



## HIGHLIGHTS OF THE WORKING GROUP ON ARTICLE 8(J) MONDAY, 4 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) 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 Olembo, 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 Olembo noted that Elaine

Fisher (Jamaica) would assume his position during the meeting. Delegates adopted the provisional agenda (UNEP/CBD/WG8J/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 Olembo 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-

This issue of the *Earth Negotiations Bulletin* © <enb@iisd.org> is written and edited by Stas Burgiel <stas@iisd.org>, Michael Davis <michael@iisd.org>, Fiona Koza <fiona@iisd.org> and Elsa Tsioumani <elsa@iisd.org>. The Digital Editor is Franz Dejon <franz@iisd.org>. The Editor is Pamela S. Chasek, Ph.D. <pam@iisd.org> and the Director of IISD Reporting Services is Langston James "Kimo" Goree VI <kimo@iisd.org>. The Operations Manager is Marcela Rojo <marcela@iisd.org> and the On-Line Assistant is Diego Noguera <diego@iisd.org>. The Sustaining Donors of the *Bulletin* are the Netherlands Ministry of Foreign Affairs, the Government of Canada (through CIDA), the United States (through USAID), the Swiss Agency for Environment, Forests and Landscape (SAEFL), the United Kingdom (through the Department for International Development - DFID, and the Foreign & Commonwealth Office), the European Commission (DG-ENV), the Danish Ministry of Foreign Affairs, and the Government of Germany (through German Federal Ministry of Environment - BMU, and the German Federal Ministry of Development Cooperation - BMZ). General Support for the *Bulletin* during 2002 is provided by the Ministries of Foreign Affairs and Environment of Finland, the Government of Australia, the Ministry of Environment and the Ministry of Foreign Affairs of Sweden, the Ministry of Foreign Affairs and Trade of New Zealand, the Ministries of Foreign Affairs and Environment of Norway, Swan International, and the Japanese Ministry of Environment (through the Institute for Global Environmental Strategies - IGES). The *Bulletin* can be contacted by e-mail at <enb@iisd.org> and at tel: +1-212-644-0204; fax: +1-212-644-0206. IISD can be contacted by e-mail at <info@iisd.ca> and at 161 Portage Avenue East, 6th Floor, Winnipeg, Manitoba R3B 0Y4, Canada. The opinions expressed in the *Earth Negotiations Bulletin* are those of the authors and do not necessarily reflect the views of IISD and other funders. Excerpts from the *Earth Negotiations Bulletin* may be used in non-commercial publications only and only with appropriate academic citation. For permission to use this material in commercial publications, contact the Director of IISD Reporting Services. Electronic versions of the *Bulletin* are sent to e-mail distribution lists and can be found on the Linkages WWW server at <http://www.iisd.ca>. The satellite image was taken above Montreal ©2002 The Living Earth, Inc. <http://livingearth.com>. For information on the *Earth Negotiations Bulletin* or to arrange coverage of a meeting, conference or workshop, send e-mail to the Director, IISD Reporting Services at <kimo@iisd.org>.



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 cautioning that the COP has yet to adopt them.

The Secretariat introduced the report on progress in implementation 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 communities, 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 indigenous 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 participation 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 knowledge, 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 protection. INDONESIA proposed creating an international support mechanism 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 SWITZERLAND underscored the need for complementarity with WIPO's work. CANADA also stressed work under the CBD on non-intellectual 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 traditional knowledge, several developing countries objected, stressing capacity building for national registries. CHINA said that an international registry could offer global protection. SWITZERLAND recommended 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.