

WORKING GROUP ON ARTICLE 8(J)

HIGHLIGHTS:

MONDAY, 15 OCTOBER

The fifth meeting of the *Ad hoc* Open-ended Intersessional Working Group on Article 8(j) (traditional knowledge) and related provisions (Article 8(j) WG) of the Convention on Biological Diversity (CBD) opened in Montreal, Canada, on Monday 15 October 2007. In plenary in the morning and afternoon, delegates: observed a Mohawk opening ceremony; heard general statements and a report on the outcomes of the fifth meeting of the Working Group on Access and Benefit-sharing (ABS WG); considered recommendations of the UN Permanent Forum on Indigenous Issues (UNPFII); and debated progress on the Article 8(j) work programme. Delegates then broke into two sub-working groups (SWG). SWG I addressed the composite report on traditional knowledge (TK), and SWG II considered mechanisms for indigenous participation.

OPENING PLENARY

Fernando Coimbra (Brazil), on behalf of COP President Marina da Silva, opened the meeting, calling on delegates to continue their work, especially on an ethical code of conduct for the respect and protection of indigenous cultural and intellectual property. He also invited the Article 8(j) WG's contributions to the ABS WG. A representative of the Mohawk Nation welcomed delegates to Mohawk territory and prayed for positive meeting outcomes. Invoking the peaceful and cooperative spirit of the Haudenosaunee Confederacy, Ahmed Djoghlaif, CBD Executive Secretary, underscored the importance of cooperation to meet the challenges of biodiversity loss and climate change.

ORGANIZATIONAL MATTERS: Delegates adopted the meeting's agenda and organization of work (UNEP/CBD/WG8J/5/1/Add.1) without amendments; elected Mary Fosi (Cameroon) as rapporteur; and Lucy Mulenkei, Jannie Lasimbang, Mikhail Todyshev, Gunn-Britt Retter, James Lamouche, Malia Nobrega and Estebancio Castro Diaz as indigenous Friends of the Bureau. They further appointed Deon Alexander Stewart (Bahamas) and Estebancio Castro Diaz as Co-Chairs of SWG I, and Nicola Breier (Germany) and Gunn-Britt Retter as Co-Chairs of SWG II.

MEXICO requested clarification on whether nominating indigenous representatives who are not members of party delegations as Co-Chairs was in accordance with the CBD's

rules of procedure. Ahmed Djoghlaif explained that appointing indigenous Co-Chairs constitutes a generally accepted informal custom at meetings of the Article 8(j) WG.

GENERAL STATEMENTS: The PHILIPPINES and Malawi, for the AFRICAN GROUP, underscored linkages between the work of the ABS and Article 8(j) WGs. Portugal, for the EU, and the GLOBAL FOREST COALITION, requested that the Article 8(j) WG address impacts of biomass production and consumption on indigenous peoples. CANADA said the WG should prioritize issues that relate to the CBD's objectives.

COLOMBIA outlined national progress in the recognition of indigenous rights and the establishment of mechanisms for indigenous participation. Yemen, for the ASIA AND PACIFIC REGION, stressed the need for fair and equitable benefit-sharing with indigenous and local communities, while NIGERIA and SOUTH AFRICA stressed the importance of the future ABS regime.

Several indigenous representatives requested the full and effective participation of indigenous youth and women, especially regarding ABS. The INTERNATIONAL INDIGENOUS FORUM ON BIODIVERSITY (IIFB) said any international ABS regime must be informed by the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and underlined the need for a strong ethical code of conduct for the respect and protection of indigenous cultural and intellectual property. CANADA noted that the UNDRIP is not legally binding but reiterated commitment to Article 8(j) implementation. AUSTRALIA outlined reasons why it cannot support UNDRIP. The INDIGENOUS WOMEN'S BIODIVERSITY NETWORK affirmed that indigenous knowledge is not in the public domain but rather regulated by indigenous legal systems. The INTERNATIONAL FORUM OF LOCAL COMMUNITIES supported the development of *sui generis* systems for the protection of TK.

AUSTRALIA urged that the Article 8(j) WG focus on fewer activities to maximize implementation. COSTA RICA requested national implementation of UNDRIP. The WORLD INTELLECTUAL PROPERTY ORGANIZATION noted its activities under its Memorandum of Understanding with the CBD and described its voluntary fund for indigenous participation.

ABS WG Co-Chair Tim Hodges (Canada) reported on the outcomes of ABS 5 held from 8 to 12 October 2007, noting that the meeting laid the groundwork for further progress at ABS 6.

Recommendations of the UNPFII: Chair Coimbra introduced recommendations of the UNPFII (UNEP/CBD/WG8J/5/9). INDIA mentioned the importance of the UNDRIP, and MEXICO underscored the need to secure financing for implementation of the recommendations. NEW ZEALAND and AUSTRALIA suggested addressing a recommendation on capacity building to enable indigenous participation in the development of an international ABS regime. The PHILIPPINES noted the importance of capacity building for indigenous youth.

CANADA supported convening regional and sub-regional ABS workshops and developing a limited number of indicators to evaluate progress towards the CBD's 2010 target. The EU proposed a new paragraph relating to cooperation between the CBD and the UNPFII, with ARGENTINA asking for clear terms of reference in this regard.

NA KOA IKA IKA O KA LAHUI HAWAI'I called for the identification of best practices of indigenous peoples' management of territories and resources, with a view to merging the approaches with modern techniques. A revised draft recommendation will be prepared.

Progress on the Article 8(j) work programme: Chair Coimbra invited comments on progress reports regarding the Article 8(j) work programme (UNEP/CBD/WG8J/5/2/ and Add.1). AUSTRALIA called for further discussions on the remaining tasks of the work programme. NEW ZEALAND suggested focusing future work of the Article 8(j) WG on the 2010 target and developing an ABS regime by 2010. INDIA proposed focusing on ABS and TK protection. COLOMBIA pointed to the linkage between the development of *sui generis* systems for the protection of TK and ABS. BRAZIL highlighted public consultations on national ABS legislation which contains procedures for benefit-sharing with indigenous peoples.

The EU, COLOMBIA, NEW ZEALAND and ARGENTINA supported focusing on: task 7 (guidelines to ensure equitable benefit-sharing with TK holders); task 10 (prevention of unlawful appropriation of TK); and task 12 (guidelines to implement Article 8(j)) by continuing work on *sui generis* systems noting that any further work would require further discussions. The PHILIPPINES asked that guidelines be consistent with UNDRIP and called for action on all outstanding tasks by 2010 and a timeframe for their completion.

MEXICO urged parties to submit progress reports on Article 8(j). The IIFB expressed concern that some parties do not recognize the existence of indigenous peoples in their countries. TANZANIA and MALAWI welcomed the appointment of a focal point for indigenous peoples within the Clearing-House Mechanism. A revised draft recommendation will be prepared.

SUB-WORKING GROUP I

COMPOSITE REPORT: SWG I Co-Chair Deon Alexander Stewart (Bahamas) introduced relevant documents on phase II of the composite report on the status and trends regarding the knowledge, innovations and practices of indigenous and local communities relevant to the conservation and sustainable use of biodiversity (UNEP/CBD/WG8J/5/3, Add.1, Add.2, INF/3, 4, 5, 6, 7 and 8).

Delegates discussed obstacles for TK protection and considered guidelines for documenting and recording TK and the potential threat of such documentation.

Uganda for the AFRICAN GROUP asked for capacity building to enhance understanding of the effects of climate change. INDIA, BRAZIL, NEW ZEALAND, ARGENTINA and AUSTRALIA suggested restricting climate change considerations to its effects on biodiversity. BRAZIL called for a reference to indigenous communities in riparian zones. The

IIFB suggested the Secretariat initiate an expert working group on the impacts of climate change on TK. CANADA urged that issues relating to the Arctic be considered by the Arctic Council. CANADA and NORWAY, opposed by INDIA and BRAZIL, requested deletion of a reference to health protocols and food security plans for indigenous and local communities living in voluntary isolation. The IIFB underscored the cultural right to live in isolation.

SUB-WORKING GROUP II

MECHANISMS FOR PARTICIPATION: SWG II Co-Chairs Breier and Retter invited comments on mechanisms for full and effective indigenous participation (UNEP/CBD/WG8J/5/5 and INF/14). Noting limited access to web-based communication technologies, MEXICO, BRAZIL and COLOMBIA called for work on other means of communication, and for timely translation of documentation into UN languages to facilitate translation into indigenous languages. NEW ZEALAND and NORWAY, opposed by the IIFB, cautioned against recommending increasing the budget for translation, with NEW ZEALAND and CANADA preferring preparation of a list of financial implications for COP consideration.

The EU suggested monitoring the use of communication means by indigenous communities to identify effective communication strategies. The TEBTEBBA FOUNDATION proposed indicators to measure indigenous participation in national and international CBD-related processes. BRAZIL and the AFRICAN GROUP suggested encouraging indigenous and local communities to develop their own communication tools. SENEGAL and HAITI favored holding TK workshops in communities. THAILAND called for integrating communication tools in national biodiversity strategies and action plans. NORWAY encouraged the inclusion of indigenous representatives in country delegations. GUINEA BISSAU emphasized participatory resource management strategies.

Many indigenous representatives called for increased funding for indigenous participation and their recognition as key players in TK protection. ARGENTINA asked that the voluntary fund for indigenous participation prioritize indigenous participants from developing countries. The AFRICAN GROUP called for support for indigenous youth participation, with the INDIGENOUS YOUTH CAUCUS suggesting funding two indigenous youth representatives per region.

INDIA called for toolkits of measures and mechanisms to address the underlying causes for the decline of TK, innovations and practices to address all possible safeguards.

BRAZIL requested that the development of TK databases should be based on indigenous PIC. The IIFB noted the need for a timeline and the prioritization of tasks to address the underlying causes of the decline of TK. Noting diverse ways of holding TK in various parts of the world, CANADA suggested focusing on community-based initiatives.

IN THE CORRIDORS

Following last week's ABS WG meeting, delegates expressed eagerness to enter into substantive negotiations on TK. Some delegates noted that since progress at the ABS WG on defining a framework for future negotiations had been slow, the Article 8(j) WG could seize the opportunity of making real strides in the development of *sui generis* systems for the protection of TK and of a draft code of ethics, and thereby provide a kick-start to the next meeting of the ABS WG. Another delegate warned that if little progress is made here, and if ABS negotiations pick up momentum in Geneva, the Article 8(j) agenda might be left behind.