



WORKING GROUP ON ARTICLE 8(J) HIGHLIGHTS WEDNESDAY, 6 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 a conference room paper (CRP) on draft principles for cultural, environmental and social impact assessments regarding developments on sacred sites or on lands occupied by indigenous and local communities, and a draft recommendation on the outline of the composite report on status and trends. Sub-Working Group II (SWG-II) addressed CRPs on participatory mechanisms and an assessment of existing instruments, particularly those related to intellectual property rights (IPR). Plenary met briefly in the afternoon to hear progress reports by the sub-working group co-chairs.

SUB-WORKING GROUP I

IMPACT ASSESSMENTS: SWG-I Co-Chair John Herity (Canada) introduced UNEP/CBD/WG8J/2/SWG.I/CRP.1 on draft principles for impact assessments. CANADA suggested adding text to clarify the document's purpose, scope, and voluntary nature. The INTERNATIONAL INDIGENOUS FORUM ON BIODIVERSITY (IIFB) and ETHIOPIA opposed reducing the guidelines to principles. TURKEY stated that the paper goes beyond the mandate of the Working Group, and, with BRAZIL and ARGENTINA, called for more balanced language taking into account the rights of States. ETHIOPIA noted that the principles fail to address the entire assessment procedure. NEW ZEALAND stressed the importance of extending the principles to include developments that occur in areas adjacent to sacred sites and traditionally occupied lands. BRAZIL sought more emphasis on the role of public entities and competent local authorities. The US requested language acknowledging that Parties are in different stages of policy development.

Regarding text on environmental impact assessments, COLOMBIA and MEXICO suggested, and the US opposed, adding reference to genetically modified organisms to language on alien species. COLOMBIA also recommended addressing synergistic impacts. FIJI suggested strengthening text on capacity building and LIBERIA proposed a cross-reference to a paragraph on indigenous and local communities' development of protocols. BRAZIL stated

that such protocols should be submitted to competent national authorities, and ARGENTINA expressed concern about the potential for creating independent jurisdictions within a State.

Regarding the precautionary principle, ARGENTINA reiterated concerns about its interpretation and delegates agreed to use language from the CBD preamble. BRAZIL, supported by MEXICO, opposed creating special mechanisms for dispute resolution, suggesting that disputes be resolved according to national legislation.

The IIFB sought wording to strengthen language on strategic impact assessment and participation by indigenous peoples; opposed changing "territories" to "areas"; expressed concern about the omission of text regarding monitoring by indigenous peoples; and identified the need to study the impact of development activities on food security and health. They also expressed concern about national development models imposed on their communities, and, with NEW ZEALAND, stressed that indigenous communities need a sense of ownership over the assessment process.

A contact group met in the evening to work on the chair's revised text (UNEP/CBD/WG8J/2/SWG.I/CRP.1/Rev.1) on draft recommendations for the conduct of cultural, environmental and social impact assessments.

COMPOSITE REPORT ON STATUS AND TRENDS: In the afternoon, delegates discussed a draft chair's text. Regarding the terms of reference for the consultant, the IIFB requested preference for an indigenous consultant; however, Co-Chair Herity noted that the UN does not allow preferential hiring practices. UNESCO suggested changing language on re-establishing lost traditional knowledge and practices to focus on protecting threatened practices, and NEW ZEALAND proposed a separate category on threatened practices. BRAZIL requested introductory text stating that the consultant will compile information from published reports and supplementary public information. The IIFB recommended hiring consultants for different geographical regions.

The IIFB noted that impoverishment and migration are not strictly the result of loss of ancestral lands, and emphasized that loss of lands and territory, poverty and migration, and impositions of inadequate development models are three separate issues. They also recommended language to strengthen mechanisms for indigenous participation; prioritized addressing reasons for loss of traditional knowledge and practices and developing measures for their protection, rather than more studies; suggested regional workshops with full participation of

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indigenous peoples as a means of information gathering; called for specific details on who would conduct national reports; and requested a clearer statement of the study's benefits for indigenous peoples.

Regarding the recommendation for a global action plan, CANADA recommended that the plan focus on lessons learned and identification of best practices. Regarding the annex, which contains the draft outline, ARMENIA and PALAU sought changes to text on assessing status and trends in various ecosystem categories, and PALAU added a category for island ecosystems.

SUB-WORKING GROUP II

PARTICIPATORY MECHANISMS: Delegates considered a draft chair's text (UNEP/CBD/WG8J/2/SWG.II/CRP.1). CANADA suggested deleting a recommendation requesting that the Working Group identify elements for the establishment of participatory mechanisms. Regarding consultation with relevant environmental conventions, BRAZIL, on behalf of GRULAC, suggested referencing examples of those conventions. The UN CONVENTION TO COMBAT DESERTIFICATION highlighted its work on traditional knowledge and collaboration with the CBD.

Regarding strategies for awareness-raising and access to information, COTE D'IVOIRE and NIGER requested reference to their implementation, and the IIFB to their evaluation. BURKINA FASO suggested that language on enhancing participation in CBD processes be included in the preamble. COTE D'IVOIRE, KENYA and SENEGAL highlighted the need for proper representation of African communities. The EU proposed that a group of experts develop a thematic focal point in the Clearing-House Mechanism on Article 8(j).

Regarding capacity building for indigenous participation in decision-making processes, NIGER requested reference to regional and sub-regional levels, and BOLIVIA to conservation and sustainable use of biodiversity. FIJI noted that access to relevant funding information is needed not only for indigenous and local communities but also for governments. The EU said that the COP could review the GEF's mandate and, supported by COTE D'IVOIRE, suggested that the GEF give preference to projects with indigenous and local communities participation. BRAZIL noted that such preference should be given where appropriate.

The EU called for a preambular reference to Principle 10 (Participation) of the Rio Declaration. The IIFB stressed that participation should be full and effective, and recommended a participation mechanism that recognizes the principle of prior informed consent (PIC). CANADA disagreed stating that Article 8(j) does not include obligations on PIC. The UNIVERSITY OF SASKATCHEWAN, supported by CANADA, the EU and SRI LANKA, proposed language on developing communication mechanisms among indigenous and local communities. ECUADOR called on other international bodies to support indigenous participation.

SWG-II Co-Chair Linus Thomas (Grenada) noted that he would produce a revised draft text.

ASSESSMENT OF EXISTING INSTRUMENTS: Co-Chair Thomas introduced the chair's draft text (UNEP/CBD/WG8J/2/SWG.II/CRP.2). MEXICO called for distinction between different forms of IPR and, with CAMEROON, for emphasis on *in situ* conservation.

Regarding the preamble, delegates addressed language on complementarity and mutual supportiveness with regard to national and international measures, and to cooperation with other bodies. BOLIVIA, COLOMBIA, EL SALVADOR and MEXICO opposed language referencing IPR, genetic resources in indigenous territories, and continued

access for those communities. The IIFB suggested text noting that indigenous peoples have their own systems of protecting traditional knowledge, and of conserving and sustainably using biodiversity.

Regarding operational language, the EU and SWITZERLAND called for supportive references to WIPO and its work in a number of areas. Regarding WIPO's work on legal mechanisms for the disclosure of country of origin and sources of traditional knowledge, the EU proposed including possible *sui generis* systems. MEXICO proposed that WIPO explore the consequences of considering traditional knowledge as prior art.

Regarding assistance to indigenous and local communities to develop strategies to protect their knowledge, BRAZIL proposed that governments and relevant organizations consider developing such strategies. The EU proposed reference to the World Health Organization, and with NEW ZEALAND to the ECOSOC's Permanent Forum on Indigenous Issues. NIGER and TUNISIA stressed assistance for self-organization of indigenous and local communities.

Regarding the Working Group's activities on *sui generis* systems, BRAZIL noted the need for timelines. Delegates debated reference to WIPO's work. Regarding development of national or community registries, many called for deleting reference to harmonization of national approaches. SWITZERLAND proposed inviting WIPO to continue its work on an international database, which others opposed. PERU opposed reference to community databases. Regarding submission of case studies, CANADA proposed addressing the nature, diversity and status of customary laws under national legislation.

SWITZERLAND, with the US, and opposed by several delegates, suggested deleting language on disclosure of traditional knowledge in IPR applications and on respecting CBD provisions related to PIC and mutually agreed terms. Regarding language urging IPR organizations to protect traditional knowledge, CAMEROON suggested deleting reference to the WTO.

On considering the establishment of dispute settlement or arbitration procedures to address IPR claims using traditional knowledge, several delegates expressed concern over vague language. CUBA proposed text to encompass non-judicial possibilities. The IIFB called for developing ethical guidelines to address the conduct of academic research using traditional knowledge. The INTERNATIONAL MARINELIFE ALLIANCE urged Parties to require evidence of PIC in applications for IPR on innovations using traditional knowledge.

Co-Chair Thomas said that a consensus document would be prepared.

IN THE CORRIDORS

The downgrading of "guidelines" for impact assessments to "recommendations," along with numerous references to national legislation and additions of "as appropriate," had some delegates doubting the Working Group's outcome. Delegates also questioned whether this tendency to soften the legal bearing of the Working Group's outputs could impact other work programme tasks relating to guidelines and standards on benefit-sharing, repatriation of knowledge and reporting of unlawful appropriation of traditional knowledge. A few CBD veterans were not surprised, noting that discussions here have incorporated some progressive elements despite the profusion of qualifiers.

THINGS TO LOOK FOR TODAY

SUB-WORKING GROUP I: SWG-I will meet at 10:00 am to discuss draft recommendations for conducting impact assessments.

SUB-WORKING GROUP II: SWG-II will meet at 10:00 am to discuss a revised draft text on participatory mechanisms.