



HIGHLIGHTS OF THE WORKING GROUP ON ARTICLE 8(J) TUESDAY, 28 MARCH 2000

Delegates to the Working Group on Article 8(j) met during the morning in a brief Plenary session to hear the results of the Bureau meeting, and then adjourned for Sub-Working Group discussions. Sub-Working Group I (SWG-I) addressed Agenda Item 3 on the application and development of legal and other forms of protection for traditional knowledge during morning and afternoon sessions. Sub-Working Group II (SWG-II) addressed specific programme elements of Agenda Item 5 on development of the work programme.

PLENARY

Delegates met in a brief Plenary to hear proposals of the Bureau meeting. Chair Juan Luis Muriel (Spain) announced that SWG-I would be chaired by Damaso Luna (Mexico) and Antonio Jacanamijoy (COICA) and SWG-II would be chaired by John Herity (Canada) and Aroha Mead (Te Puni Kokiri). The Plenary agreed that Soumayila Bance (Burkina Faso) would be the meeting's rapporteur.

SUB-WORKING GROUP I

Co-Chair Luna asked the Secretariat to introduce the background document on Agenda Item 7 on legal and other appropriate forms of protection for traditional knowledge (UNEP/CBD/WG8J/1/2).

BOLIVIA, CANADA, CHAD, FIJI, FRANCE, HAITI, INDIA, NEW ZEALAND, SURINAME, the US and the COMISIÓN JURIDICA PARA EL AUTODESARROLLO DE LOS PUEBLOS ORIGINARIOS ANDINES (COMISIÓN JURIDICA) supported a recommendation on the need for case studies to enable a meaningful assessment of existing forms of protection. JAMAICA and the AUSTRALIAN INDIGENOUS DELEGATION stated that the case studies should be developed with indigenous and local communities, and MAURITANIA stressed that the assessment should be participatory. BOLIVIA, CANADA, CHAD, HAITI, INDIA, NEW ZEALAND, SURINAME, the US and the COMISIÓN JURIDICA supported a recommendation on a review of activities under the UN and other intergovernmental bodies to help identify areas of synergy and coordination. NAMIBIA encouraged coordination and networking to avoid duplication.

BOLIVIA, CHAD, SURINAME and the COMISIÓN JURIDICA supported a recommendation to create a task force to coordinate and harmonize activities for the implementation of Article 8(j). HAITI, INDIA, JAMAICA and NEW ZEALAND stressed the need for a better defined mandate and terms of reference. FRANCE said assessments should be carried out prior to

creating a task force. CANADA and the US stated development of a task force would be premature, and the US noted that it should not try to harmonize all activities. The AUSTRALIAN INDIGENOUS DELEGATION and the NATIONAL INDIGENOUS ORGANIZATION OF COLOMBIA stated that the task force should include indigenous and local community representatives. ETHIOPIA stated that the task force should go beyond coordination and harmonization of processes.

BOLIVIA, CHAD, INDIA and the COMISIÓN JURIDICA supported a recommendation inviting governments to develop national legislation, including *sui generis* systems. The PACOS TRUST said that effective consultation with local and indigenous communities is an important prerequisite for the implementation of national policies. The ASIAN INDIGENOUS TRIBAL NETWORK called for assessment of the recognition of customary laws under national legislation.

SPAIN supported development of *sui generis* systems, and BOLIVIA stressed the need to specifically identify the important features of these systems. The COLOMBIAN INDIGENOUS MOVEMENT and TEBTEBBA stressed that effective *sui generis* systems require recognition of indigenous and local community rights over their resources and knowledge. The FEDERATION OF AMERINDIAN ORGANIZATIONS OF GUYANA said that *sui generis* systems should be integrated into national-level legal mechanisms, and, with the AUSTRALIAN INDIGENOUS DELEGATION, stressed their integration with customary law. COICA called for international guidelines to include, *inter alia*: the right to self-determination; strategies addressing the impacts on and threats to traditional knowledge; effective participation in decision-making; and registration mechanisms. INDIA called for examination of how geographic indications could be applied to traditional knowledge. NEW ZEALAND stressed that guidelines should be non-binding. JAMAICA supported the development of national guidelines especially for developing countries required to conform to the TRIPs agreement's obligations by the end of 2000. DENMARK noted a legal vacuum between international IPR systems and Article 8(j). ETHIOPIA and TEBTEBBA stated that the TRIPs agreement undermines the protection of traditional knowledge. TEBTEBBA also noted that the agreement compromises national and local sovereignty over natural resources.

The COMISIÓN JURIDICA and the NATIONAL INDIGENOUS ORGANIZATION OF COLOMBIA stressed that territorial rights are a prerequisite for effective protection of traditional knowledge. DENMARK called for disclosure of the origin of genetic resources and traditional knowledge used for inventions. DENMARK, the CRUCIBLE GROUP and the INTERNATIONAL ALLIANCE OF INDIGENOUS PEOPLES OF TROPICAL FORESTS (INTERNATIONAL ALLIANCE) highlighted the importance of prior informed consent.

This issue of the *Earth Negotiations Bulletin* © <enb@iisd.org> is written and edited by Stas Burgiel <stas@iisd.org>, Michael Davis <mdavis@pcug.org.au>, Wendy Jackson <wendy@iisd.org> and Jessica Suplie <jsuplie@iisd.org>. The Digital Editor is David Fernau <david@iisd.org>. The Editor is Pamela S. Chasek, Ph.D. <pam@iisd.org> and the Managing Editor is Langston James Goree VI <kimo@iisd.org>. The Sustaining Donors of the *Bulletin* are The Netherlands Ministry of Foreign Affairs, the Government of Canada (through CIDA and DFAIT), the United States (through USAID), the Swiss Agency for Environment, Forests and Landscape (SAEFL), the United Kingdom Department for International Development (DFID) and the European Commission (DG-ENV). General Support for the *Bulletin* during 2000 is provided by the German Federal Ministry of Environment (BMU) and the German Federal Ministry of Development Cooperation (BMZ), the Danish Ministry of Foreign Affairs, the Ministry of Environment of Austria, the Ministries of Foreign Affairs and Environment of Norway, the Ministry of Foreign Affairs and Ministry of Environment of Finland, the Government of Sweden, the Government of Australia, the United Nations Development Programme (UNDP), the Global Environment Facility (GEF) and BP Amoco. Specific funding for this meeting was provided by the Ministry of the Environment of Spain, and the Canadian Department of Foreign Affairs and International Trade (DFAIT) and Environment Canada. The *Bulletin* can be contacted by e-mail at <enb@iisd.org> and at tel: +1-212-644-0204; fax: +1-212-644-0206. IISD can be contacted by e-mail at <info@iisd.ca> and at 161 Portage Avenue East, 6th Floor, Winnipeg, Manitoba R3B 0Y4, Canada. The opinions expressed in the *Earth Negotiations Bulletin* are those of the authors and do not necessarily reflect the views of IISD and other funders. Excerpts from the *Earth Negotiations Bulletin* may be used in non-commercial publications only and only with appropriate academic citation. For permission to use this material in commercial publications, contact the Managing Editor. Electronic versions of the *Bulletin* are sent to e-mail distribution lists and can be found on the Linkages WWW server at <http://www.iisd.ca/linkages/>. The satellite image was taken above Sevilla ©2000 The Living Earth, Inc. <http://livingearth.com>. For information on the *Earth Negotiations Bulletin*, send e-mail to <enb@iisd.org>.



SPAIN, the ASIAN INDIGENOUS TRIBAL NETWORK and the INTERNATIONAL ALLIANCE stressed recognition of collective property rights. ETHIOPIA, the COLOMBIAN INDIGENOUS MOVEMENT, the INTERNATIONAL INDIAN TREATY COUNCIL, KAMAN PASURAN and the NATIONAL INDIGENOUS ORGANIZATION OF COLOMBIA called for a moratorium on bioprospecting until effective protection systems have been implemented.

The MESO-AMERICAN PROGRAMME ON INDIGENOUS KNOWLEDGE recommended establishing mechanisms for access to *ex situ* collections. HAITI and SPAIN encouraged the establishment of national registries for traditional knowledge. Regarding the work programme, CANADA stressed the need to prioritize tasks, assess associated requirements and adopt a phased approach to address issues sequentially. The CRUCIBLE GROUP called for an ombudsman within WIPO and the UN system to address queries of indigenous and local communities. WIPO gave a brief overview of its recent work to identify and explore the needs of the holders of traditional knowledge. ETHIOPIA and the FAO drew attention to the review of the International Undertaking on Plant Genetic Resources and the relevance of farmers' rights.

Co-Chair Muriel stated that he would develop a Co-Chair's text of recommendations, including a list of concerns expressed by indigenous and local community representatives. The Secretariat then introduced the background documents for Agenda Item 5 on the development of the work programme (UNEP/CBD/WG8J/1/3 and Inf.1) and its programme elements on participatory mechanisms, equitable benefit-sharing and legal elements. SWG-I then adjourned.

SUB-WORKING GROUP II

At Co-Chair Herity's request, the Secretariat introduced the background document for Agenda Item 5 on the development of the programme of work (UNEP/CBD/WG8J/1/3) and programme elements on status and trends, traditional cultural practices for conservation and sustainable use, exchange and dissemination of information, and monitoring. Co-Chair Herity stated a text would be produced on each of the elements following its discussion.

NORWAY noted potential financing difficulties, and supported by ARGENTINA, BRAZIL, BURKINA FASO, CANADA, ECUADOR, INDIA, ITALY, NEW ZEALAND, NIGER, PERU, the RUSSIAN FEDERATION, SENEGAL, the UNITED KINGDOM and the US, suggested prioritizing elements of the work programme. NORWAY proposed inclusion of capacity-building, land-use, a legal framework, and the development of guidelines. MALAWI, supported by CAMEROON, GUINEA and MEXICO noted that countries' priorities may differ. ECUADOR stated that recommendations should be based on Plenary discussions.

BURKINA FASO underscored the importance of taking an inventory of traditional knowledge before it is lost. CANADA, supported by the TULATIP representative, pointed out the inconsistency between the Western worldview of property and indigenous worldviews of cooperation and respect for community as a collective, noting that few knowledge-holders had been consulted prior to the Working Group. SENEGAL emphasized that some traditional knowledge is banned from dissemination or purchase, and stated that communities have not been repaid for knowledge already taken. The TULATIP representative noted the need to understand the vision of the programme of work before establishing objectives.

The CANADIAN INDIGENOUS CAUCUS proposed conducting a gap analysis for capacity-building and suggested that discussion of information dissemination include media other than the Internet. ITALY suggested using radio for information dissemination given the oral tradition among indigenous groups. MADAGASCAR encouraged networking among indigenous peoples to

facilitate information dissemination regarding protection of traditional knowledge. MALAWI proposed the creation of guidelines to enhance communication between governments and indigenous peoples and better communication channels for indigenous peoples. SOLAGRAL-IUCN recommended that information registers remain the property of those who provide the knowledge. ARIPA, supported by the RUSSIAN FEDERATION, proposed establishing a system for exchange of indigenous information under the CBD and said monolingual regions that lack Internet access require information systems developed by indigenous and local communities. MEXICO noted the need for greater incentives to ensure cooperation and to strengthen communication in indigenous and local communities. ARGENTINA questioned the utility of a database. PERU stated that capacity-building needs should be identified with technical support from governments, before they can be addressed. The US called for the analysis of information by indigenous peoples.

NEW ZEALAND proposed merging overlapping tasks. FRANCE said that the tasks are too vague, called for a more realistic work programme and cautioned against duplicating the work of the COP and SBSTTA. BRAZIL advocated focusing the programme of work according to regional and national legislation. The RUSSIAN FEDERATION highlighted work carried out in the Arctic Council. PERU, supported by NORWAY and CANADA, drew attention to gender issues. WIPO noted its fact-finding mission on the protection of traditional knowledge. The CANADIAN INDIGENOUS CAUCUS noted that WIPO had not obtained sufficient input from indigenous peoples and questioned the accuracy of this report. INDIA highlighted a biodiversity registry system organized by an Indian NGO. The RUSSIAN ASSOCIATION OF INDIGENOUS PEOPLES OF THE NORTH noted the paternalistic attitude toward indigenous groups taken in some consultations. SAMOA called for specific reference to funding for environment management. NORWAY suggested that a distinction be made between reports and guidelines, because guidelines are not obligatory.

The MESO-AMERICAN PROGRAMME ON INDIGENOUS KNOWLEDGE suggested a new element based on: indigenous peoples' declarations, including, *inter alia*, the Kari Oca Declaration, the Mataatua Declaration, the Santa Cruz Declaration, and the Leticia Declaration and Plan of Action; and synergies, conflicts and gaps between the CBD, international treaties, agreements and policies administered by UN bodies and other international organizations, including, *inter alia*, FAO, UNESCO, WIPO and the WTO.

IN THE CORRIDORS

Discussions in the Sub-Working Groups brought out what could be the biggest gap to bridge during the meeting: differences in world visions. Debates in both groups highlighted the tension between an intellectual property system based on economic underpinnings and traditional knowledge systems based on sociocultural and spiritual grounds. One participant declared that for the CBD to move forward it would have to finally and explicitly address this tension between economic rights and cultural rights.

THINGS TO LOOK FOR TODAY

PLENARY: Plenary will meet briefly at 10:00 am to hear reports of the Sub-Working Groups.

SUB-WORKING GROUP I: SWG-I will meet after the Plenary to discuss work programme elements on participatory mechanisms, equitable benefit-sharing and legal elements.

SUB-WORKING GROUP II: SWG-II will meet after the Plenary to continue discussing work programme elements on status and trends and traditional cultural practices.