

WORKING GROUP ON ARTICLE 8(J)

HIGHLIGHTS:

WEDNESDAY, 17 OCTOBER 2007

On Wednesday, delegates convened in two sub-working groups (SWGs) in morning and evening sessions. Plenary convened in the afternoon to review progress and consider draft recommendations on cooperation with the UN Permanent Forum on Indigenous Issues (UNPFII) and on progress on the CBD work programme on Article 8(j).

Before the meeting, delegates observed a minute of silence to acknowledge the UN International Day for the Eradication of Poverty. SWG I addressed an international regime on access and benefit-sharing (ABS). SWG II considered indicators for assessing progress towards the 2010 target with regard to traditional knowledge (TK); and draft decisions on mechanisms for participation, *sui generis* systems and an ethical code of conduct for TK protection.

SUB-WORKING GROUP I

INTERNATIONAL ABS REGIME: SWG I Co-Chair Stewart invited discussion on an informal compilation of proposals on an international ABS regime. BRAZIL, AUSTRALIA, CANADA, MALAYSIA and others expressed concern that the document did not capture all proposals presented on Tuesday and asked for its revision. Discussions continued nonetheless, with CANADA proposing developing guidelines on access to genetic resources and TK, and benefit-sharing, as an element of an international ABS regime, which would outline user responsibilities. The EU proposed establishing a technical expert group to consider, *inter alia*, the ethical code of conduct and the integration of TK into an international certificate of compliance. COLOMBIA highlighted the need for intersessional work to feed into the ABS WG. The INTERNATIONAL INDIGENOUS FORUM ON BIODIVERSITY (IIFB) underscored the inextricable nature of TK and genetic resources, and the requirement of indigenous PIC.

In the afternoon, Co-Chair Stewart introduced a revised compilation of proposals. In line with BRAZIL, Uganda, for the AFRICAN GROUP: noted that the guidelines should be legally binding and that benefit-sharing can contribute to poverty

alleviation; questioned the value of the Bonn Guidelines; and underlined the importance of regional and sub-regional workshops.

Noting the Bonn Guidelines' ineffectiveness, Malaysia, for the LMMC, called for an effective system to protect against misappropriation of genetic resources and TK. Suggesting that it is too early to decide upon the main elements of a regime, the EU favored outlining the process to identify elements, with NEW ZEALAND proposing the formation of an expert group in that regard.

CANADA, supported by the IIFB, highlighted the importance of capacity building for indigenous communities on PIC and MAT. BRAZIL, supported by the AFRICAN GROUP and the LMMC, underscored that the Article 8(j) WG's mandate is to provide input to the ABS WG. GRULAC stressed the need for technology transfer.

Co-Chair Stewart adjourned the session, encouraging informal consultations, including on the format of input to be provided, as suggested by AUSTRALIA. Discussions will resume on Thursday.

SUB-WORKING GROUP II

INDICATORS: SWG II Co-Chair Retter introduced documents relating to TK indicators for assessing progress towards the 2010 target (UNEP/CBD/WG8J/8 and INF/1, INF/1/Add.1 and INF/2). The IIFB Working Group on Indicators reported on regional consultations and the international expert seminar on indicators, the recommendations of which are contained in UNEP/CBD/WG8J/8 Annex 1. Participants welcomed these examples of effective cooperation between indigenous peoples and governments. The PHILIPPINES, ARGENTINA and COLOMBIA supported adopting the indicator list as a basis for future work.

The EU requested inclusion of a reference to Decision VIII/15 (Framework for the achievement of the 2010 target and integration of targets in thematic work programmes) and opposed the inclusion of indicators not already listed in this decision. The EU, BRAZIL and THAILAND noted that the focus should be on a number of practical and meaningful indicators, opposing inclusion of indicators that did not fall within the mandate of the Article 8(j) WG. CANADA and AUSTRALIA rejected the indicator list, but expressed their interest in developing indicators in accordance with Decision VIII/15.

NORWAY, supported by NEW ZEALAND and RWANDA, suggested adding a maximum of two indicators to the headline indicators already elaborated, with RWANDA noting the need to consult parties and stakeholders. NEW ZEALAND proposed devising indicators on the basis of relevance to the CBD and wider application.

The ASIAN INDIGENOUS CAUCUS supported convening additional technical workshops, opposed by the AFRICAN GROUP and COLOMBIA who noted their futility. KENYA preferred testing the suggested indicators. TANZANIA proposed an additional indicator regarding sectoral legislation on TK protection. The RUSSIAN INDIGENOUS CAUCUS suggested taking into account relevant work by the Arctic Council. The INDIGENOUS YOUTH CAUCUS called for an indicator on demographic trends. The PACIFIC INDIGENOUS PEOPLES CAUCUS prioritized indicators relating to: indigenous rights such as PIC; the percentage of traditional territories available for and used to sustain livelihoods; wellbeing of indigenous communities; and environmental restoration.

A revised draft recommendation will be prepared.

MECHANISMS FOR PARTICIPATION: SWG II Co-Chair Breier tabled the revised draft recommendation on participatory mechanisms (UNEP/CBD/WG8J/5/SWG.2/CRP.1). The EU and CANADA opposed annexing the recommendations of the workshop on capacity-building in Latin America and the Caribbean to the draft recommendation. NEW ZEALAND suggested, and delegates agreed, to simply welcome the convening of the workshop.

On alternative means of communication, the EU and CANADA, opposed by LESOTHO and MEXICO, proposed to refer to communication “in consultation with” rather than “with the support of” the Executive Secretary. Delegates agreed to refer to “as appropriate in collaboration with the Executive Secretary”. The AFRICAN GROUP, supported by many, asked for a specific reference to women and youth.

In response to a cost estimate for translation needs presented by the Secretariat, NEW ZEALAND proposed deleting a paragraph on consideration of translation costs in the CBD’s core budget, raising funding and procedural concerns. NORWAY and the EU asked to retain the paragraph for consideration by the COP’s budget group and SWG II Co-Chair Breier suggested a general reference to the need for translation.

NEW ZEALAND requested to clarify throughout the text that the focus was on TK related to conservation and sustainable use. BRAZIL asked for references to community-friendly public information tools instead of web-based technologies and also to refer to mail and not just to the TK Information Portal. NEW ZEALAND and NORWAY asked that parties be included in consultations with indigenous and local communities regarding the TK Information Portal.

A revised draft recommendation will be prepared.

ETHICAL CODE OF CONDUCT: Delegates discussed an informal compilation of proposals on elements of an ethical code of conduct to promote respect for the cultural and intellectual heritage of indigenous and local communities. The EU, BRAZIL and the CIBN underlined that the code should not be limited to research but comprise all interactions with indigenous and local communities, with the EU favoring language expressing the voluntary nature of the code.

CANADA suggested deleting a section on rationale, expressing difficulties with the use of references to “lands and waters traditionally owned.” The AFRICAN GROUP and the CIBN opposed, and CANADA suggested alternative language: “lands and territories that indigenous and local communities

possess/hold by reason of traditional ownership or other traditional occupation or use as well as those which they have otherwise acquired.”

SUI GENERIS SYSTEMS: SWG II Co-Chair Breier opened discussions on the development of *sui generis* systems for TK protection (UNEP/CBD/WG8J/5/SWG.2/CRP.2). NEW ZEALAND suggested to “note” rather than “endorse” draft elements for *sui generis* systems. Malaysia, for the LMMC and GRULAC, proposed to “take them into account” and further recognize that they provide a useful basis for parties and governments for developing *sui generis* systems.

NEW ZEALAND expressed concerns regarding references to indigenous PIC and customary law and suggested to revert to wording from Decision VIII/5 (Traditional Knowledge) urging the development, adoption and/or recognition of national and local *sui generis* models for TK protection.

Regarding the use of the elements in the development of guidelines to support *sui generis* systems, the LMMC and GRULAC, suggested to invite further submissions on the effective implementation of PIC and MAT relevant to TK and to request the Executive Secretary to compile and analyze these submissions for consideration by Article 8(j) WG 6.

Discussion of this item will continue on Thursday.

PLENARY

PROGRESS ON THE ARTICLE 8(J) WORK

PROGRAMME: Chair Coimbra invited general comments on a draft recommendation on the progress report on the implementation of the Article 8(j) work programme (UNEP/CBD/WG8J/CRP.1). The EU, AUSTRALIA and CANADA, noted that the implementation of several aspects of the draft recommendation would be contingent on the outcomes of discussions on an international ABS regime, the draft ethical code of conduct, and elements of *sui generis* systems. BRAZIL and MALAWI supported the draft text and proposed amendments. NEW ZEALAND drew attention to its earlier proposals on limiting reporting requests to the Secretariat and mainstreaming new activities with parties’ existing reporting obligations.

RECOMMENDATIONS OF THE UNPFII: On draft recommendations of the UNPFII (UNEP/CBD/WG8J/5/CRP.2), AUSTRALIA proposed deleting two paragraphs on TK, noting that these should be discussed elsewhere. In a paragraph on the role of indigenous issues in the International Year of Biodiversity, the EU requested adding that it should relate to international exchange and awareness raising, and CANADA added that it should be under the guidance of the CBD COP Bureau. NEW ZEALAND delivered a statement setting out its reasons for opposing UNDRIP.

IN THE CORRIDORS

In a day marked by confusion about how to pursue issues in the sub-working groups, a number of delegates expressed bewilderment about the latest turn of events, threatening to diminish substantive progress made to date on issues such as *sui generis* systems and the ethical code of conduct. While one delegate described the day as a “flat spin,” another complained of “too much talking about what to talk about.” Another delegate expressed concern that one signal sent out today may be that the Article 8(j) WG’s role might be downgraded to merely providing inputs to the ABS WG rather than producing broader outputs on TK. Responding to whether the agenda of the WG is progressing, one delegate joked “we don’t know where we are going, but we’re on our way.”