

WORKING GROUP ON ARTICLE 8(J) HIGHLIGHTS: MONDAY, 2 NOVEMBER

The sixth meeting of the *Ad hoc* Open-ended Intersessional Working Group on Article 8(j) and related provisions of the Convention on Biological Diversity (CBD) opened in Montreal, Canada, on Monday 2 November 2009. Delegates first met in plenary. They attended an indigenous welcoming ceremony and addressed: mechanisms for participation, *sui generis* systems for the protection of traditional knowledge, and the ethical code of conduct. A contact group on the ethical code was established and commenced its work in the afternoon.

OPENING PLENARY

Otsi.tsa.ken:RA (Charles Patton) of the Mohawk Nation welcomed delegates to Mohawk traditional territory and opened the meeting in the way of his ancestors. Working Group (WG) Co-Chair Nicola Breier, for the COP 9 President, highlighted the importance of Article 8(j) multi-year programme of work and its possible focus on the implementation of Article 10(c) (customary use of biological resources), as well as the need for consensus on elements of the ethical code of conduct. Balakrishna Pisupati, on behalf of UNEP Executive Director Achim Steiner, stressed that the work on *sui generis* systems, the ethical code of conduct and indicators is critical to achieving the three objectives of the CBD. Ahmed Djoghlaif, CBD Executive Secretary, highlighted the contribution of indigenous and local communities to protecting biodiversity, and thanked India for offering to host COP 11 in 2012.

ORGANIZATIONAL MATTERS: Delegates adopted the meeting agenda and organization of work (UNEP/CBD/WG8J/6/1 and Add.1/Rev.1) without amendments; elected Somaly Chan (Cambodia) as rapporteur of the meeting; and appointed Lucy Mullenkei, Shimreihon Luithui-Erni, Gunn-Britt Retter, Victoria Esther Camac Ramírez, Merle Alexander and Neva Collins as Indigenous Friends of the Bureau. Delegates further appointed Lucy Mullenkei as WG Co-Chair.

GENERAL STATEMENTS: The International Indigenous Forum for Biodiversity (IIFB): requested devoting sufficient time to address the programme of work; and highlighted climate change as a threat to survival for indigenous peoples, and the negotiation of a legally binding international ABS regime that protects traditional knowledge. INDIGENOUS NATIONS AND HUMAN RIGHTS ORGANIZATIONS IN CANADA advocated for the continuation of the Working Group on Article 8(j) and singled out three possible achievements for the current session:

completion of negotiations on the ethical code of conduct; contribution on all substantive elements of the international ABS regime; and a realistic and robust programme of work. The INTERNATIONAL FORUM OF LOCAL COMMUNITIES (IFLC) recommended including climate change in the programme of work, and prioritizing the development and implementation of *sui generis* systems. The Indigenous Women's Biodiversity Network (IWBN) recommended consideration of women's role in the transfer of traditional knowledge, in developing indicators and the programme of work.

MECHANISMS FOR PARTICIPATION: On participatory mechanisms for indigenous and local communities in the work of the Convention (UNEP/CBD/WG8J/6/3), IIFB welcomed the continuation of work on the traditional knowledge information portal and proposed extending capacity-building initiatives to all regions. The QUEBEC NATIVE WOMEN'S ASSOCIATION lamented lack of funding for capacity building and indigenous participation from North America. CANADA argued that future initiatives must take into account the results of the evaluation of past initiatives, and information technology tools must be cost effective and targeted. NIGER supported capacity building in support of the Guidelines on Biodiversity and Tourism. MALAWI underscored the need to promote capacity building at regional, national and local levels.

Many delegates stressed the importance of indigenous and local community participation in CBD work and the need for increased capacity building. UGANDA, INDIA and others noted that the development of communication mechanisms should take into account indigenous and local communities' limited internet access, with GUATEMALA, PERU and SENEGAL pointing to the usefulness of radio communication. THAILAND proposed translation of documents into local languages. SENEGAL called for an information and awareness raising campaign targeting indigenous and local communities, and suggested the Secretariat fund two government representatives and one indigenous representative per country. BRAZIL said the key role of indigenous and local communities in conservation and sustainable use of biodiversity should be better reflected in CBD processes.

IFLC suggested that the membership in the committee administering the voluntary fund for the participation of indigenous and local communities be rotated regularly and include a local community representative in the future.

SUI GENERIS SYSTEMS: On elements of *sui generis* systems for the protection of traditional knowledge, innovation and practices (UNEP/CBD/WG8J/6/5), TUNISIA called on

international organizations, such as the Food and Agriculture Organization, to support CBD work on *sui generis* systems. INDIA supported the development of internationally agreed standards for *sui generis* systems.

Sweden, on behalf of the European Union (EU), and AUSTRALIA pointed to the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore of the World Intellectual Property Organization (WIPO) as the primary forum for discussing intellectual property aspects of traditional knowledge protection, suggesting that the Working Group focus on sharing information on developing and implementing *sui generis* systems. EGYPT stressed that WIPO should not discuss benefit-sharing and traditional knowledge issues. The QUEBEC NATIVE WOMEN'S ASSOCIATION reminded parties that the UN Permanent Forum on Indigenous Issues (UNPFII) recommended development of *sui generis* systems under the CBD to comprise traditional customary laws and meet the minimum standards of the UN Declaration on the Rights of Indigenous Peoples, including prior informed consent.

UGANDA proposed encouraging parties that have not done so to develop *sui generis* systems. CANADA highlighted that the list of elements of *sui generis* systems is not exhaustive and not all elements should necessarily be included in every *sui generis* system. YEMEN supported protecting the intellectual property of indigenous and local communities to their traditional knowledge. SOUTH AFRICA stressed the development of *sui generis* systems where indigenous peoples own the knowledge and control its dissemination. MALAYSIA noted that existing intellectual property rights systems can harm traditional knowledge innovations and practices.

The IIFB and IWBN stressed the need to respect indigenous peoples' decision-making processes and customary laws. BRAZIL proposed that *sui generis* systems should be based on defensive protection, as well as endogenous protection tools aimed at combating the erosion of traditional knowledge. CHINA noted that *sui generis* systems should protect traditional Chinese medicinal knowledge. INDONESIA supported the need to share transboundary traditional knowledge among countries through joint ownership and the adoption of regional measures.

ETHICAL CODE: On the revised draft elements of an ethical code of conduct to ensure respect for cultural and intellectual heritage of indigenous and local communities (UNEP/CBD/WG8J/6/4), several delegates supported the conclusion of negotiations on the ethical code at the present session. The EU proposed to use its submission (UNEP/CBD/WG8J/6/INF/2/Add.1) as the basis for further elaboration of the ethical code. CANADA expressed concern that the current draft went beyond the scope of Article 8(j) and the task set out in the programme of work, noting that a limited number of bracketed elements are not acceptable to Canada.

INDIA noted that the non-binding nature of the code should not preclude the incorporation of its elements in national and international instruments for the protection of traditional knowledge. EGYPT considered the code as a first step leading to a mandatory regime in the future. NORWAY stressed that certain elements of the code should be reflected in national legislation, and noted the importance of certain elements of the code for negotiations on ABS. ALGERIA advocated establishing close links between the code and the international ABS regime. MEXICO argued that the scope of the code should be as broad as possible. NEW ZEALAND stressed the importance of the code to ensure respect for traditional knowledge in the research

sector. PERU suggested taking into account the International Convention on the Elimination of All Forms of Racial Discrimination.

WG Co-Chair Breier established a contact group with the mandate to remove all brackets on the draft elements of the code, co-chaired by Susanna Chung (South Africa) and indigenous representative Neva Collins.

CONTACT GROUP

Delegates agreed to negotiate the draft elements of the ethical code paragraph by paragraph. On the preamble, delegates agreed to replace "endorsed" with "noted" with reference to the recommendations by UNPFII. Delegates then agreed on "aiming to promote" the full respect for the cultural and intellectual heritage of indigenous and local communities, and to delete "as far as possible and as appropriate" with regard to parties' obligations under Article 8(j). Parties agreed to delete a reference to the "enforceable" character of measures to respect, preserve and maintain the use of traditional knowledge, such as codes of conduct.

Some delegates questioned a reference to "western scientific knowledge" versus indigenous knowledge, and could not reach agreement on whether to delete it. Delegates could not agree on bracketed references to lands and waters "traditionally occupied by indigenous and local communities," with one party proposing to refer instead to "their" lands and waters.

On the importance of preserving traditional languages as sources of traditional knowledge, delegates agreed to retain a reference to traditional farm practices. Delegates also agreed to add a reference to the Bonn Guidelines on Access and Benefit-Sharing and the Akwé: Kon voluntary guidelines for the conduct of cultural, environmental and social impact assessments regarding developments proposed to take place on lands and waters traditionally used or occupied by indigenous and local communities.

On the operative language of the proposed elements of the code, delegates agreed to merge sections on rationale, nature and scope of the code. On the scope, delegates agreed to keep references to both "activities" and "interactions" with indigenous and local communities, and to traditional knowledge "relevant for the conservation and sustainable use of biodiversity." Delegates then discussed whether to refer to "indigenous peoples" rather than to "indigenous communities," the term used by the CBD, without reaching agreement. Delegates agreed to delete a section describing the way in which the elements are supposed to be used as guidance for parties and governments.

IN THE CORRIDORS

Indigenous and government delegates returning to the traditional territory of the Mohawk Nation and the home of the CBD Secretariat seemed in good spirits, gearing up for twelve days of negotiations. The fact that several seasoned ABS negotiators had already arrived for the Working Group on Article 8(j) fuelled some expectations with regard to the possible influence of this week's work on traditional knowledge on next week's negotiations on the international ABS regime. While some argued that they had come to ensure that discussions on Article 8(j) would not pre-empt discussions on ABS the following week, others took this as an expression of readiness to listen to the views of indigenous representatives in a forum where they can take the floor on equal footing with governments.