BIODIVERSITY CONVENTION BRIEFINGS

Biodiversity Convention: Controversy over the proposed US Interpretative Statement

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In recent weeks a controversy has been raging over reports that President Clinton will be annexing an interpretative statement on behalf of the US to the Biodiversity Convention when he signs the convention shortly.

Two such interpretative statements had been circulating among NGOs. The first of these was a draft prepared jointly by three NGOs (World Wide Life Fund – US, World Resources Institute and Environmental and Energy Study Institute) and three biotechnology companies (Merck, Shamam and Genetech), and submitted to the US government.

A number of activists and NGOs such as Vandana Shiva and Greenpeace have severely criticised this statement. Describing this statement as a 'perverse' interpretation of the Convention, Vandana Shiva has charged that 'The most important perversion ... is the shift from concern for the protection of biodiversity to the protection of the biotechnology industry, and from the protection of indigenous knowledge of local communities to the protection of intellectual property rights of corporations whose "intellectual property" is built on the free exploitation of Third World knowledge.'

The second text had apparently been drawn up by the US Government as its own interpretative statement and according to sources, this text was circulated among OECD countries in an attempt by the US to muster their support.

Due to the international outcry, the Clinton Administration signed the Convention on June 4 without an interpretative statement. On June 25, the European Parliament voted unanimously against any "interpretative declaration" to the ratification of the Convention by the EC Commission.

However, the US issued a press statement upon signing which stated that it "will address interpretative issues at the time of ratification".

In the following article, Vandana Shiva examines the implications of the US interpretative statement, revealing the US position that remains fundamentally unchanged.

Introduction

WE have received two drafts of the US interpretation of the Biodiversity Convention. The one draft is being claimed by three biotech companies (Merck, Genetech and Shamam) and three environment groups (World Wildlife Fund, World Resources Institute and Environmental and Energy Study Institute). The fact that a non-government draft is written as if it was a government draft with no indication that it is merely on industry/WRI/WWF proposal, gives us a sense of how 'democracy' works in the US. Quite clearly, the boundaries between government and lobby groups are very porous.

In any case, whatever the genesis of Draft I on the principal issues of concern to us, it does not differ from Draft II which we are told is being circulated by the US among OECD countries for support.

Our critique of the interpretative statement stands and centres on the disturbing fact that the US wants to shift the focus of the Biodiversity Convention from protection of the earth's living diversity to protection of corporate demands for monopoly control of life forms.

We are particularly concerned that some US environmental groups who should be playing a leadership role in resisting the patenting of life are instead facilitating a process that will

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contribute to the violation of the rights of non-human species and non-Western cultures. We believe that the protection of rights of other species should be the ethical context for the protection of biodiversity. We also believe that protection of the rights of indigenous communities who have contributed to the protection of biodiversity and to our knowledge about its utilisation is essential to attain the objectives of the Biodiversity Convention. There is an ecological and ethical imperative to protect these rights.

IPRs as a world view, a legal setting, and a value framework violates these basic ecological and human rights. If the objective of the Biodiversity Convention is to protect biodiversity, IPR protection is antithetical of the objectives of the Convention.

In the final analysis, our principal difference with US corporations, the environmental groups who support them and the US government is that their only concern is the protection of TNC investments and profits. Our concern is the protection of biodiversity and the protection of the survival options of indigenous communities of farmers, forest dwellers, herbalists, and pastoralists.

A Critique of the US Interpretation

The US interpretation of the technology transfer in the Biodiversity Convention could actually defeat the principle objective of the Convention.

In the US view, 'attainment of the objective of biodiversity conservation requires foreign investment, joint research and commercial development – activities that will largely be undertaken by the private sector and not the contracting parties directly ...' Further, according to the US, 'adequate and effective protection of intellectual property rights is essential to investment, research and development'.

The perverted logic of the US is thus the following – IPR protection will lead to foreign investment and foreign investment will protect biodiversity.

This logic is flawed because foreign investments in large scale commercial ventures have destroyed biodiversity, they do not protect biodiversity.

Pepsi's tomato cultivation in Punjab and Cargill's sunflower cultivation in Karnataka are examples of biodiversity destruction, not examples of biodiversity protection. Large scale commercial interests in agriculture, forestry, fisheries are the biggest threat to biodiversity. IPR protection to these commercial interests will accelerate biodiversity erosion because the monopolies that are created through IPRs destroy the capacity of countries and small producers to protect biodiversity.

The US interpretation is inconsistent with the objectives of the Convention since it is aimed at weakening the capacity of local communities and Third World countries to protect biodiversity and to adopt development models that reward biodiversity conservation rather than rewarding its destruction.

Biodiversity is not protected by foreign investments of capital but by the knowledge and culture of local indigenous communities.

Rights without responsibility, responsibility without rights

Article 15(6) provides that contracting parties shall endeavour to develop and carry out scientific research with the participation of the contracting party that provided genetic resources.

The US interprets Article 15(6) as imposing an obligation for contracting parties to provide for participation in research activities directly conducted by contracting parties, and not to government funded or other research activities carried out by non-government entities, including the private sector.

Further, in its opening statement the US has also stated that research will be 'largely undertaken by private sector, and not the contracting parties directly.'

The US interpretation thus amounts to negating the commitment (embodied in 15(6)) to carry out research in partnership with countries which have provided genetic resources. The interpretation is thus demanding a one sided North-South exchange in which the South is expected to give its genetic resources but cannot expect anything in exchange.

Double Standards

The interpretation circulated to the OECD, and the interpretation drafted by US industry/environment groups both propose rights without responsibilities for industry and the countries of the North and responsibilities without rights for indigenous communities and the countries of the South.

There are inconsistencies and double standards common to both interpretation drafts. The US interprets the responsibilities placed on biotech industry as a result of its deriving benefits from genetic resources which are the sovereign properties of other countries as 'coercion

On the other hand the US itself is using strong arm coercion and 'crow bar' tactics through Super and Special 301 clauses of its Trade Act. This is basically a unilateral threat to force Third World countries to protect US corporate interests rather than their own moral standards, their citizens' needs and their domestic production systems. It amounts to an interpretation in which Northern states coerce Southern states to coerce their citizens to give up protection to human and environmental rights in order to protect corporate profits, which have sophisticatedly been defined as 'intellectual property.' It amounts to an interpretation in which these corporations have no obligations to the state or society.

The issue is not just a matter of interpretation. It is a matter of rights. It is a matter of power distributed in the world. Not only is the US interpretation weighted in favour of the North and against the South, it is more seriously weighted in favour of Northern corporations and against Southern communities.

Such an interpretation has no place in an ecological and democratic order. Its acceptance will threaten biodiversity conservation and the human rights of Third World communities. In a period when across the world movements against forced imposition of IPR regimes are growing on the grounds that IPRs in the area of biodiversity as presently defined are unethical and threat to biodiversity and to the rights of local communities, it is misleading and undemocratic of the US to mobilise the support of governments to state that 'the exercise of rights and obligations under existing international agreements related to the protection of intellectual property rights do not cause a serious damage, or threat to biological diversity.'

Protection of IPRs and protection of biodiversity are ethically, ecologically and economically mutually exclusive demands. People across the world have to decide what they will choose to protect – the earth's living diversity and human societies which it supports or the profits of a handful of biotechnology companies.