



# Earth Negotiations Bulletin

SBSTTA 19  
Article 8(j)-9  
#5

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## SBSTTA 19 & WG8(J)-9 HIGHLIGHTS: THURSDAY, 5 NOVEMBER 2015

The Working Group on Article 8(j) met on Thursday morning in plenary, and established a contact group on the guidelines on PIC and benefit-sharing from TK use, that met in the evening. In the afternoon, SBSTTA 19 adopted all remaining recommendations.

### ARTICLE 8(J) WORKING GROUP

#### GUIDELINES ON TRADITIONAL KNOWLEDGE:

GUATEMALA supported the IIFB proposals. COLOMBIA, JAPAN and ARGENTINA underscored the voluntary character of the guidance, and BRAZIL suggested reflecting this in the title. JAPAN also: called for language to improve access and benefit-sharing related to TK associated with genetic resources, as well as compliance with domestic legislation; clarified that “authorities” mentioned under procedural considerations for PIC or approval and involvement, and MAT for benefit-sharing, are not equivalent to “national focal points” and “competent national authorities” under Nagoya Protocol Article 13; and suggested deleting reference to disclosure requirements concerning the origin or source of TK, not to prejudice ongoing negotiations in other fora.

BRAZIL suggested “welcoming,” rather than “adopting,” the guidance, and deleting a section on the understanding of PIC or approval and involvement, cautioning against further analysis of Convention and Nagoya Protocol language. She also noted that community protocols are subject to national law and expressed concern on cross-border measures for shared TK. SAUDI ARABIA and CHINA called for flexibility to take into account national circumstances. CHINA proposed requesting the Secretariat to invite parties to provide information on benefit-sharing related to open-access TK.

URUGUAY underscored the need for harmonization of international and national law with respect to PIC and IPLCs’ rights, and encouraged parties, the GEF and others to support capacity building for IPLCs to implement Article 8(j) and the Nagoya Protocol. LOCAL COMMUNITIES OF LATIN AMERICA AND THE CARIBBEAN: emphasized the obligatory nature of PIC and benefit-sharing; suggested using the guidelines to support harmonization of international and national laws; and requested enhanced financial support to IPLCs for building capacity to apply guidelines, the Nagoya Protocol and elaboration of community protocols. WIPO called attention to the IGC work programme for 2016-2017 on text-based negotiations of international legal instrument(s) on IPRs and genetic resources,

TK and traditional cultural expression. Co-Chair Jae Chun Choe (Republic of Korea), on behalf of COP 12 Presidency, established a contact group, chaired by Johan Bodegard (Sweden) and Christine Teresa Grant (Australia).

**REPATRIATION:** The Secretariat introduced the document on draft best practice guidelines on repatriation of TK relevant to biodiversity conservation and sustainable use (UNEP/CBD/WG8J/9/3). SWEDEN reported on the expert meeting held in Guatemala in June 2015, noting that the proposed name for the guidelines is Kaqchikel, the Mayan expression for “the significance of returning to the place of origin.” Co-Chair Chun Choe: noted that the draft guidelines are not expected to be finalized at this meeting; suggested that the Working Group request the Secretariat to further develop the guidelines in light of the outcome of the expert meeting, for consideration at the next meeting of the Working Group; and invited delegates to provide general views to support the Secretariat in finalizing the draft.

The IIFB recommended that the draft guidelines not only reflect consensus principles but also other options, including information from governments and IPLCs beyond the biodiversity community, taking into account that IPLCs do not distinguish between tangible and intangible heritage. The LMMC noted that the voluntary guidelines can facilitate and encourage a greater number of successful repatriation experiences to support national efforts for conservation and sustainable use. The EU favored repatriation of TK related to biodiversity conservation and sustainable use, to facilitate information exchange, noting that it should not impede continued use of such information by parties that decide to repatriate TK; and urged governments, IPLCs and the private sector to ensure that TK is treated according to the Tkarihwaié:ri Code of Ethical Conduct. INDIGENOUS WOMEN’S BIODIVERSITY NETWORK emphasized that repatriation must be based on IPLCs’ protocols and customary norms. The PHILIPPINES raised concerns about: the kind of TK covered by the guidelines; modalities of repatriation; TK related to PGRFA; and possible repatriation of TK derivatives.

MEXICO urged implementing the guidelines in cooperation with UNESCO. MOROCCO suggested interpreting the guidelines in light of the ‘environmental,’ as well as ‘political, legal, economic and cultural,’ diversity of each party. Ethiopia, on behalf of the AFRICAN GROUP, stressed that the guidelines’ scope should remain limited to the CBD. INDIA suggested that, given the complexity of repatriation, the draft guidelines focus more on TK protection, cautioning against prescriptive language. The REPUBLIC OF KOREA underscored the guidelines’ role in

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facilitating the recovery and repatriation of TK that is vital for biodiversity conservation, and urged their use by governments and public research bodies.

**UNPFII RECOMMENDATIONS:** The Secretariat introduced the relevant documentation (UNEP/CBD/WG8J/9/4), noting that UNPFII had invited the Nagoya Protocol COP/MOP to consider using the terminology IPLCs and that CBD COP has already adopted a decision on adopting this terminology in future decisions and secondary documents under the Convention (decision XII/12F).

The UNPFII urged reflecting the status of indigenous peoples as ‘peoples’ and their collective rights enshrined in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in national implementation of ABS and the Nagoya Protocol. MEXICO supported the adoption of IPLC terminology into national legislation. BOLIVIA welcomed the use of IPLC terminology as vital to the preservation and strengthening of indigenous institutions, and suggested adding language reaffirming indigenous peoples’ collective rights. INDONESIA opposed the use of IPLC terminology in legally binding documents or documents that have legal implications.

### **SBSTTA**

On Thursday afternoon, Chair Bignell reported that the following new members of the SBSTTA Bureau were elected: Aleksandar Mijović (CEE); Norbert Bärlocher (Western Europe and Others); Prudence Galega (Africa); Nialuga Evaimalo Tavita (Asia and Pacific); and Lourdes Coya de la Fuente (GRULAC). Chair Bignell then recalled that recommendations on effectiveness of policy instruments (UNEP/CBD/SBSTTA/19/L.3) and on geoengineering (UNEP/CBD/SBSTTA/19/L.5) had been adopted on Tuesday and Wednesday respectively.

Delegates adopted, without amendment, the recommendation on indicators for the Strategic Plan (UNEP/CBD/SBSTTA/19/L.2); and with minor amendments recommendations on: biodiversity mainstreaming (UNEP/CBD/SBSTTA/19/L.4); scientific and technical needs (UNEP/CBD/SBSTTA/19/L.7); and on the IPBES work programme (UNEP/CBD/SBSTTA/19/L.8). On the recommendation on forest biodiversity (UNEP/CBD/SBSTTA/19/L.6), NORWAY reported that her capital wished to retain reference to the New York Declaration on Forests. BRAZIL opposed, emphasizing that not all parties to the CBD support the Declaration and cautioning against SBSTTA addressing political issues. NORWAY conceded to delete the reference. The recommendation was adopted with this amendment.

**BIODIVERSITY AND HEALTH:** On a revised draft recommendation, ARGENTINA and BRAZIL suggested “taking note,” rather than “welcoming,” the State of Knowledge Review. BRAZIL further proposed to “invite parties to consider using” the Review, rather than to encourage parties to make use of it. Delegates then discussed text on drivers of change that may affect both biodiversity and health, eventually agreeing on deleting a list of specific examples.

On a paragraph on health-biodiversity linkages and the 2030 Sustainable Development Agenda and the achievement of the SDGs, BRAZIL suggested acknowledging that the linkages are “related to” the Agenda and the SDGs, rather than emphasizing that they are “important to their implementation.”

BRAZIL, opposed by the EU, preferred language saying that the health benefits of biodiversity “may be influenced,” rather than “are largely influenced,” by socioeconomic factors. ETHIOPIA offered compromise language stating that health benefits of biodiversity “are influenced” by socioeconomic factors. On a list of activities related to biodiversity and health,

BRAZIL suggested to invite, rather than encourage, parties to carry them out “as appropriate and taking into account national circumstances.” On language identifying opportunities benefitting biodiversity and human health, BRAZIL and ARGENTINA proposed substituting “sustainable consumption choices” with “sustainable production and consumption patterns.”

On a list of issues for further research on health-biodiversity linkages and related socioeconomic considerations, COLOMBIA suggested adding linkages between invasive alien species and human health. FRANCE, supported by NORWAY and SWITZERLAND, suggested deleting language on the establishment of a world day on biodiversity and human health.

On an annex elaborating on specific topics to promote the understanding of health and biodiversity linkages, ARGENTINA, supported by BRAZIL and opposed by the EU and NORWAY, proposed to delete guidance for each topic. Chair Bignell suggested, and delegates agreed, to clarify that the annexed guidance is voluntary. BRAZIL then requested reference to: ‘inappropriate,’ rather than ‘reduced,’ use of pesticides; ‘inappropriate use,’ rather than ‘overuse and unnecessary routine use,’ of antibiotics; and ‘healthy, nutritious and diversified diets,’ rather than ‘sustainable diets.’ She also requested deletion of reference to ‘green infrastructure’ regarding the role of terrestrial and inland water ecosystems. The EU and TIMOR LESTE opposed. ETHIOPIA, ARGENTINA and URUGUAY cautioned against opening up the annex to negotiation. Delegates eventually agreed to approve the annex, without amendments, as “information” rather than as “guidance.”

**CLOSING PLENARY:** Delegates adopted the report of the meeting (UNEP/CBD/SBSTTA/19/L.1) with minor amendments. CBD Executive Secretary Dias acknowledged the challenges arising from the limited time to consider recommendations, and singled out outcomes on biodiversity and human health, biodiversity mainstreaming, and the IPBES work plan. Costa Rica for GRULAC lamented the shortened format of the meeting, arguing that the quality of some recommendations suffered, particularly in relation to crosscutting issues. South Africa for the AFRICAN GROUP noted the need for further research into geoengineering, and enhanced synergies among biodiversity-related bodies. The Republic of Korea for ASIA AND PACIFIC affirmed that SBSTTA 19 recommendations will contribute to the implementation of the Strategic Plan and the Aichi targets. Chair Bignell considered the recommendations “a sound foundation for COP 13,” underscoring the role of the 2030 Sustainable Development Agenda and the anticipated new climate change agreement. He gavelled the meeting to a close at 5:22pm.

### **IN THE CORRIDORS**

As participants met for the second Article 8(j)/SBSTTA split day on Thursday, they expressed mixed feelings on how discussions progressed under the new format. Understandably many were rather tired, following the dense SBSTTA plenary that continued almost until midnight the evening before. A few veterans appeared perplexed by the lack of momentum on critical issues, such as geoengineering or the linkages between biodiversity and health. Others grumbled about the lack of time to iron out the, admittedly few, thornier issues. A regional group described the outcomes as making “hardly transcendental progress.” Nonetheless, many were pleased with the more prominent role of TK and IPLCs in the deliberations on the technical and scientific aspects of the Strategic Plan implementation.