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Saturday, 16 December 2017

WG8J 10 & SBSTTA 21 HIGHLIGHTS: FRIDAY, 15 DECEMBER 2017

On Friday morning, the plenary of Article 8(j) Working Group finalized draft recommendations on: the guidelines on the repatriation of traditional knowledge; resource mobilization; the glossary; and the recommendations from the UN Permanent Forum on Indigenous Issues (UNPFII). Plenary also discussed proposed topics for the next in-depth dialogue. In the afternoon, a Friends of the Chair group met to discuss future work, on the basis of progress towards Aichi Target 18 (traditional knowledge), implementation of the customary sustainable use action plan, the integration of Article 8(j) in the work of the CBD and its Protocols, and the finalization of tasks 7, 10 and 12 under the Article 8(j) work programme.

PLENARY

GUIDELINES ON THE REPATRIATION OF TRADITIONAL KNOWLEDGE

TRADITIONAL KNOWLEDGE: Basile van Havre, Co-Chair of the contact group on the draft guidelines on traditional knowledge repatriation, reported on the group's deliberations on Thursday evening, noting that, following robust and frank discussions, consensus had been reached. Delegates approved a draft recommendation with minor amendments.

GLOSSARY: Delegates addressed two outstanding definitions on indigenous peoples' and community conserved territories and areas (ICCAs) and traditional biological resources respectively.

On traditional biological resources, ARGENTINA stressed that biological resources are already defined in CBD Article 2 (use of terms) as including "genetic resources, organisms or parts thereof, populations, or any other biotic component of ecosystems with actual or potential use or value for humanity." He suggested adding to this definition, for the purposes of the glossary, "used traditionally by IPLCs in keeping with their customs and national legislation." JAMAICA offered "in keeping with their customs and/or national legislation." MEXICO proposed "resources defined in CBD Article 2, used traditionally in keeping with their customs and/or national legislation." SWITZERLAND and the EU expressed concerns about potential impacts of a definition on genetic information for other processes. PERU favored bracketing the definition. Following informal consultations, delegates agreed to define traditional biological resources as "biological resources, as defined by CBD Article 2, used customarily and traditionally by IPLCs, in accordance with national legislations, as appropriate."

On ICCAs, delegates discussed whether "areas conserved by IPLCs could potentially be recognized as protected or conserved areas, subject to their free PIC and national circumstances." ARGENTINA suggested adding "subject to national circumstances and legislation." COLOMBIA, opposed by BOLIVIA, suggested replacing "free PIC" with "their request," noting that the areas in question belong to IPLCs. MEXICO offered as compromise language "subject to free PIC or a request, and according to national circumstances and legislation." Following informal consultations, COLOMBIA suggested "subject to their free PIC or request, subject to national circumstances." AUSTRALIA recommended using already agreed terminology referring to "PIC, free PIC or approval and involvement." Delegates eventually agreed that "areas conserved by IPLCs could potentially be recognized as protected or conserved areas, subject to their PIC, free PIC, approval and involvement or request, according to national circumstances." With these amendments, delegates approved the draft recommendation.

UNPFII RECOMMENDATIONS: Delegates approved a draft recommendation without any amendments.

RESOURCE MOBILIZATION: Delegates approved a draft recommendation with a minor amendment and a clarification from the Secretariat that comments made, especially from IPLCs representatives, were annexed to the document for consideration by SBI 2.

FUTURE IN-DEPTH DIALOGUE: The Secretariat introduced the relevant documentation (CBD/WG8J/10/10), noting that the proposed topic for the next in-depth dialogue is the contribution of traditional knowledge to the post-2020 global biodiversity framework. The EU, CANADA, and the IIFB supported the proposed topic. SOUTH AFRICA proposed preambular language on recognizing the important contribution of traditional knowledge to the CBD objectives and achievement of the SDGs, and proposed "cultural diplomacy" as an alternative topic, noting that it focuses on the notion of national cultures, fostering a greater understanding of traditional knowledge and providing innovative ways of engaging new partners. Acting Chair Cuauhtémoc Ochoa proposed informal consultations on the theme.

FRIENDS OF THE CHAIR GROUP ON FUTURE WORK

Delegates discussed ways and instruments for achieving the full integration of Article 8(j) and provisions related to IPLCs in the work of the Convention and its Protocols, with IPLCs' full

and effective participation and aiming at enhancing efficiencies, coherence and coordination. In a recommendation to the COP to consider the development of a new work programme, delegates agreed to clarify that this is a “fully integrated work programme on Article 8(j) within the post-2020 biodiversity framework” on the basis of achievements to date, “including the 2030 Agenda for Sustainable Development, the SDGs and the Paris Agreement,” in addition to gaps to be identified. Delegates agreed to inviting not only governments, IPLCs and international organizations, but also other biodiversity-related conventions to submit views on possible elements of a fully integrated work programme as part of the post-2020 biodiversity framework.

In an invitation for parties to gather experiences in implementing the Mo’otz Kuxtal Voluntary Guidelines, delegates accepted a broader approach to gather experiences in implementing “guidelines and standards related to Article 8(j) and related provisions at the national level” to consider the need for further work on these issues for the development of a fully integrated work programme.

In a request to the Secretariat to extend appropriate assistance that enables IPLCs to participate effectively in broader discussions and processes, including through regional consultations, regarding the post-2020 biodiversity framework, delegates agreed to add bracketed text on this being “subject to availability of resources,” so that future discussions on budget can take this request into consideration.

The IIFB drew attention to work that still needs to be done, also relating to specific CBD bodies such as SBSTTA and SBI; indicated that a permanent body could provide advice to different CBD bodies and the COP; and noted that both a permanent body and innovative participatory mechanisms for IPLC participation across the Convention’s bodies may be required. CANADA referred to its proposal of a hybrid approach, seeing value in both a continuing body with a longer-term mandate on Article 8(j) and related provisions, and enhanced participatory mechanisms that might help other CBD bodies. She called for an in-depth discussion of functions, roles, responsibilities and governance, and for a compilation of views and inputs. The EU reported that they are still considering the options, reiterating her proposed criteria, suggesting that they could assist in building a future structure, namely: continuity, building on the work of the Article 8(j) Working Group; IPLCs’ full and effective participation; focus on implementation of existing decisions and guidance; and efficiency and good use of resources. AUSTRALIA called for a robust process, information about costs and sufficient time to consider options, with NEW ZEALAND adding the need for time for national consultations. BRAZIL cautioned against prejudging decisions, including by determining criteria, and underscored the need to ensure IPLCs’ full participation and gather information about future tasks. SOUTH AFRICA noted the merit of having a specific structure for these discussions.

MEXICO proposed inviting sharing of experiences about integrating and incorporating work of IPLCs, including in other international processes, such as the UN Permanent Forum on Indigenous Issues (UNPFII), World Intellectual Property Organization (WIPO) and the UN Educational, Scientific and Cultural Organization (UNESCO). Supported by BOLIVIA and COLOMBIA, MEXICO suggested holding an online forum before

SBI 2. CANADA supported IPLC consultation before SBI 2 through a meeting. Pointing to previous COP decisions establishing the Article 8(j) Working Group and work programme, JAPAN indicated they did not foresee ending the Working Group. The Secretariat indicated if the Working Group was to continue, its terms of reference would have to be updated, whereas for a new body they would have to be developed. AUSTRALIA suggested looking at current models and governance arrangements. The EU, supported by CHINA, proposed drawing on experiences in integrating issues related to the Cartagena and Nagoya Protocols across the Convention. CHINA considered it premature to make a choice.

Delegates then considered a Co-Chairs’ proposal for the Working Group at its eleventh session to consider possible institutional arrangements and their *modus operandi*, including three options, namely to: establish a new subsidiary body to provide advice to the CBD COP and, subject to their approval, the Protocols COPs serving as the Meeting of Parties on matters relevant to IPLCs within the scope of the CBD; continue convening the Working Group; and address matters of direct relevance to IPLCs in existing subsidiary bodies, applying the enhanced participation mechanism of the Working Group. Delegates also considered requests to the Secretariat to: facilitate electronic consultations, inviting governments, IPLCs, international organizations and stakeholders to submit and exchange views on possible elements of a work programme as part of the post-2020 framework, as well as possible institutional arrangements and their *modus operandi*. Discussions continued into the night.

IN THE CORRIDORS

After six years of deliberations, a sense of satisfaction and relief was palpable in the Working Group on Article 8(j), when the Rutzolijirisaxik voluntary guidelines for the repatriation of traditional knowledge were agreed upon, following work done in a contact group on Thursday evening. A delegate remarked that the rich document “allows for a broad understanding and recognition of the knowledge and practices of IPLCs, relevant to the conservation and sustainable use of biodiversity,” highlighting, in particular, the inclusion of a reference to users’ “special measures to address benefit-sharing” in cases of ongoing use of traditional knowledge.

Another participant, albeit still pleased with the result, was more cautious: “There is much work remaining to be done. Repatriating an item embodying traditional knowledge or information on it is good, as it can help revitalize traditional knowledge where it was originated. But the heart of the matter is the repatriation of ownership, control and rights over that knowledge.” He continued: “Benefit-sharing is great, no doubt about that, but it is still about a contract. We need to work towards the development of a better understanding of IPLCs’ aspirations and worldviews.”

ENB SUMMARY AND ANALYSIS: The *Earth Negotiations Bulletin* summary and analysis of the twenty-first meeting of the Subsidiary Body on Scientific, Technical and Technological Advice and the tenth meeting of the Article 8(j) Working Group will be available on Tuesday, 19 December 2017 at <http://enb.iisd.org/biodiv/sbstta21-wg8j10/>