGC started in 2009 (!)
- 2019 Chair's Text might be an acceptable compromise (?)
- But even if adopted will take years to have any real effect, and will probably not create adequate economic incentives to halt unsustainable development, reverse biodiversity loss and drive ecosystem restoration
- Too little, too late – we have run out of time

Time to try something new?

- A very simple idea anyone can understand and everyone can support
- Voluntary and universal benefit sharing, collected at retail level, used to support global conservation priorities, with a focus on IPLCs
- “A penny on every dollar” (1%) biodiversity user charge on all products derived from biological resources, passed on to consumers
- WEF estimates US\$ 44 trillion of global GDP depends on biodiversity and ecosystem services – if system is 50% efficient it can raise US\$ 220 billion a year
- Probably not enough, but a good start
- Added bonus: all the resources currently wasted on implementing ineffective ABS systems can be directed at solving real problems!

The End

or just maybe

A New Beginning?