

Additional issues and trends that give rise to concern

Two sets of issues were mentioned, but were not discussed, as a result of lack of time:

BROAD PATENTS ON LIFE FORMS

In some jurisdictions where patents on life forms are admissible, patents covering genes, cells or plants *per se* have been granted under broad, overreaching claims. In some cases, for instance, claims are drafted in functional rather than in structural terms, thereby covering all ways of

addressing a problem (e.g. claims over an increase in tryptophan content rather than over particular genes that produce this effect). In other cases, patent claims can extend to many varieties, or even to entire species (horizontal reach), while in others protection may reach back to parent breeding lines or unimproved germplasm contained in relatives of a patented cultivar (vertical reach). Moreover, under some laws that permit patents over genes as such, patent-owners may obtain exclusionary rights not only with respect to the particular function(s) of the gene that they have actually discovered, but also with regard to any other function that can later become known. Of course, this prevents or discourages further research on a protected gene, and is ethically objectionable, as patent-owners obtain rights beyond what they have found and disclosed in the patent application.

Despite the establishment of international minimum standards for the protection of inventions (namely under the TRIPS Agreement), countries retain the capacity to determine whether or not they accept patents on plants and animals and, if so, what the scope of the claims could be. They should carefully consider, hence, how their patenting policies are designed and implemented, having in view the implications of broad patent claims in this field.

DATA PROTECTION/CONFIDENTIALITY

Undisclosed test data related to agrochemicals that contain new chemical entities should, under certain circumstances, be protected against unfair competition in accordance with international rules (Article 39.3 of the TRIPS Agreement). Although these rules do not require the granting of exclusive rights, in some countries and, notably, in the context of free-trade agreements recently established with some developing countries, such test data cannot be used or relied on for at least ten years (counted from the date of marketing approval), even in cases where the relevant product is off-patent. This form of "data exclusivity" restrains competition and leads to higher prices for inputs that farmers in developing countries need, eventually making them uncompetitive and forcing them out of production. Such exclusivity may, in practice, amount to another impoverishing trade barrier, as morally objectionable as other barriers that restrict agricultural exports from poor countries. Reducing poverty is an imperative. IPRs, including on test data, should be implemented in a way that contributes to such an objective and not to the further marginalization of farmers in the developing world. ●

Future work of the Panel

It was decided that the issues listed below would be discussed at the next session. For each of these issues, a discussion paper would be prepared by a member of the Panel or by two or three members of the Panel working together:

- Reviewing the concept of ethics as it applies to ethical concerns of relevance for food and agriculture
- Ethics of IPRs
- Ethical aspects of consumption patterns and lifestyles, including ethical dimensions of the right to food. It will address interfaces between combating malnutrition, marketing and promotion of food, and the shaping of diet and food practices. Attention will be given, *inter alia*, to the ethical implications of personalization of diets versus public health perspectives and the meaning of private choice. The role of retail chains and corporations in promoting what is consumed and what is produced will also be examined
- Ethical issues in globalization from a developing-world perspective
- The loss of crops in the changing world (i.e. globalization and climate and other environmental change)
- Ethical aspects of GPGs and services in the areas of food and agriculture
- Ethical aspects of animal husbandry and animal welfare issues

Annexes



Annex 1

TERMS OF REFERENCE of the Panel of Eminent Experts on Ethics in Food and Agriculture

The Panel of Eminent Experts on Ethics in Food and Agriculture shall advise the Director-General on ethical issues in food and agriculture, including forestry and fisheries. The Eminent Experts shall be appointed by the Director-General under the terms of Article VI.4 of the FAO Constitution and Rule XXXV of the General Rules of the Organization and the guidance provided by the Conference.

Composition

The Panel shall consist of eight Eminent Experts designated in their personal capacity by the Director-General, in accordance with established procedures and practices for a period of four years. The Eminent Experts shall be of recognized competence in ethics, philosophy, humanities or a relevant economic, legal or scientific discipline with experience of ethics, and be of high moral authority and international or regional standing. The Panel shall, as far as practical, represent varied geographical, cultural and religious backgrounds.

Terms of Reference

1. The Panel of Eminent Experts shall reflect on and promote reflection on ethical issues arising from food production and consumption practices and on agricultural development, including forestry and fisheries, in the context of food security and sustainable rural development and in an environment of rapid global change.
2. The Panel shall, in particular, consider ethical issues relating to the interests of present and future generations regarding the sustainable use of natural resources, the safeguarding of biodiversity and the balanced mix of traditional and modern technologies to increase food security and sustainable agriculture.
3. Based on the above considerations the Panel shall:
 - a. promote an overall sense of international responsibility with regard to the development of necessary policies and instruments aimed at maximizing global benefits, while minimizing risks, arising from the application of modern technologies to food and agriculture;
 - b. seek to increase the awareness of States, intergovernmental organizations, non-governmental organizations, civil society and public opinion worldwide with regard

to ethical issues in food and agriculture in order to promote international understanding and appropriate action on such issues, bearing in mind that different communities have different cultural values;

- c. advise on possible international, regional or national action or the preparation of instruments, as appropriate, to respond best to ethical issues arising from food and agriculture, with due regard to interdependence among generations, among countries and between food security and other community needs;
- d. encourage exchange of information on all issues of an ethical nature arising out of food and agriculture.

4. The Panel may consider any other issue related to the above.
5. In its consideration of the above, the Panel shall advise the Director-General on the possible role and policies of FAO. ●

Annex 2

BIOGRAPHIES of the Panel of Eminent Experts on Ethics in Food and Agriculture 2004–07

Francisco J. Ayala, United States of America

■ Francisco Ayala was a member of the Panel of Eminent Experts on Ethics in Food and Agriculture, 2000–03. Born in 1934, Madrid, Spain, he has been a United States citizen since 1971. He is Professor of Biological Sciences and of Philosophy at the University of California at Irvine, and was formerly President and Chairman of the Board of the American Association for the Advancement of Science. He was a member of President Clinton's Committee of Advisors on Science and Technology. In 2002, he received the National Medal of Science from President Bush. He is the author of more than 850 articles and 20 books. His scientific research focuses on population and evolutionary genetics, including the origin of species, genetic diversity of populations, the origin of malaria, the population structure of parasitic protozoa and the molecular clock of evolution. He also writes about the interface between religion and science, and on philosophical issues concerning epistemology, ethics and the philosophy of biology.

Ruth Chadwick, United Kingdom

■ Ruth Chadwick is Professor of Bioethics and Director of the United Kingdom Economic and Social Research Council Centre for Economic and Social Aspects of Genomics at Lancaster University. She studied for a B.Phil. in Philosophy and a D.Phil. on "The ethics of eugenics and genetic engineering", both from Oxford University; and an LL.B. from London University. She held positions in Liverpool, Cardiff and Preston before moving to Lancaster in 2000. She has coordinated a number of projects funded by the European Commission, including the Euroscreen projects (1994–96; 1996–99), and co-edits the journal *Bioethics* and the online journal *Genomics, Society and Policy*. She is Chair of the Ethics Committee of the Human Genome Organisation and a member of the Food Ethics Council, the Advisory Committee on Novel Foods and Processes and the Biotechnology and Biological Sciences Research Council Strategy Panel on Biosciences for Society. She was editor-in-chief of the award-winning *Encyclopaedia of Applied Ethics* (1998). She is an Academician of the Academy of the Learned Societies for the Social Sciences and a partner in the North West Genetics Knowledge Park.

Chee Yoke Ling, Malaysia

■ Born in 1959, Chee Yoke Ling is a lawyer trained in international law, with a Masters of Law from Cambridge University (United Kingdom) and a first class honours in law from the University of Malaya (Malaysia). She is Legal Advisor to the Third World Network, an international coalition of organizations and individuals that aims to articulate the sustainable development needs and perspectives of developing countries at the global level. For more than 20 years, Chee Yoke Ling has been very active on a national level in policy research and advocacy, focusing on trade, environment and development issues, working with local communities. For the past ten years, she has been a key non-governmental organization player at the international level, representing the Third World Network in many international conferences and meetings, including at the United Nations, the Commission on Sustainable Development and at several trade and investment seminars. Of particular concern in her work are the ecological, social and economic impacts of globalization, especially in the developing countries of the South.

Carlos María Correa, Argentina

■ Born in 1949, Carlos María Correa is a lawyer and economist. He is Professor at the University of Buenos Aires, and has taught in universities all over the world in legal and economic matters related to North–South cooperation. He is well known for his sensitivity to ethical issues and the interests of developing countries. He has, on several occasions, been a consultant in the negotiating process of the ITPGRFA. He has also been a consultant in many other United Nations organizations. He has taught post-graduate international training courses, including International Trade and the WTO (graduate), Political Economy of Science and Technology (post-graduate), Economics of Intellectual Property (post-graduate), Patent Law (post-graduate) and WTO Multilateral Trade Agreements (post-graduate).

He is the current Chair of the Consultative Group in International Agricultural Research Genetic Resources Policy Committee, Member of the World Health Organization Commission on Intellectual Property Rights, Innovation and Public Health, established by the World Health Assembly in February 2004, and Director of the project on Intellectual Property and Development of the South Centre. He was one of the six Members of the International Commission on Intellectual Property Rights established by the Government of the United Kingdom of Great Britain and Northern Ireland (www.iprcommission.org), which culminated with the 2002 publication of its milestone report, *Integrating intellectual property rights and development policies*, including several chapters dedicated to agriculture and many ethical considerations. He was previously Director of the United Nations Development Programme/United Nations Industrial Development Organization Regional Program on Informatics and Microelectronics for Latin America and the Caribbean (1991–95), Undersecretary of State for Informatics and Development of the Argentine National Government (1984–89), Coordinator of the Inter-Ministerial Group on Intellectual Property of the Argentine Government (1987–89) and a lawyer and private consultant, specialized in intellectual property, investment and negotiation of international transfer of technology agreements (1976–84).

Souleymane Bachir Diagne, Senegal

Born in 1955 in Saint-Louis, Senegal, Souleymane Bachir Diagne is Professor in the Department of Philosophy at Northwestern University, Evanston, United States of America. He obtained his Ph.D. (Doctorat d'État) from Sorbonne, Paris, in 1988. He is a philosopher of logic, including mathematical logic, and has also taught philosophy at secondary level. He was Special Advisor to the President of Senegal for cultural and educational policy (1993–99) and Preceptor of the Institute for Advanced Study and Research in the African Humanities (April–June 1999). Among other affiliations, he is Co-Director of *Ethiopiques*, a Senegalese Journal of Literature and Philosophy, member of the editorial board of *Présence Africaine*, member of the Council for the Development of Social Science Research in Africa, member of the African Scientific Committee on Higher Education and member of the Conseil du Futur (UNESCO). He has been the editor of and a contributor to numerous books and the author of a great number of articles on African, Islamic and Southern philosophy, science and culture, among other issues.

Asbjørn Eide, Norway

Member and Chair of the Panel of Eminent Experts on Ethics in Food and Agriculture since 2000, Asbjørn Eide is the former Director and now Senior Fellow of the Norwegian Centre for Human Rights, University of Oslo, and a Visiting Professor at the University of Lund. He is the former Secretary-General of the International Peace Research Association. He is a member and former Chairman of the United Nations Sub-Commission on the Promotion and Protection of Human Rights. He has been the Special Rapporteur of the Sub-Commission on the Right to Food as a Human Right, and Chairman of the United Nations Working Group on Minorities. He is the President of the Advisory Committee on National Minorities of the Council of Europe. He has published extensively on human rights issues and is Dr. juris hc. of the Lund University.

Cecilia A. Florencio, Philippines

Cecilia Florencio is a nutrition scientist and educator. She obtained her Ph.D. from Michigan State University, United States of America. She holds the highest academic rank in the University of the Philippines, where she also chairs the University Council's Committee on Academic Integrity and Accountability. She is President of a human rights organization, Foodfirst Information and Action Network, Philippines, and a member of the World Health Organization's Virtual Network of Experts to Assist in the Implementation of the Global Strategy on Diet, Physical Activity and Health. She is a fellow of the International Union of Nutritional Sciences and member of the advisory board of several nutrition journals in Asia and United States of America. She is a former member of the Governing Board of the Philippine Nutrition Council and consultant in nutrition of international agencies and educational institutions, including the United Nations University. Her areas of research

work are: development and evaluation of national/regional nutrition policies, plans and programmes; local people's knowledge; nutrition education and training; ethics in academe; and the human right to adequate food. Her most recent publication is the book, *Nutrition in the Philippines: the past for its template, red for its color*.

Tewolde Berhan Gebre Egziabher, Ethiopia

Tewolde Berhan Gebre Egziabher is a well-recognized, charismatic African leader in matters related to ethics, agriculture and the environment. He was born in 1940, graduated in 1963 from the University of Addis Ababa and took a doctorate from the University of Wales in 1969. He was Dean of the Faculty of Science at the University of Addis Ababa (1974–78), keeper of the National Herbarium (1978–83), President of Asmara University (1983–91) and Director of the Ethiopian Conservation Strategy Secretariat (1991–94). Since 1995, he has been Director General of the Environmental Protection Authority of Ethiopia. He has often represented his country and acted as spokesman for the whole of Africa in international negotiations dealing with major international instruments, such as the Convention on Biological Diversity, its Cartagena Protocol on Biosafety, and ITPGRFA. In 2000, he received the Right Livelihood Award "...for his exemplary work to safeguard biodiversity and the traditional rights of farmers and communities to their genetic resources". ●

Annex 3

AGENDA of the Panel of Eminent Experts on Ethics in Food and Agriculture

1. Opening and welcome statements
2. Introduction of Panel members
3. Adoption of the agenda and organization of work
4. Review of the Panel's previous work
5. Work on ethics in food and agriculture since the last Panel
 - 5.1 Ethical issues in fisheries
 - 5.2 Food safety and food aid
 - 5.3 Animal welfare and intensified animal production
 - 5.4 Sustainable agricultural intensification
6. Work in progress
 - 6.1 Globalization of food and agriculture
 - 6.2 Global public goods
7. Voluntary Guidelines on the right to food, and other relevant developments in the United Nations
8. Emerging issues
9. Discussion with members of the FAO Committee and Sub-Committees on Ethics in Food and Agriculture
10. Future work of the Panel
11. Preparation of the Report of the Panel
12. Any other business
13. Closure

Annex 4

LIST OF DOCUMENTS for the third session of the Panel of Eminent Experts on Ethics in Food and Agriculture

- Draft agenda
- Draft annotated agenda
- Draft provisional timetable
- Terms of Reference for the Panel of Eminent Experts on Ethics in Food and Agriculture
- Terms of Reference of the Committee and Sub-Committee on Ethics in Food and Agriculture
- Report of the First Session of the Panel of Eminent Experts on Ethics in Food and Agriculture.*
Rome, 2001
- Report of the Second Session of the Panel of Eminent Experts on Ethics in Food and Agriculture.*
Rome, 2003
- FAO Ethics Series No. 1: *Ethical issues in food and agriculture.* Rome, 2001
- FAO Ethics Series No. 2: *Genetically modified organisms, consumers, food safety and the environment.* Rome, 2001
- FAO Ethics Series No 3: *The ethics of sustainable agricultural intensification.* Rome, 2004
- FAO Ethics Series No 4: *Ethical issues in fisheries.* Rome, 2005 (draft)
- Readings in Ethics No. 1: *FAO Expert Consultation on Food Safety: Science and Ethics, Rome, Italy, 3–5 September 2002.* Rome, 2004
- Readings in Ethics No 2: *Animal welfare and the intensification of animal production: an alternative interpretation.* Rome, 2005 (draft)
- Draft paper for the FAO Ethics Series: *Ethical dimensions of globalization of food and agriculture,* August 2005
- The role of global public goods in food and agriculture (concept note)
- Global public goods in food and agriculture (draft outline for a paper in the FAO Ethics Series)
- Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security.* Rome, 2005
- United Nations Millennium Declaration,* Resolution 55/2 of the General Assembly
- Concept notes on issues that might be treated in the FAO Ethics Series or in other ways

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