



WORKING GROUP ON ARTICLE 8(J) HIGHLIGHTS TUESDAY, 5 FEBRUARY 2002

Delegates to the second meeting of the *Ad Hoc* Open-ended Inter-Sessional 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 the outline of the composite report on status and trends, and began discussing guidelines for impact assessments. Sub-Working Group II (SWG-II) concluded initial discussion on the effectiveness of existing instruments, particularly regarding intellectual property rights (IPR), and on participatory mechanisms for indigenous and local communities.

SUB-WORKING GROUP I

COMPOSITE REPORT ON STATUS AND TRENDS:

BRAZIL and SPAIN, on behalf of the EUROPEAN UNION (EU), cautioned against using confidential knowledge in the compilation of the report. The EU suggested the report declare its use of traditional knowledge. The GEF expressed concern about setting a precedent for using GEF funding for such studies and the burden this would place on funding resources. Representatives of the INTERNATIONAL INDIGENOUS FORUM ON BIODIVERSITY (IIFB) commented that the document was prepared with a top-down approach, stressed the importance of including more indigenous perspectives, suggested mechanisms to ensure indigenous participation, sought an examination of the impact of organized religion on traditional knowledge, and highlighted the importance of empowering indigenous communities. They noted that many governments give priority to multinational companies, neglecting their commitments under Article 8(j), and suggested regional workshops organized by indigenous peoples to provide input into the report.

Regarding the report's outline, the EU proposed reference to conservation and sustainable use of biodiversity in the title, and called for geographic and cultural balance to ensure appreciation of regional differences. Regarding terms of reference, the EU suggested a consultative or advisory group, including indigenous representatives. ARGENTINA called for more discussion and clarification of globalization and its impacts. The contact group on the definition of indigenous and local communities identified the need for a glossary of terminology.

SWG-I Co-Chair John Herity (Canada) indicated that he would develop draft text for further consideration.

GUIDELINES FOR IMPACT ASSESSMENTS: The Secretariat introduced documents UNEP/CBD/WG8J/2/6 and Add.1. Several delegates called for harmonization with SBSTTA's work on assessments. Noting problems with the document's length and complexity, several delegates called for a more practical document to facilitate implementation. The US suggested that recommendations might be more useful than guidelines. CANADA expressed concern that the guidelines are prescriptive, and proposed a principle-based approach that sets out goals, which are voluntary, flexible and implementable according to national circumstances. SWEDEN called for prioritization of the salient aspects relevant to traditional knowledge. The EU recommended that the guidelines focus on cultural, social and environmental impact assessments in a more unified way.

The US noted the need to clarify the relationship between these guidelines and those of the World Bank. The IIFB suggested that the World Bank's guidelines not be used as they are based on a different approach. IIFB delegates also pointed to the importance of prior informed consent; noted that existing impact assessment processes do not adequately address the loss of traditional knowledge; highlighted the impact of imposed development models on indigenous communities; and suggested language that better reflects indigenous peoples' views. NEW ZEALAND called for a preventive approach, noting the difficulty of redressing damages and, with ETHIOPIA, commented that the draft guidelines overlook development activities on lands adjacent to sacred sites. ETHIOPIA noted that the guidelines do not address the community trust fund's establishment, distribution of funds to the community, or monitoring its effectiveness.

The EC stressed the need for balance among social, cultural and environmental priorities, noting that projects that are good for the environment are not necessarily good for society and culture. DENMARK suggested that non-scientific approaches not be precluded. CUBA addressed the cultural aspects of impact assessments, and called for standardized procedures to guarantee transparency. FIJI stressed capacity building for increasing indigenous participation, highlighted the special needs of small islands and, with the PHILIPPINES, called for a holistic approach to cultural, environmental and social impact assessments.

ECUADOR called for the use of indicators for conservation, sustainable use and development, and for a plurality of legal regimes to protect indigenous rights. BRAZIL emphasized the need for public

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participation. COLOMBIA noted that indigenous participation may not be necessary in every assessment phase. The NESKONLITH BAND stressed that the recognition of indigenous land rights is necessary for preserving traditional knowledge.

Co-Chair Herity noted that he would develop a draft text for further consideration.

SUB-WORKING GROUP II

ASSESSMENT OF EXISTING INSTRUMENTS: Several delegates supported the work of WIPO, and the EU proposed that the Working Group cooperate with WIPO in its work on *sui generis* systems. ECUADOR with several Latin American countries argued that the Working Group should generate such guidelines. NAMIBIA called for case studies on regionally harmonized *sui generis* systems. Delegates also highlighted potential input from UNESCO, UNCTAD, UN human rights bodies, the World Health Organization, the Organization of African Unity and the Third World Network. The TEBT-EBBA FOUNDATION said that trade-related fora are not appropriate for protecting indigenous interests. The INDIGENOUS PEOPLES' BIODIVERSITY NETWORK (IPBN) and IIFB stated that existing local systems of handling innovations should be used in the development of any protection system.

Several delegates objected to the development of an international database, which INDIA supported. Many delegates instead encouraged their development at the local or national level. Several delegates highlighted the need to build appropriate capacity. IPBN stressed that databases should be under local control and based on local models. The US and UNCTAD noted that databases at any level should address issues of access, security and the legal status of information. PERU and YORK UNIVERSITY stressed that no traditional knowledge should be registered without the prior informed consent of indigenous communities. The TULALIP TRIBE highlighted work on a database involving categories of confidential and publicly available information.

Regarding the establishment of a notification system, ARGENTINA, on behalf of GRULAC, noted that WIPO and the WTO already require submissions on national legislation, and, with the EU, suggested establishing links through the Clearing-House Mechanism (CHM). ST. LUCIA, on behalf of Caribbean Small Islands States, requested support for public education, awareness-raising, inventories and documentation, noting that loss of traditional knowledge is especially rapid on small land areas. EL SALVADOR noted that pilot projects should concentrate on new mechanisms, not existing ones. FRANCE proposed examining the conflict between common and customary law. INDONESIA proposed facilitating cooperation between industry and indigenous and local communities. UNCTAD suggested that the economic viability of indigenous communities is a means of protecting traditional knowledge, and further noted the need to exchange experiences on best practices. IPBN prioritized information exchange among indigenous organizations.

IIFB representatives noted that protection of traditional knowledge is intrinsically linked with indigenous rights to self-determination, land and territories; rejected patents as a form of protection; and called for a separate international mechanism for the protection of traditional knowledge. The UNIVERSITY OF SASKATCHEWAN called for guidelines on the repatriation of traditional knowledge.

SWG-II Co-Chair Linus Thomas (Grenada) noted that he would develop a draft recommendation for further consideration.

PARTICIPATORY MECHANISMS: The Secretariat introduced document UNEP/CBD/WG8J/2/4. On effective involvement in decision making regarding use of traditional knowledge, SENEGAL drew attention to lack of resources for the participation of governments' and communities' representatives to international meetings. CANADA

noted that one set of guidelines could not satisfy the interests of many indigenous cultures; cautioned against discussing land and human rights issues currently addressed in other fora; and proposed changing language on the recognition of traditional systems of land tenure to research and documentation on such systems with incorporation into national legislation as appropriate. BRAZIL requested references to competent national authorities' participation.

The ST' AT' IMC CHIEFS COUNCIL stressed the lack of information and of proper mechanisms for true participation of indigenous peoples in CBD negotiations. He added that for the CBD to succeed, indigenous peoples' land title and rights must be recognized. The INTERNATIONAL SUPPORT CENTRE FOR SUSTAINABLE TOURISM called for indigenous participation in drafting guidelines on tourism, highlighting the risks that tourism poses to biological and cultural diversity, and to the protection of indigenous peoples' rights.

Regarding the recommendations, the EU proposed: reference to women's knowledge; capacity building for developing guidelines on participatory mechanisms and participation in relevant decision-making processes; and identification of an indigenous focal point for the CHM. CANADA, with BOLIVIA and BRAZIL, opposed developing guidelines for participatory mechanisms, and instead suggested soliciting model examples.

Regarding national mechanisms to ensure stakeholder participation, NEW ZEALAND opposed reference to stakeholders and TUNISIA suggested indigenous and local communities' participation instead. The IIFB noted that indigenous and local communities are holders of rights rather than simply stakeholders. ST. LUCIA noted that stakeholder analysis could enhance participation. Regarding the recommendation for a consultation process with Secretariats of other relevant environmental conventions, CANADA suggested that it be broadened to include other relevant bodies such as WIPO. BRAZIL and COLOMBIA suggested deleting the recommendation.

SENEGAL, with RWANDA, noted an information deficit in local communities and suggested that stakeholders be invited to establish communication strategies. NAMIBIA proposed submission of case studies regarding national experiences in ensuring participation. The US stressed the need for capacity-building efforts for indigenous participation at international meetings. The GEF offered to organize a workshop at a future meeting to train indigenous representatives on preparation of project proposals.

SWG-II Co-Chair Thomas noted that he would prepare a draft text for further consideration.

IN THE CORRIDORS

As the temperature dropped outside, delegates pondered whether this had a chilling effect on the discussions regarding participatory mechanisms, which finished early. Some indigenous representatives noted a contradiction between the historical difficulties of establishing effective and representative participation at the national level, and the rhetoric of such discussions within intergovernmental fora. On a broader scale, others were frustrated by the silence of some Parties, and the complete absence of others, concerned that those not present will attempt to dismantle any accomplishments achieved here during COP-6.

THINGS TO LOOK FOR TODAY

SUB-WORKING GROUP I: SWG-I will meet at 10:00 am in Assembly Hall 1 to discuss the draft text on impact assessments.

SUB-WORKING GROUP II: SWG-II will meet at 10:00 am in Assembly Hall 2 to review draft recommendations on participatory mechanisms and on the effectiveness of existing instruments.