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) commenced with an indigenous ceremony. Plenary considered opening statements, organizational matters, general statements and reports in morning and afternoon sessions. Sub-Working Group I (SWG-I) then considered the outline of the composite report on status and trends, and Sub-Working Group (SWG-II) addressed the effectiveness of existing instruments, particularly regarding intellectual property rights (IPR), with implications for the protection of traditional knowledge.

**PLENARY**

**OPENING STATEMENTS:** In an opening ceremony, the representative of the Grand Council of the Mohawks said that humans have forgotten that they are part of the cycle of life, and that they should turn their minds to the world around them, acknowledge its power and respect everyone’s and everything’s place on it. Chair Reuben Oleomo, on behalf of the COP-5 President and Minister of Environment and Natural Resources of Kenya, noted past work on traditional knowledge including the workshop in Madrid (November 1997), the first Working Group meeting in Sevilla (March 2000) and the results of COP-5 (May 2000). He stressed that the meeting should help to strengthen indigenous and local communities as stakeholders within the Convention.

Hamdallah Zedan, Executive Secretary of the CBD, thanked the governments of Canada and Spain for their financial support of indigenous representatives’ participation. He addressed the priority tasks of the work programme on Article 8(j), reviewed the meeting’s documentation and expressed hope that the spirit of cooperation from Madrid and Sevilla would continue. Paul Chabeda, on behalf of UNEP Executive Director Klaus Töpfer, highlighted UNEP’s ongoing work on issues related to Article 8(j). He called for strengthened partnerships, capacity building, mobilization of adequate resources, and increased recognition and respect for the role of indigenous and local communities in the conservation of biodiversity.

**ORGANIZATIONAL MATTERS:** Delegates agreed that the COP Bureau serve as Bureau for this meeting with six indigenous representatives serving as friends of the chair, and appointed Barbara DiGiovanni (Italy) as rapporteur. Chair Oleomo noted that Elaine Fisher (Jamaica) would assume his position during the meeting. Delegates adopted the provisional agenda (UNEP/CBD/SWG8J/2/1), and agreed to meet in two sub-working groups and to reverse the order of SWG-II’s agenda items. Delegates approved John Herity (Canada) as chair of SWG-I and Linus Thomas (Grenada) as chair of SWG-II.

**GENERAL STATEMENTS:** Chair Oleomo then welcomed general statements. The INTERNATIONAL INDIGENOUS FORUM ON BIODIVERSITY (IIFB) stressed the need to ensure the full and effective participation of indigenous peoples, particularly women, in the conservation of biodiversity, and to establish a clear and binding framework for the protection of indigenous peoples’ fundamental rights to maintain and practice their traditional knowledge and access their lands. Veit Koester (Denmark) reported on the informal consultation on the potential impacts of genetic use restriction technologies (GURTs) on indigenous and local communities and farmers’ rights, held in Montreal, on 3 February 2002. The WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO) highlighted the activities of its Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, including, inter alia, compiling an inventory of traditional knowledge-related periodicals to assist the search for traditional knowledge as prior art.

SPAIN, on behalf of the EU, highlighted Resolution 12647/98 of the European Council, recognizing the importance and role of traditional knowledge, as well as linkages with work on access and benefit-sharing (ABS), invasive species, impact assessments and the Clearing-House Mechanism (CHM). TOGO, on behalf of the African Region, underscored agenda items on impact assessments, existing instruments and participation. FIJI, on behalf of the Pacific Island States, noted constraints in fulfilling Party obligations and stressed the importance of reporting, public awareness and coordination of regional activities. INDIA encouraged development of traditional knowledge inventories and called for a binding disclosure clause to ensure that patent seekers have not used traditional knowledge. BRAZIL stressed the need to observe national legislation and develop binding agreements between local communities and competent authorities. SRI LANKA flagged the need for capacity building for the effective involvement of local communities in decision making, and for national and local action plans to address communication gaps.

UNCTAD reviewed its recent work on traditional knowledge and emphasized the exchange of national experiences relating to the protection of traditional knowledge and harnessing it for trade and development. The FAO noted that the International Treaty on Plant Genetic Resources for Food and Agriculture recognizes the contribu...
tion of indigenous and local communities in the conservation of plant
genetic resources. UNESCO described the recent launch of its cross-
cutting initiative “Local and Indigenous Knowledge Systems in a
Global Society,” which will include a focus on women’s knowledge
and a holistic approach to understanding indigenous knowledge
systems.

REPORTS: The Secretariat introduced documents regarding the
progress report on the integration of work on Article 8(j) into the
CBD’s thematic programmes (UNEP/CBD/WG8J/2/2 and INF/2).
ARGENTINA proposed making financial resources available for
training governmental consultants on cross-cutting issues. The EU
requested recommendations on the International Treaty on Plant
Genetic Resources for Food and Agriculture; agricultural biodiversity,
GURTs and farmers’ rights; and the report’s submission to COP-6.
ECUADOR proposed stronger links with work on forest biodiversity
and its sustainable use, and an analysis of biotechnology’s impact on
indigenous and local communities. COLOMBIA highlighted the
importance of sustainable tourism. Several countries noted the need
for analysis of the draft Bonn Guidelines on ABS, with some
cautiously that the COP has yet to adopt them.

The Secretariat introduced the report on progress in implementa-
tion of the priority tasks of the work programme (UNEP/CBD/WG8J/
2/3). As there were no substantive comments, Chair Olembo closed
the Plenary session.

SUB-WORKING GROUP I – REPORT ON STATUS AND
TRENDS

At the request of SWG-I Chair Herity, the Secretariat introduced
the outline of the composite report on the status and trends regarding
the knowledge, innovations and practices of indigenous and local
communities (UNEP/CBD/WG8J/2/5).

Regarding proposed definitions of indigenous and local communi-
ties, BRAZIL with ARGENTINA, COLOMBIA and NEW
ZEALAND, expressed concerns. GUINEA called for reference to
traditional healers and hunters. COSTA RICA preferred reference
to “communities” rather than “indigenous people.” CHINA referred to
its recognition of indigenous groups and emphasized participation. The
IIFB stated that the proposed definition may exclude some indigenous
peoples who use modern practices to retain their knowledge. Chair
Herity proposed that a few delegates prepare a new definition of indig-
enous and local communities.

Regarding the proposal for a consultant, HAITI stressed the need to
define the consultant’s responsibilities, research methodologies and
qualifications. ARGENTINA suggested that the consultant come from
an indigenous community. The IIFB called for full and effective partic-
ipation of indigenous peoples in preparing the report. Delegates called
for several consultants working at regional levels. DENMARK
proposed having one consultant and an advisory group. The EU
suggested a multidisciplinary team and, supporting a regional
approach, proposed that national focal points provide information with
incorporation of other external sources of input. The PHILIPPINES
called for a public process to select the consultant. MAURITANIA
recommended that the consultant coordinate with ongoing work under
the CBD.

BRAZIL suggested the consultant’s research be based solely on
published or public information. Some delegates said the proposed
report is too ambitious. CANADA stated that the report will place a
burden on indigenous and local communities, and proposed a more
manageable outline. NEW ZEALAND and SWEDEN expressed
concern about reducing the scope of the report. SWEDEN proposed
that some issues be addressed in-depth and others in a less ambitious
manner. The IIFB recommended identifying processes that threaten
the maintenance, preservation and application of traditional knowl-
dge, and prioritizing the protection of indigenous knowledge and its
holders.

SUB-WORKING GROUP II – ASSESSMENT OF EXISTING IPR
INSTRUMENTS

At the request of SWG-II Chair Thomas, the Secretariat introduced
the assessment of existing instruments, particularly those on IPR, that
may impact the protection of traditional knowledge (UNEP/CBD/
WG8J/2/7). On relations with other bodies, the EU recommended that
COP-6 invite international IPR instruments to develop the conceptual
framework and instruments to protect traditional knowledge, while the
CBD should deal with databases, registers and other means of protec-
tion. INDONESIA proposed creating an international support mech-
ism for resolving disputes over inappropriately granted patents.

Regarding sui generis systems, CANADA opposed identifying
minimum standards, while COLOMBIA noted the need to clarify their
scope. BRAZIL proposed including binding agreements involving
national competent authorities as appropriate. CANADA and SWIT-
ZERLAND underscored the need for complementarity with WIPO’s
work. CANADA also stressed work under the CBD on non-intellec-
tual property instruments related to in situ conservation, elaboration
of the nature of customary laws and capacity building for communities
to protect traditional knowledge. BOLIVIA and ECUADOR stressed the
incompatibility between existing intellectual property regimes and
traditional knowledge, and BOLIVIA said that protection strategies
would be inappropriate if based on a “mix” of approaches. ECUADOR
proposed a permanent forum with related conventions to define the
nature of a sui generis system.

Regarding the development of an international database of traditi-
nal knowledge, several developing countries objected, stressing
capacity building for national registries. CHINA said that an interna-
tional registry could offer global protection. SWITZERLAND recom-
ended addressing the specific characteristics of traditional
knowledge and said that such a database should be one of a range of
mechanisms.

MEXICO questioned the use of patents and trade secrets to protect
traditional knowledge, and proposed examining denominations of
origin and collective marks. BRAZIL supported disclosure of the
source of genetic resources or traditional knowledge as part of patent
application requirements. CHINA called for benefit-sharing with the
knowledge holder in cases of patented innovations from traditional
knowledge. Several delegates highlighted the collective nature of
traditional knowledge. The IIFB stressed, inter alia, rights to self-
determination, legal security over lands and territories, development
of internal registries according to customary practices, right of veto
over research and transactions undermining the integrity of traditional
knowledge, impact prevention strategies, prior informed consent and
equitable benefit-sharing.

IN THE CORRIDORS

As many expected, questions about the inter-relation between
WIPO and the CBD arose within discussions on IPR, particularly
regarding minimum standards for sui generis systems. Many delegates
supported work by WIPO, with its expertise and higher profile within
trade-related discussions. Others expressed more immediate concerns
over problems with transparency, clarification and coordination of the
division of work, and the need for timely communication between
governing bodies, while hoping that the relationship could mature.

THINGS TO LOOK FOR TODAY

SUB-WORKING GROUP I: SWG-I will meet at 10:00 am in
Assembly Hall 1 to continue discussion of the report on status and
trends.

SUB-WORKING GROUP II: SWG-II will meet at 10:00 am in
Assembly Hall 2 to continue discussion on the assessment of existing
instruments.

FINANCING IMPLEMENTATION OF ARTICLE 8(j): The
GEF and the CBD Secretariat will host this side event at 1:15 pm in
Room 3.