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Editorial

Losing control – the future management of bioprospecting in the Antarctic Treaty Area

Bioprospecting at the Antarctic Treaty Consultative Meetings has a long history. The SCAR Working Group on Biology recognised in the late 1990s that there was growing interest in screening collections from Antarctica to determine if there were any organisms producing compounds that might be of commercial use. This interest soon expanded to looking for organisms whose genome contained specific genetic sequences that could be copied and patented to control the production of specific secondary metabolites or enzymes, especially those concerned with cold adaptation. A Working Paper from the United Kingdom in 2002 (WP43 XXV ATCM) was the first to describe the range of activities under way and has been followed by several others examining the trends, identifying new fields of interest and questioning the need for a regulatory regime. Academic developments have included a workshop in New Zealand that concluded that there were no mechanisms for benefit sharing within the Treaty System, there was no clear control over access and sample collection and that the Protocol on its own did not constitute an adequate management tool for these developments.

Over the last 15 years, there has been considerable discussion and even resolutions on the topic but the early suggestion that a further Annex to the Protocol or other legally binding instrument would be a practical way of regulating bioprospecting has not found consensus, not least as it would only apply to land areas. Indeed, from both ethical and legal viewpoints there has been no significant development of regulation and responsibilities at all, perhaps as some Parties like the present uncontrolled situation and see little need to curb the commercial activities of large pharmaceutical and genomic companies who are busy exploiting Antarctic resources through patenting and licensing.

The Parties have always maintained that they should regulate and govern any activities in and around Antarctica but have had to concede that there are other international jurisdictions that must be respected. From the start of the Treaty it was clear that the International Whaling Commission had precedence for whales over anything the Treaty Parties might wish to say and the activities of other organisations, like the International Maritime Organisation, have had to be recognised for specific purposes. Moreover, whilst the United Nations Convention on the Law of the Sea (UNCLOS) has gradually crept southwards to encompass parts of the Southern Ocean there are still some Parties who are not signatories and are thus able to delay its acceptance and application.

Now a new threat of resource controls has appeared. Information Paper 168 at the recent ATCM in Beijing described how a committee of the United Nations General Assembly is currently considering a binding international legal instrument under UNCLOS on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, like the Southern Ocean. Meanwhile initiatives under the Nagoya Protocol of the Convention on Biodiversity are discussing how to extend the rules on benefit sharing and compliance to those areas outside sovereign lands. It seems possible that these two threads will come to fruition in the near future and it may be that since the Consultative Parties have so far failed to enact any comparable laws the new initiatives from outside will gain legal precedence.

With three resolutions to keep bioprospecting under review there has not been a lack of evidence of what is happening but there has been a singular lack of enthusiasm to develop a regime acceptable to all those working on and around the continent. Time is running out for providing our own version of bioprospecting governance within the Antarctic Treaty System.

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