



## SECOND MEETING OF THE AD HOC OPEN-ENDED INTER-SESSIONAL WORKING GROUP ON ARTICLE 8(J) 4-8 FEBRUARY 2002

The second meeting of the *Ad Hoc* Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions of the Convention on Biological Diversity (CBD) begins today in Montreal, Canada, and will continue until 8 February 2002.

The Working Group will consider progress on the implementation of the work programme on Article 8(j) and will address four specific areas: an outline for a composite report on the status and trends regarding the knowledge, innovations and practices of indigenous and local communities; draft guidelines or recommendations for the conduct of cultural, environmental and social impact assessments regarding activities on the lands of indigenous and local communities; participatory mechanisms; and the effectiveness of existing instruments impacting the protection of traditional knowledge, particularly intellectual property rights (IPR). Delegates are expected to meet in two sub-working groups, with Sub-Working Group I (SWG-I) to consider the outline of the composite report and impact assessments and Sub-Working Group II (SWG-II) to address participatory mechanisms and the effectiveness of instruments for protecting traditional knowledge.

The outcomes of the session will be forwarded for consideration to the CBD's sixth Conference of the Parties (COP-6) to be held in The Hague, the Netherlands, from 8-19 April 2002.

### A BRIEF HISTORY OF ARTICLE 8(j) AND RELATED PROVISIONS UNDER THE CBD

The CBD, negotiated under the auspices of the United Nations Environment Programme (UNEP), entered into force on 29 December 1993. To date, 182 countries have become Parties. Article 8(j) of the CBD specifically states that Parties will, subject to national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biodiversity; promote their wider application with the approval and involvement of such knowledge-holders; and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices.

Article 10(c) calls upon Parties to protect and encourage customary use of biological resources in accordance with traditional cultural practices. Article 17.2 addresses scientific and technical information exchange with specific reference to indigenous and traditional knowledge. Finally, Article 18.4 states that Parties shall encourage and develop methods of cooperation for the development and use of technologies, including indigenous and traditional technologies, pursuant to the CBD's objectives.

Additionally, CBD discussions on cross-cutting themes, such as the ecosystem approach, access and benefit-sharing (ABS), and the Clearing-House Mechanism (CHM), as well as the specific ecosystem themes, have addressed the integration of considerations relating to Article 8(j) and indigenous and local communities.

**COP-2:** The second COP met in Jakarta, Indonesia, from 6-17 November 1995. Discussion of traditional knowledge was limited to Decision II/12 on IPR, which calls for consultation with all stakeholders, particularly indigenous and local communities, to improve the understanding of the needs and concerns of such groups, as well as for a preliminary analysis of IPR systems, which could focus on the preservation and maintenance of traditional knowledge.

**SBSTTA-2:** The second session of the CBD's Subsidiary Body for Scientific, Technical and Technological Advice (SBSTTA) met in Montreal, Canada, from 2-6 September 1996. Delegates discussed indigenous knowledge with regard to: preserving the knowledge, innovations and practices of indigenous communities; promoting their wider application; and encouraging the equitable sharing of benefits arising from their use. Recommendation II/4 encourages representatives of indigenous communities to prepare information on their views regarding the implementation of Article 8(j).

**COP-3:** The third COP met in Buenos Aires, Argentina, from 4-15 November 1996. Delegates adopted Decision III/14, which, *inter alia*: requests Parties to develop national legislation to implement Article 8(j); invites case studies on the implementation of Article 8(j) and related provisions; requests the interim financial mechanism to examine support of capacity-building projects for indigenous and local communities; and establishes a process to advance work on the implementation of Article 8(j), including the organization of an intersessional workshop.

**WORKSHOP ON TRADITIONAL KNOWLEDGE:** The Workshop on Traditional Knowledge and Biological Diversity was convened in Madrid, Spain, from 24-28 November 1997, to produce recommendations for the COP on how to advance the implementation

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of Article 8(j). The workshop produced a report, which contains an extensive list of options and recommendations in the following areas: participatory mechanisms; status and trends in relation to Article 8(j); traditional cultural practices for conservation and sustainable use; equitable sharing of benefits; exchange and dissemination of information; monitoring; and legal elements. The report also includes recommendations for actions at the national and international levels, and suggests terms of reference for establishing an open-ended working group or a subsidiary body on Article 8(j).

**COP-4:** The fourth COP met in Bratislava, Slovakia, from 4-15 May 1998. Delegates discussed the development of a work programme on Article 8(j) and the formation of an *ad hoc* working group. Decision IV/9 establishes a working group to provide advice on the development of a work programme and its implementation based on the report of the Madrid workshop. The Decision also calls for: representation from indigenous and local communities to the widest possible extent; short- and medium-term work programmes; case studies relating to Article 8(j); and application for observer status to and development of a memorandum of understanding with the World Intellectual Property Organization (WIPO).

#### FIRST MEETING OF THE WORKING GROUP ON

**ARTICLE 8(j):** The first meeting of the Working Group on Article 8(j) met in Sevilla, Spain, from 27-31 March 2000. Delegates considered elements for a work programme on Article 8(j), including: participatory mechanisms for indigenous and local communities; equitable sharing of benefits and legal elements; status and trends in relation to Article 8(j) and related provisions; traditional cultural practices for conservation and sustainable use; exchange and dissemination of information; and monitoring. The Working Group also addressed: the application and development of legal and other appropriate forms of protection for traditional knowledge; international cooperation among indigenous and local communities; and opportunities for collaboration and implementation of the work programme.

**COP-5:** The fifth COP met in Nairobi, Kenya, from 15-26 May 2000. Delegates discussed the report of the first meeting of the Working Group on Article 8(j), including its recommendations for a proposed programme of work and advice on the application and development of legal and appropriate forms of protection. Decision V/16 establishes a work programme with two phases. The first phase will address participatory mechanisms, status and trends, benefit-sharing, exchange and dissemination of information, monitoring elements and legal elements. The second phase will also consider traditional cultural practices for conservation and sustainable use, exchange and dissemination of information, and monitoring elements. The Decision extends the Working Group's mandate to address progress in implementation and increased participation of indigenous and local communities in other thematic work programmes of the CBD. It also notes the importance of case studies, and *sui generis* systems, while recognizing that preserving traditional knowledge depends on maintaining cultural identities and its material base.

#### INTER-SESSIONAL HIGHLIGHTS

##### WORKING GROUP ON ACCESS AND BENEFIT-

**SHARING:** The first meeting of the *Ad Hoc* Open-ended Working Group on Access and Benefit-sharing under the CBD was held in Bonn, Germany, from 22-26 October 2001. The Working Group met to discuss the development of guidelines and other approaches for access to genetic resources and benefit-sharing, an action plan for capacity building and the role of IPR in the implementation of ABS arrangements. With particular regard to traditional knowledge, delegates addressed issues including documentation of prior informed consent for the use of traditional knowledge within patent applications, facilitation of searches of prior art and *sui generis* systems for the protection of traditional knowledge.

#### INTERNATIONAL TREATY ON PLANT GENETIC

**RESOURCES FOR FOOD AND AGRICULTURE:** The Treaty (formerly known as the International Undertaking) was adopted by the 31st Conference of the UN Food and Agricultural Organization (FAO) on 3 November 2001. Under negotiation since 1994, it establishes a Multilateral System for facilitated access to a specified list of plant genetic resources for food and agriculture (PGRFA), balanced by benefit-sharing in the areas of information exchange, technology transfer and capacity building, as well as commercial benefit-sharing. The objectives of the Treaty are the conservation and sustainable use of PGRFA and equitable benefit-sharing for sustainable agriculture and food security. Of particular relevance to indigenous and local communities, Article 9 (Farmers' Rights) addresses Parties' obligations to take measures, subject to national laws, to protect and promote farmers' rights through protection of traditional knowledge relevant to PGRFA, equitable participation in benefit-sharing and participation in decision making.

**WIPO INTERGOVERNMENTAL COMMITTEE ON INTELLECTUAL PROPERTY AND GENETIC RESOURCES, TRADITIONAL KNOWLEDGE AND FOLKLORE:** The second session of WIPO's Intergovernmental Committee met in Geneva, Switzerland, from 10-14 December 2001. The meeting considered operational principles for contractual agreements concerning access to genetic resources, national experiences in the protection of folklore, and, with particular regard to traditional knowledge, operational definitions, existing forms of intellectual property protection and prior art. Delegates noted the need to coordinate work with the CBD and proposed discussing elements for a possible *sui generis* regime to protect traditional knowledge at the next meeting.

**WIPO FORUM ON INTELLECTUAL PROPERTY AND TRADITIONAL KNOWLEDGE:** This forum was convened by WIPO and the Sultanate of Oman in Muscat, Oman, from 21-22 January 2002. The meeting's themes included the relevance of the existing intellectual property system, as well as traditional knowledge as a bridge between civilizations and cultures and as a source of wealth creation. The forum produced a declaration, which addresses: the interaction between traditional knowledge holders and relevant governmental, intergovernmental and non-governmental organizations; awareness-raising within traditional communities; and the work of WIPO's Intergovernmental Committee.

**INTERNATIONAL INDIGENOUS FORUM ON BIODIVERSITY:** The seventh International Indigenous Forum on Biodiversity met in Montreal, Canada, from 2-3 February 2002. Approximately 45 indigenous delegates from around the world attended to discuss inputs into the present meeting.

**CONSULTATION ON GURTS, INDIGENOUS AND LOCAL COMMUNITIES, AND FARMERS' RIGHTS:** The informal consultation was organized by the CBD Secretariat on the potential impacts of genetic use restriction technologies (GURTs) on indigenous and local communities and farmers' rights and met in Montreal, Canada, on 3 February 2002. It was attended by approximately 30 participants. Its results will be disseminated during the present meeting and will be incorporated into a thematic report for COP-6 on agricultural biodiversity.

#### THINGS TO LOOK FOR TODAY

**PLENARY:** The meeting will commence at 10:00 am in the Plenary hall to hear opening remarks, address organizational matters and consider reports from the Secretariat.

**SUB-WORKING GROUP I:** SWG-I will meet at 3:00 pm to start discussion on the outline of the composite report on status and trends.

**SUB-WORKING GROUP II:** SWG-II will meet at 3:00 pm to begin consideration of participatory mechanisms.