



WORKING GROUP ON ARTICLE 8(J) HIGHLIGHTS THURSDAY, 7 FEBRUARY 2002

Delegates to the second meeting of the *Ad Hoc* Open-ended Intersessional Working Group on Article 8(j) and Related Provisions of the Convention on Biological Diversity (CBD) met throughout the day in two sub-working groups. Sub-Working Group I (SWG-I) considered conference room papers (CRP) on draft recommendations for cultural, environmental and social impact assessments, and on the outline of the composite report on status and trends. Sub-Working Group II (SWG-II), which also met in an evening session, addressed CRPs on participatory mechanisms and an assessment of existing instruments, particularly those related to intellectual property rights (IPR).

SUB-WORKING GROUP I

IMPACT ASSESSMENTS: SWG-I Co-Chair John Herity (Canada) introduced a revised Chair's text (UNEP/CBD/WG8J/2/SWG-I/CRP.1/Rev.2). The INTERNATIONAL INDIGENOUS FORUM ON BIODIVERSITY (IIFB) reiterated its concern that the guidelines had been reduced to principles or recommendations. Regarding the Preamble, delegates debated whether the COP should adopt or endorse the recommendation.

Delegates supported NORWAY's proposal to encourage Parties to have regard for these recommendations until the finalization of the guidelines. The IIFB stressed the importance of assessing cultural, social and socioeconomic impacts. The IIFB, supported by NORWAY and the EU, and opposed by ARGENTINA and BRAZIL, recommended that the Secretariat continue developing the recommendations and that they be kept within the Working Group's mandate rather than be transferred to SBSTTA. The EU proposed that the Working Group's third meeting should reconsider provisions for conducting impact assessments to supplement SBSTTA's guidelines, especially with regard to procedures and institutions. The SHUSWAP NATION stressed the need to deal with substantive issues and noted the indigenous peoples' reliance on the international community to defend their rights. Regarding the role of international funding and development agencies in facilitating the incorporation of the recommendations into impact assessment policies, FIJI, supported by the IIFB, added reference to developing and least developed countries, emphasizing small island States.

The contact group chair introduced the Annex containing the draft recommendations. Regarding the assessment of development proposals for potential impacts of alien invasive species and genetically modified organisms (GMOs), SWEDEN, supported by ETHIOPIA, TUNISIA, ARGENTINA and MEXICO preferred reference to living modified organisms (LMOs) over GMOs, and proposed reference to relevant international law. ETHIOPIA added a reference to biosafety. TUNISIA agreed but cautioned that some countries lack mechanisms for controlling GMOs. MEXICO referred to possible cultural and social impacts upon the indigenous and local communities' customary practices, including food and medicine. ARGENTINA stated that reference to customary practices would go beyond the CBD's mandate and impede finalizing the draft. Delegates were unable to agree on text regarding LMOs and bracketed it for consideration by COP-6.

Under general provisions, SWEDEN, with amendments by LIBERIA and the IIFB, suggested that assessment procedures and development plans consider the inclusion of provisions regarding free and prior informed consent of indigenous and local communities. CANADA proposed deleting the text, and delegates agreed to forward the issue to COP-6. On the need to respect the human rights of indigenous and local communities, the EU, opposed by CANADA, urged the inclusion of environmental rights. CANADA proposed, and it was agreed, that all human rights, including social and cultural rights and any rights related to the environment be respected.

The CRP was then approved.

COMPOSITE REPORT ON STATUS AND

TRENDS: Co-Chair Herity reopened discussions on the Chair's revised outline of the composite report (UNEP/CBD/WG8J/2/SWG.I/CRP.2). FIJI proposed encouraging Parties to hold national workshops to ensure participation of indigenous and local communities in the report's completion. The EU proposed that the title specify that the report should examine status and trends regarding the knowledge, innovations and practices of indigenous and local communities "relevant to the conservation and sustainable use of biodiversity." Supported by CANADA, the EU also suggested that the report's information be used to support further advancement of the work programme on Article 8(j), rather than as a basis for identifying objectives and developing a framework for an action plan. The IIFB high-



lighted the need for respect for indigenous and local communities' "code of ethics/guidelines," which entails their permission and/or consent to enter the communities and conduct research.

Regarding possible topics for the report, CANADA opposed reference to the use of traditional knowledge to maintain customary practices for the management of biodiversity, while the IIFB requested its retention. Delegates agreed that the report would assess the feasibility of using traditional knowledge to maintain customary practices for the management, conservation and sustainable use of biodiversity. With respect to the relationship between biological, cultural and linguistic diversity, the IIFB recommended addressing the critical reduction in numbers of certain indigenous populations.

Regarding trends relating to the implementation of Article 8(j), the PHILIPPINES requested a reference to the effects of globalization. Delegates agreed to the EU's proposed deletion of text calling on the Global Environment Facility (GEF) to provide funding to Parties for preparation of national input to the report.

The CRP was then approved.

SUB-WORKING GROUP II

PARTICIPATORY MECHANISMS: SWG-II Co-Chair Linus Thomas (Grenada) introduced a revised draft text (UNEP/CBD/WG8J/2/SWG.II/CRP.1/Rev.1). Regarding the preparation and use of a synthesis report on participatory mechanisms, BRAZIL and ECUADOR proposed text recognizing the diversity of conditions and situations across States. The EU, with SENEGAL, requested that funding for indigenous participation at CBD meetings be explored for all geographic regions. On communication mechanisms, the IIFB proposed reference to the Indigenous Biodiversity Information Network.

CANADA proposed that the development, implementation and evaluation of strategies on awareness and access to information be done in cooperation with indigenous and local communities. Referring to language on the GEF, the EU noted that the COP should review and update its guidance in accordance with the Working Group's outputs. The GEF proposed amending language to refer to its policies on public involvement. Responding to an IIFB proposal on GEF funding in all geographic regions, the GEF noted that its eligibility criteria restrict support to developing countries only.

BRAZIL and CANADA proposed, and the IIFB opposed, that references to the preservation, maintenance and utilization of traditional knowledge be relevant to the conservation and sustainable use of biodiversity. Regarding language on supporting capacity building, INDIA suggested that communities receive the "legal dues" arising from their traditional knowledge, while INDONESIA proposed reference to recognition of rights. CANADA noted that addressing rights is beyond the Working Group's mandate. Regarding language on establishing participation mechanisms, BRAZIL proposed deleting reference to indigenous participation in the management of biodiversity, arguing that it is not included in Article 8(j), which BOLIVIA opposed. EL SALVADOR, supported by the DOMINICAN REPUBLIC, suggested using Article 8(j) language and proposed drafting another clause on management in the paragraph on capacity building. The IIFB cautioned against confining the group's mandate to Article 8(j), noting that it includes related CBD provisions. They also criticized the vagueness of the document and highlighted an earlier intervention by ECUADOR indicating that participation needs to be ensured through concrete recommendations and mechanisms.

Following extensive debate, delegates agreed on language promoting indigenous participation in the management of biodiversity, where those communities and governments deem appropriate, and encouraging the capacity-building efforts of those communities for

obtaining access to national and international legal protection regarding the preservation, maintenance and utilization of their traditional knowledge.

The CRP was approved as amended.

ASSESSMENT OF EXISTING INSTRUMENTS: SWG-II Co-Chair Thomas introduced a revised draft text (UNEP/CBD/WG8J/2/SWG.II/CRP.2/Rev.1). The EU proposed rephrasing preambular reference to the nature of traditional knowledge to denote its collective or other characteristics. NEW ZEALAND suggested reference to cultural considerations. TOGO, with others, proposed a preambular reference and recommendation regarding the African Model Law on the rights of local communities and the Organization for African Unity. Delegates agreed to a new reference to the review of the TRIPS Agreement, particularly Article 27.3(b).

Delegates debated preambular references suggested by CANADA on unauthorized access, use and control of traditional knowledge at the community level and on indigenous participation in CBD implementation without reaching consensus. BRAZIL proposed deleting preambular references to complementarity between national and international measures and with WIPO.

On WIPO's activities, delegates agreed on inviting WIPO to explore mechanisms such as the disclosure of traditional knowledge in IPR applications. Regarding protection strategies, delegates debated a reference to customary law and finally agreed on strategies based on approaches with the full respect of customary law and practices.

Regarding the Working Group's activities on *sui generis* systems, ECUADOR, on behalf of GRULAC, proposed reverting to text from the original CRP, which omits reference to WIPO. The IIFB proposed reference to the relevant activities and conduct of researchers and academic institutions as a topic for case studies.

BRAZIL requested that the development of national and community registries or databases be subject to national legislation. Regarding provision of technical and financial assistance, the IIFB suggested, and the US amended, community capacity building to develop protection strategies and systems. Delegates debated language that organizations responsible for IPR instruments be invited to develop a protection framework, particularly referencing prior art and patent applications. Discussion centered around the role of WIPO, the WTO and the CBD, as well as the principle of fair and equitable benefit-sharing. At the suggestion of the IIFB, CANADA and PERU the recommendation was deleted.

INDONESIA, with CUBA, reintroduced a recommendation on dispute settlement or arbitration procedures, which was agreed upon with reference to the application of CBD Article 27 (Settlement of Disputes). PERU requested that WIPO forward relevant documents to the CBD Executive Secretary as background information for future meetings of the Working Group.

The CRP was then approved.

IN THE CORRIDORS

The bracketing of text on prior informed consent in the discussions on impact assessments had some delegates harking back to similar deferrals of contentious text on terminology and "derivatives and products thereof" in the Bonn meeting of the Working Group on Access and Benefit-sharing. While the time constraints and mandates of the CBD's subsidiary groups are valid, numerous delegates fear that COP-6 will be hard pressed to resolve such contentious issues given an overloaded agenda with over 15 substantive items.

THINGS TO LOOK FOR TODAY

PLENARY: Plenary will convene at 10:00 am in the Assembly Hall to consider other matters, and adopt the results of the sub-working groups and the meeting's report.