



## SUMMARY OF THE SECOND MEETING OF THE AD HOC OPEN-ENDED INTER-SESSIONAL WORKING GROUP ON ARTICLE 8(J): 4-8 FEBRUARY 2002

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) took place in Montreal, Canada, from 4-8 February 2002. The meeting was hosted by the Canadian Government and had approximately 300 participants from 79 countries, indigenous and local communities and international and non-governmental organizations.

Over the course of the week-long meeting, the Working Group considered: an outline for the composite report on the status and trends regarding the knowledge, innovations and practices of indigenous and local communities; draft guidelines/recommendations for the conduct of cultural, environmental and social impact assessments regarding developments proposed on or impacting the lands of indigenous and local communities; participatory mechanisms; and the effectiveness of existing instruments impacting the protection of traditional knowledge, particularly intellectual property rights (IPR). Delegates adopted six recommendations on the preceding items, as well as on progress in the integration of relevant tasks of the work programme on Article 8(j) and related provisions into the CBD's thematic programmes and on progress in implementation of the priority tasks of the work programme on Article 8(j). These recommendations will be forwarded to the sixth Conference of Parties (COP-6) in The Hague, the Netherlands, in April 2002.

### A BRIEF HISTORY OF ARTICLE 8(J) AND RELATED PROVISIONS UNDER THE CBD

The CBD, negotiated under the auspices of the United Nations Environment Programme (UNEP), was adopted at the Earth Summit in Rio de Janeiro in June 1992 and entered into force on 29 December 1993. To date, 182 countries have become Parties. Article 8(j) of the CBD specifically states that Parties will, subject to national legislation, respect, preserve and maintain knowledge, innovations and prac-

tices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biodiversity; promote their wider application with the approval and involvement of knowledge-holders; and encourage the equitable sharing of benefits arising from the utilization of such knowledge, innovations and practices.

Related provisions of the Convention include: Article 10(c), which calls on Parties to protect and encourage customary use of biological resources in accordance with traditional cultural practices; Article 17.2, which addresses scientific and technical information exchange with specific reference to traditional knowledge; and Article 18.4, which states that Parties shall encourage and develop methods of

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This issue of the *Earth Negotiations Bulletin* © <enb@iisd.org> is written and edited by Stas Burgiel <stas@iisd.org>, Michael Davis <michael@iisd.org>, Fiona Koza <fiona@iisd.org>, Charlotte Salpin <charlotte@iisd.org>, Nicole Schabus <nicole@iisd.org>, Kira Schmidt <kira@iisd.org>, and Elsa Tsioumani <elsa@iisd.org>. The Digital Editor is Franz Dejon <franz@iisd.org>. The Editor is Pamela S. Chasek, Ph.D. <pam@iisd.org> and the Director of IISD Reporting Services is Langston James "Kimo" Goree VI <kimo@iisd.org>. The Operations Manager is Marcela Rojo <marcela@iisd.org> and the On-Line Assistant is Diego Noguera <diego@iisd.org>. The Sustaining Donors of the *Bulletin* are the Netherlands Ministry of Foreign Affairs, the Government of Canada (through CIDA), the United States (through USAID), the Swiss Agency for Environment, Forests and Landscape (SAEFL), the United Kingdom (through the Department for International Development - DFID, and the Foreign & Commonwealth Office), the European Commission (DG-ENV), the Danish Ministry of Foreign Affairs, and the Government of Germany (through German Federal Ministry of Environment - BMU, and the German Federal Ministry of Development Cooperation - BMZ). General Support for the *Bulletin* during 2002 is provided by the Ministries of Foreign Affairs and Environment of Finland, the Government of Australia, the Ministry of Environment and the Ministry of Foreign Affairs of Sweden, the Ministry of Foreign Affairs and Trade of New Zealand, the Ministries of Foreign Affairs and Environment of Norway, Swan International, and the Japanese Ministry of Environment (through the Institute for Global Environmental Strategies - IGES). 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 Director of IISD Reporting Services. 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>. The satellite image was taken above Montreal ©2002 The Living Earth, Inc. <http://livingearth.com>. For information on the *Earth Negotiations Bulletin* or to arrange coverage of a meeting, conference or workshop, send e-mail to the Director, IISD Reporting Services at <kimo@iisd.org>.



cooperation for the development and use of technologies, including indigenous and traditional technologies, pursuant to the CBD's objectives.

Additionally, CBD discussions on cross-cutting themes, such as the ecosystem approach, access and benefit-sharing (ABS), and the Clearing-House Mechanism (CHM), as well as the specific ecosystem themes, have addressed the integration of considerations relating to Article 8(j) and indigenous and local communities.

**COP-2:** The second Conference of the Parties (COP) met in Jakarta, Indonesia, from 6-17 November 1995. Discussion of traditional knowledge was limited to Decision II/12 on IPR, which calls for consultation with all stakeholders, particularly indigenous and local communities, to improve the understanding of the needs and concerns of such groups, as well as for a preliminary analysis of IPR systems, which could focus on the preservation and maintenance of traditional knowledge.

**COP-3:** The third COP met in Buenos Aires, Argentina, from 4-15 November 1996. Delegates adopted Decision III/14, which, *inter alia*: requests Parties to develop national legislation to implement Article 8(j); invites case studies on the implementation of Article 8(j) and related provisions; requests the interim financial mechanism to examine support of capacity-building projects for indigenous and local communities; and establishes a process to advance work on implementation of Article 8(j), including the organization of an intersessional workshop.

**WORKSHOP ON TRADITIONAL KNOWLEDGE:** The Workshop on Traditional Knowledge and Biological Diversity was convened in Madrid, Spain, from 24-28 November 1997, to produce recommendations for the COP on how to advance the implementation of Article 8(j). The workshop produced a report, which contains an extensive list of options and recommendations in the following areas: participatory mechanisms; status and trends in relation to Article 8(j); traditional cultural practices for conservation and sustainable use; equitable sharing of benefits; exchange and dissemination of information; monitoring; and legal elements. The report also includes recommendations for actions at the national and international levels, and suggests terms of reference for establishing an open-ended working group or a subsidiary body on Article 8(j).

**COP-4:** The fourth COP met in Bratislava, Slovakia, from 4-15 May 1998. Delegates discussed the development of a work programme on Article 8(j) and the formation of an *ad hoc* working group. Decision IV/9 establishes a working group to provide advice on the development of a work programme on Article 8(j) and its implementation based on the report of the Madrid workshop. The decision also calls for: representation from indigenous and local communities to the widest extent possible; short- and medium-term work programmes; case studies relating to Article 8(j); and application for observer status to and development of a memorandum of understanding with the World Intellectual Property Organization (WIPO).

**FIRST MEETING OF THE WORKING GROUP ON ARTICLE 8(J):** The first meeting of the Working Group on Article 8(j) met in Seville, Spain, from 27-31 March 2000. Delegates considered elements for a work programme on Article 8(j), including: participatory mechanisms for indigenous and local communities; equitable sharing of benefits; legal elements; status and trends in relation to Article 8(j) and related provisions; traditional cultural practices for conservation and sustainable use; exchange and dissemination of

information; and monitoring. The Working Group also addressed: the application and development of legal and other appropriate forms of protection for traditional knowledge; international cooperation among indigenous and local communities; and opportunities for collaboration and implementation of the work programme.

**COP-5:** The fifth COP met in Nairobi, Kenya, from 15-26 May 2000. Delegates discussed the report of the first meeting of the Working Group on Article 8(j), including its recommendations for a proposed work programme and advice on the application and development of legal and other appropriate forms of protection. Decision V/16 establishes a work programme with two phases. The first phase would address participatory mechanisms, status and trends, benefit-sharing, exchange and dissemination of information, and monitoring and legal elements. The second phase would also consider traditional cultural practices for conservation and sustainable use, exchange and dissemination of information, and monitoring elements. The decision extends the Working Group's mandate to address progress in implementation and increased participation of indigenous and local communities in other thematic work programmes of the CBD. It also notes the importance of case studies and *sui generis* systems for protecting traditional knowledge, while recognizing the importance of maintaining cultural identities and the material base of such knowledge.

## REPORT OF THE MEETING

The second meeting of the Working Group on Article 8(j) opened in Plenary on Monday morning, to hear opening statements and consider a report on progress in the integration of relevant tasks of the work programme on Article 8(j) and related provisions into the CBD's thematic programmes, and a review of progress in implementation of the priority tasks of the work programme. Delegates met in two sub-working groups from Tuesday to Thursday, to discuss the meeting's substantive agenda items, and in a closing Plenary on Friday, to adopt recommendations for COP-6.

### PLENARY

A representative from the Grand Council of Mohawks opened the meeting on Monday morning with a ceremonial statement. He reminded participants of human beings' place in the cycle of life and stressed their responsibilities toward nature. He urged delegates to listen to the natural world and apply this understanding in the decisions taken at the meeting.

Chair Reuben Olembo, on behalf of the President of COP-5, highlighted past work on traditional knowledge, including the November 1997 workshop in Madrid, the first Working Group meeting in Seville in March 2000, and the results of COP-5. He stated that this meeting should help to strengthen indigenous and local communities as stakeholders within the Convention, and stressed the need to produce sound recommendations for COP-6.

CBD Executive Secretary Hamdallah Zedan thanked the Governments of Canada and Spain for their financial support for indigenous representatives' participation. He addressed the priority tasks of the work programme on Article 8(j), and expressed hope that the spirit of cooperation from Madrid and Seville would continue at this meeting. Paul Chabeda, on behalf of UNEP Executive Director Klaus Töpfer, highlighted UNEP's ongoing work on issues related to Article 8(j). He called for strengthened partnerships, capacity building, mobilization



of adequate resources, and increased recognition and respect for the role of indigenous and local communities in the conservation of biodiversity.

**ORGANIZATIONAL MATTERS:** Delegates agreed that the COP Bureau would serve as Bureau for the meeting, with six indigenous representatives serving as Friends of the Chair, and appointed Barbara Di Giovanni (Italy) as Rapporteur. Chair Olemba noted that Elaine Fisher (Jamaica) would assume his position during the meeting. Delegates adopted the provisional agenda (UNEP/CBD/WG8J/2/1), and agreed to meet in two sub-working groups, electing John Herity (Canada) and Earl Stevenson (Peguis First Nation) to co-chair Sub-Working Group I (SWG-I), and Linus Thomas (Grenada) and Lucy Mulenkei (African Indigenous Women Organization) to co-chair Sub-Working Group II (SWG-II).

**GENERAL STATEMENTS:** The International Indigenous Forum on Biodiversity (IIFB) stressed the need to ensure the full and effective participation of indigenous peoples, particularly women, in the conservation of biodiversity, and to establish a clear and binding framework for the protection of indigenous peoples' fundamental rights to maintain and practice their traditional knowledge and control their lands. Veit Koester (Denmark) reported on the informal consultations on the potential impacts of genetic use restriction technologies (GURTs) on indigenous and local communities and farmers' rights, held in Montreal on 3 February 2002. WIPO highlighted the activities of its Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (Intergovernmental Committee), including the compilation of an inventory of traditional knowledge-related periodicals to assist the search for traditional knowledge as prior art.

Spain, on behalf of the European Union (EU), highlighted European Council Resolution 12647/98, recognizing the importance and role of traditional knowledge, as well as linkages with work on ABS, invasive species, impact assessments and the CHM. Togo, on behalf of the African Region, underscored the importance of agenda items on impact assessments, existing instruments and participation. Fiji, on behalf of Pacific Island States, stressed the importance of reporting, public awareness and coordination of regional activities. India encouraged development of traditional knowledge inventories and called for a binding disclosure clause to ensure that patent seekers have not used traditional knowledge. Brazil stressed the need to observe national legislation and develop binding agreements between local communities and competent authorities.

The United Nations Conference on Trade and Development (UNCTAD) reviewed its recent work on traditional knowledge, emphasizing the exchange of national experiences relating to the protection of traditional knowledge and harnessing it for trade and development. The United Nations Food and Agriculture Organization (FAO) noted that the recently-adopted International Treaty on Plant Genetic Resources for Food and Agriculture (PGRFA) recognizes the contribution of indigenous and local communities in the conservation of plant genetic resources. The United Nations Educational, Scientific and Cultural Organization (UNESCO) described the recent launch of its cross-cutting initiative "Local and Indigenous Knowledge Systems in a Global Society," which focuses on women's knowledge and a holistic approach to understanding indigenous knowledge systems.

**REPORT ON PROGRESS IN THE INTEGRATION OF RELEVANT TASKS OF THE PROGRAMME OF WORK ON ARTICLE 8(J) AND RELATED PROVISIONS INTO THE THEMATIC PROGRAMMES OF THE CBD**

On Monday afternoon, the Plenary discussed the progress report on the integration of work on Article 8(j) into the CBD's thematic programmes (UNEP/CBD/WG8J/2/2 and INF/2). Argentina suggested making financial resources available for training governmental consultants on cross-cutting issues. The EU called for recommendations on the International Treaty on PGRFA; agricultural biodiversity, GURTs and farmers' rights; and the report's submission to COP-6. Ecuador proposed stronger links with work on forest biodiversity and its sustainable use, and an analysis of the impact of biotechnology on indigenous and local communities. Several countries noted the need for analysis of the draft Bonn Guidelines on ABS.

In the closing Plenary on Friday, delegates adopted the report without amendment.

**FINAL TEXT:** In the final text of the report (UNEP/CBD/WG8J/2/L.2), the Working Group recommends that the COP urge Parties to sign and ratify the International Treaty on PGRFA and request the Secretariat, in collaboration with the FAO, to examine the Treaty's implications on implementation of Article 8(j) and related provisions. It emphasizes the need for further action in the following areas:

- forest biodiversity: development of methodologies to further integrate traditional forest-related knowledge into sustainable forest management; promotion of activities assembling management experiences and scientific, indigenous and local information at the national and local levels; and dissemination of research results;
- marine and coastal biodiversity: provision of information on approaches to managing marine and coastal living resources in relation to those used by indigenous and local communities;
- inland water ecosystems: implementation of the guidelines, adopted under the Ramsar Convention, to establish and strengthen indigenous participation in the management of wetlands;
- agricultural biodiversity: support for local dryland and sub-humid ecosystems, and capacity building and information exchange for farmers; and
- availability of financial resources for training governmental decision-makers on cross-cutting issues for the recuperation of degraded ecosystems.

The final text also urges Parties to include information in their national reports on each of the CBD's thematic programmes, on:

- status and trends regarding traditional knowledge;
- measures to enhance indigenous and local communities' participation, particularly that of women, in implementation of national thematic programmes; and
- capacity-building measures to facilitate involvement of indigenous and local communities and application of their knowledge, with their prior informed consent, in the management, conservation and sustainable use of biodiversity.

It also requests the Executive Secretary to prepare a progress report on the integration of relevant tasks of the work programme on Article 8(j) into each thematic area for consideration by the third meeting of the Working Group, and reminds Parties of the need for further action regarding the potential impacts of GURTs on indigenous and local communities and on farmers' rights.



## **REVIEW OF PROGRESS IN THE IMPLEMENTATION OF THE PRIORITY TASKS OF WORK ON ARTICLE 8(J) AND RELATED PROVISIONS**

On Monday, the Secretariat introduced the report on progress in implementation of the priority tasks of the work programme (UNEP/CBD/WG8J/2/3). Delegates adopted the report without amendment during the closing Plenary.

**FINAL TEXT:** In the final text (UNEP/CBD/WG8J/2/L.3), the Working Group recommends that the COP request that Parties ensure that indigenous and local communities are included in the consultative process of preparing their national reports, particularly those sections addressing Article 8(j) and related provisions. It also requests that the Executive Secretary prepare a report on progress in the implementation of the work programme on Article 8(j) and related provisions based on information submitted in national reports, and other relevant information, for the next meeting of the Working Group.

## **OUTLINE OF THE COMPOSITE REPORT ON STATUS AND TRENDS**

On Monday afternoon, SWG-I began discussion of the outline of the composite report on status and trends (UNEP/CBD/WG8J/2/5), which includes sections on the report's size and scope, rationale, sources and availability of information, ways and means for preparation, sources of funding, and suggested recommendations. Regarding definitions of indigenous and local communities in text on size and scope, Guinea suggested inclusion of reference to traditional healers and hunters. The IIFB expressed concern that the definition may exclude indigenous peoples that use modern practices in applying their knowledge. After informal consultations, delegates agreed to text on respect for the diversity of indigenous and local communities.

Several delegates expressed concern about the ambitious scope of the report. Canada stated that the report's preparation may place a burden on indigenous and local communities and proposed a more manageable outline. The IIFB recommended that priority be given to identification of processes that threaten the maintenance, preservation and application of traditional knowledge, and measures for the protection of indigenous knowledge and its holders. Regarding sources of information, Brazil suggested that research be based on published or public information.

Regarding the role of a consultant in the section on ways and means for the report's preparation, many delegates suggested a team, instead of a single consultant, with the EU proposing a multidisciplinary team, and Denmark supporting one consultant with an advisory group. Many delegates suggested that consultants work at the regional level. Haiti stressed the need to define the consultant's responsibilities, research methodologies and qualifications; the Philippines called for a public process to select the consultant; and the IIFB urged full and effective participation of indigenous peoples.

Brazil and the EU cautioned against referencing confidential knowledge in the compilation of the report, and the EU suggested that the report declare any such use. The EU also proposed a reference to conservation and sustainable use of biodiversity in the title, and called for geographic and cultural balance to ensure appreciation of regional differences. The IIFB commented that the outline reflected a top-down approach, stressed the importance of including more indigenous perspectives, supported a regional approach, and suggested workshops organized by indigenous peoples to provide input. Regarding text on

sources of funding, the Global Environment Facility (GEF) expressed concern about setting a precedent for using GEF funding for future studies and the burden this would place on the Financial Mechanism.

On Wednesday, SWG-I Co-Chair Herity introduced a Chair's text (UNEP/CBD/WG8J/2/SWG.I/CRP.1). Regarding sources of information, the IIFB suggested regional workshops with full participation of indigenous peoples as a means of information gathering, and requested a clearer statement of the study's benefits for indigenous peoples. On ways and means, the IIFB preferred indigenous consultants, and recommended hiring consultants for different geographical regions.

Regarding the state of retention of traditional knowledge, UNESCO suggested amending language on re-establishing lost traditional knowledge and practices to focus on protecting threatened knowledge and practices. The IIFB recommended references to measures to preserve and protect traditional practices, rather than more studies, which was agreed. In a listing of ecosystems, Palau added reference to island ecosystems. This was agreed in the final text. Regarding the relationship between biological, cultural and linguistic diversity, the IIFB suggested separate references to impoverishment, migration, and loss of ancestral lands and territories.

On Thursday, SWG-I Co-Chair Herity introduced a revised Chair's text (UNEP/CBD/WG8J/2/SWG.I/CRP.2). The EU proposed that the title specify that the report examine status and trends regarding traditional knowledge "relevant to the conservation and sustainable use of biodiversity." Addressing text on sources of information, the EU, supported by Canada, suggested that the report's information be used to advance the work programme on Article 8(j), rather than identify objectives and develop a framework for an action plan. The IIFB added the need for respect for indigenous and local communities' "codes of ethics guidelines, which entail permission and/or consent to enter the communities and conduct the research." On ways and means, Fiji proposed encouraging Parties to hold national workshops to ensure participation of indigenous and local communities in the report's completion. On sources of funding, delegates agreed to the EU's deletion of text calling for the GEF to provide funding to Parties for preparation of national input to the report. On the state of retention of traditional knowledge, delegates agreed that the report should make reference to assessing 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, delegates supported the IIFB's recommendation to address the critical reduction in numbers of certain indigenous populations.

During the closing Plenary, delegates adopted the final text with minor amendments.

**FINAL TEXT:** The final text (UNEP/CBD/WG8J/2/L.4) comprises recommendations and an annex containing the draft outline of the report on status and trends. It recalls Decision V/16 and relevant elements of the work programme and the general principles on implementation of Article 8(j), and adopts the draft outline of the composite report. It requests that the Executive Secretary undertake the first phase of the composite report, submit it to the next meeting of the Working Group on Article 8(j) and ensure the full and effective participation of indigenous and local communities in its preparation.

The annex contains:

- a draft outline;
- a plan for the preparation of the report;



- considerations regarding the size and scope of the report;
- a rationale for the outline of the composite report;
- sources and availability of information;
- ways and means for the preparation of the report; and
- sources of funding.

The draft outline sets out the proposed work in several phases.

Phase one includes examination of the state of retention of traditional biodiversity-related knowledge, and identification and assessment of measures and initiatives to protect, promote and facilitate the use of traditional knowledge. Subsequent phases include examination of: the relationship between biological, cultural and linguistic diversity; identification, at national and local community levels, of processes that may threaten the maintenance, preservation and application of traditional knowledge; and trends regarding the recognition and implementation of Article 8(j) and related provisions.

#### **DRAFT RECOMMENDATIONS FOR THE CONDUCT OF CULTURAL, ENVIRONMENTAL AND SOCIAL IMPACT ASSESSMENTS**

On Tuesday, delegates began discussion on draft guidelines or recommendations for the conduct of cultural, environmental and social impact assessments (UNEP/CBD/WG8J/2/6). Noting the document's length and complexity, several delegates called for a more practical document to facilitate implementation, and proposed that the Working Group develop principles or recommendations rather than guidelines. Several delegates called for harmonization with the CBD Subsidiary Body on Scientific, Technical and Technological Advice's (SBSTTA) work on assessments. New Zealand recommended that the scope be extended beyond the Working Group's original mandate, to include development activities occurring adjacent to sacred sites or lands and waters traditionally occupied or used by indigenous and local communities. The IIFB noted that existing impact assessment procedures do not adequately address the loss of traditional knowledge, and highlighted the importance of free, prior informed consent. Fiji stressed the need for capacity building to increase indigenous participation in impact assessments.

On Wednesday, SWG-I Co-Chair Herity introduced a Chair's text on draft principles for the conduct of cultural, environmental and social impact assessments (UNEP/CBD/WG8J/2/SWG.I/CRP.1). Ethiopia and the IIFB opposed reducing the guidelines to principles. Canada suggested text to clarify the document's voluntary nature. The IIFB, with New Zealand, stressed that indigenous communities need a sense of ownership of the assessment process. Argentina expressed concern regarding language on the precautionary principle, and delegates agreed to use language from the Preamble of the CBD. Brazil and Mexico opposed the creation of special mechanisms for dispute resolution, suggesting that disputes be resolved according to national legislation. Regarding text on environmental impact assessments, Colombia and Mexico suggested, and the US opposed, adding reference to genetically modified organisms (GMOs) to language on alien invasive species.

A contact group, chaired by Johan Bodegard (Sweden), met on Wednesday evening, to address 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.

On Thursday, SWG-I Co-Chair Herity introduced a new revised text (UNEP/CBD/WG8J/2/SWG-I/CRP.1/Rev.2). The IIFB objected to reducing the guidelines to recommendations. Delegates debated

whether to recommend that the COP "adopt" or "endorse" the draft recommendations. Delegates supported Norway's proposal to encourage Parties to "have regard for" these recommendations until the complete set of guidelines for impact assessment is finalized. The EU proposed that the Working Group's third meeting continue to develop guidelines for the conduct of integrated cultural, environmental and social impact assessments, to supplement the SBSTTA guidelines for incorporating biodiversity-related issues into environmental assessment legislation, especially with regard to procedures and institutions. The IIFB stressed the need for socioeconomic as well as social impact assessments.

Regarding the assessment of development proposals for their potential to introduce GMOs into local ecosystems, delegates preferred the term "living modified organisms" (LMOs), and proposed that due regard be paid to CBD Article 8(g) (managing the risks of LMOs) and other relevant international agreements. Ethiopia, opposed by many delegations, proposed inserting a reference to international agreements relating to safety in biotechnology. The reference was included in brackets for consideration by COP-6.

On general provisions, Sweden, with amendments by the IIFB and Liberia, proposed that assessment processes consider the inclusion of provisions regarding free, prior informed consent of indigenous and local communities. Canada requested deletion of the paragraph, and delegates bracketed the paragraph for consideration by 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.

In the closing Plenary, delegates adopted the final text with minor amendments. Canada requested that its opposition to the bracketed text on prior informed consent be reflected in the report of the meeting, while the IIFB requested that its strong support for the inclusion of provisions regarding free, prior informed consent also be reflected in the report.

**FINAL TEXT:** The final text (UNEP/CBD/WG8J/2/L.5) contains recommendations for the COP and an annex with recommendations for the conduct of cultural, environmental and social impact assessments regarding developments proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities. The final text, *inter alia*, acknowledges the ongoing work on environmental impact assessment and strategic environmental assessment undertaken by SBSTTA, and considers the environmental assessment sourcebook updates provided by the World Bank and the Draft Principles and Guidelines for the Protection of the Heritage of Indigenous People of the UN Commission on Human Rights. The text recommends that COP-6, *inter alia*:

- adopt the recommendations contained in the annex;
- request the Working Group on Article 8(j), at its third meeting, to work further on guidelines for the conduct of cultural, environmental and social impact assessments to complement SBSTTA's guidelines for incorporating biodiversity-related issues into environmental assessment legislation;
- request Parties and governments to undertake education and awareness-raising and develop communication strategies that allow indigenous and local communities and other stakeholders in



development projects to be made aware of these recommendations for incorporation into policies and processes for the assessment of proposed developments;

- invite international funding and development agencies to facilitate the incorporation of the recommendations into such policies and processes; and
- invite Parties and governments to have regard for these recommendations until the complete set of guidelines for impact assessments is finalized.

The recommendations for the conduct of impact assessments contained in the annex include sections on integrating cultural, environmental and social impact assessments as a single process, and general provisions. The purpose of the recommendations is to help facilitate, *inter alia*, the participation of indigenous and local communities, and the inclusion of traditional knowledge, innovations, and practices as part of environmental, social and cultural impact assessment processes. The text stipulates that the recommendations are voluntary and are intended to serve as guidance for Parties and governments according to national legislation.

Regarding cultural impact assessments, the final text recommends, *inter alia*, identifying issues of concern to be taken into consideration while developing cultural impact assessments, including: beliefs; customary practices; forms of social organization; systems of natural resource use, including patterns of land use; places of cultural significance; sacred sites and ritual ceremonies; languages; customary law systems; political structures; roles; and customs. It also notes the need to respect both the custodians and the holders of traditional knowledge and the knowledge itself.

On environmental impact assessments, the final text recommends that, *inter alia*:

- analyses should include areas of significant conservation value, environmental constraints, geographical aspects and potential synergistic impacts;
- the direct and indirect impacts of the development proposal on local biodiversity should be assessed, particularly those components of biodiversity that the community relies on for its subsistence and livelihood;
- development proposals should be assessed for their potential to introduce alien invasive species into local ecosystems;
- with respect to LMOs, due regard should be paid to Article 8(g) of the CBD and other relevant international agreements. (A reference to relevant international agreements relating to safety in biotechnology remains in brackets.)

Regarding social impact assessments, the final text recommends:

- analyses should be carried out with respect to demographic factors, housing, employment, infrastructure and services, income and asset distribution, traditional systems of production, technical skills, educational needs, and financial implications;
- proposed developments should be evaluated in relation to tangible benefits to indigenous and local communities;
- developments that involve changes to traditional practices for food production should be assessed; and
- social development indicators consistent with the views of indigenous and local communities should be developed, and consideration given to gender, generational issues, health, safety, food, livelihood security and possible effects on social cohesion and mobilization.

In the section on general provisions, the final text recommends that, *inter alia*:

- indigenous and local communities be fully involved in the assessment process;
- the role that women play in the conservation and sustainable use of biodiversity should be considered;
- the capacity-building needs of indigenous and local communities be recognized and assistance provided to facilitate their full participation in impact assessment procedures;
- all human rights, including social and cultural rights, and any rights related to the environment, be respected;
- pursuant to national legislation, the customary laws and IPR of indigenous and local communities, with respect to their biodiversity-related knowledge, innovations and practices, be respected;
- consistent with the ecosystem approach, proponents of development proposals recognize the importance of understanding and applying the values and knowledge of use of biodiversity held by indigenous and local communities;
- lack of full scientific certainty not be used as a reason for postponing measures to avoid or minimize threats to biodiversity from development activities;
- dispute resolution mechanisms be available to manage disputes in relation to a development proposal;
- in the absence of legal mechanisms for the protection of traditional knowledge, innovations and practices, indigenous and local communities may define their own protocols for access to and use of traditional knowledge in impact assessment procedures; and
- assessment processes consider the inclusion of provisions regarding free, prior informed consent. (This paragraph remains in brackets.)

#### **ASSESSMENT OF THE EFFECTIVENESS OF EXISTING INSTRUMENTS**

On Monday and Tuesday, delegates considered an assessment of the effectiveness of existing instruments, particularly on IPR, that may have implications on the protection of the knowledge, innovations and practices of indigenous and local communities (UNEP/CBD/WG8J/2/7).

On relations with other bodies, the EU recommended that international bodies responsible for IPR instruments, such as WIPO, develop the conceptual framework and mechanisms to protect traditional knowledge, while the CBD deal with databases, registers and other means of protection. Indonesia proposed creating an international support mechanism for resolving disputes over inappropriately granted patents.

On *sui generis* systems to protect traditional knowledge, Canada and Switzerland underscored the need for complementarity with WIPO's work, and the EU proposed cooperation with WIPO in its work on *sui generis* systems. Highlighting the incompatibility between existing intellectual property regimes and traditional knowledge, Ecuador, with several Latin American countries, argued that the Working Group should generate guidelines on *sui generis* systems. The Tebtebba Foundation said that trade-related fora are not appropriate for protecting indigenous interests. The Indigenous Peoples' Biodiversity Network (IPBN) and the IIFB stated that existing local



systems for handling innovations should be used in the development of any protection system. Namibia called for case studies on regionally harmonized *sui generis* systems.

Brazil supported disclosure of the origin of genetic resources and traditional knowledge as part of patent application requirements. Several delegates highlighted the collective nature and specific characteristics of traditional knowledge. The IIFB stressed rights to self-determination, legal security over lands and territories, development of internal registries according to customary practices, the right to veto research and transactions undermining the integrity of traditional knowledge, impact prevention strategies, prior informed consent and equitable benefit-sharing.

Several delegates objected to, but India supported, the development of an international database on traditional knowledge. Many encouraged development of local or national databases, stressing appropriate capacity building. The IPBN stressed that databases should be under local control and based on local models. Switzerland said that an international database should be one of a range of mechanisms to protect traditional knowledge. 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.

Regarding the establishment of a notification system, Argentina, on behalf of the Group of Latin American and Caribbean Countries (GRULAC), and the EU suggested creating links through the CHM. St. Lucia, on behalf of Caribbean small island States, requested support for public education, awareness-raising, inventories and documentation. France proposed examining the conflict between common and customary law. The IIFB 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.

On Wednesday, SWG-II Co-Chair Thomas introduced a Chair's text developed on the basis of previous discussions (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. Delegates then addressed preambular language on complementarity and mutual supportiveness with regard to national and international measures, and cooperation with other bodies. The IIFB suggested text noting that indigenous peoples have their own systems of protecting traditional knowledge and of conserving and sustainably using biodiversity.

The EU and Switzerland called for supportive references to WIPO and its work in a number of areas. Mexico proposed that WIPO explore the consequences of considering traditional knowledge as prior art. Switzerland, with the US, suggested deleting language on disclosure of traditional knowledge in IPR applications and on respecting CBD provisions related to prior informed consent and mutually agreed terms. Several delegates objected. Switzerland suggested that WIPO's Intergovernmental Committee be invited to consider protection mechanisms, such as the disclosure of origin of relevant traditional knowledge in IPR applications.

Regarding the Working Group's activities on *sui generis* systems, delegates debated a reference to WIPO's work. Regarding development of national or community registries, many proposed deleting

reference to harmonization of national approaches. Switzerland proposed inviting WIPO to continue its work on an international database, which others opposed, preferring that such databases be developed at the national or local level. Regarding submission of case studies, Canada proposed addressing the nature, diversity and status of customary laws under national legislation. On dispute settlement or arbitration procedures to address IPR claims using traditional knowledge, several delegates expressed concern over vague language. The International Marinelife Alliance urged Parties to require evidence of prior informed consent in applications for IPR on innovations using traditional knowledge.

On Thursday, delegates considered a revised Chair's text (UNEP/CBD/WG8J/2/SWG.II/CRP.2/Rev.1). Delegates agreed to reference the review of the Agreement on Trade-Related Intellectual Property Rights (TRIPS), particularly Article 27.3(b). Brazil proposed deleting preambular references to complementarity between national and international measures and with WIPO. Delegates agreed to invite WIPO to explore mechanisms such as the disclosure of traditional knowledge in IPR applications. They then debated a reference to customary law regarding protection strategies, and 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, opposed a reference to WIPO. The IIFB proposed referring to the 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. Indonesia, with Cuba, reintroduced a recommendation on dispute settlement or arbitration procedures, which was agreed, with the inclusion of a reference to CBD Article 27 (Settlement of Disputes). Peru recommended, and it was agreed, that WIPO forward relevant documents to the CBD Executive Secretary as background information for future meetings of the Working Group. SWG-II then approved the revised text bracketing language on the complementarity between the Working Group and WIPO.

On Friday, the closing Plenary considered the recommendations contained in UNEP/CBD/WG8J/2/L.7, on the assessment of existing instruments, particularly IPR instruments, that may have implications for the protection of the knowledge, innovations and practices of indigenous and local communities. As suggested by the IIFB and supported by Colombia, delegates deleted bracketed language on the complementarity between the Working Group's work programme and ongoing work in WIPO. The Working Group also accepted additional language proposed by the African Group on encouraging and assisting the African Union to facilitate implementation of the African Model Legislation for the Recognition and Protection of the Rights of Local Communities, Farmers and Breeders and for the Regulation of Access to Biological Resources. Regarding the Working Group's activities on *sui generis* systems, delegates debated the reference to WIPO's work. GRULAC suggested deleting the reference, to which the EU and Canada objected. Following brief informal consultations, the agreed language takes into account the work of the WIPO Intergovernmental Committee, with a view to promoting mutual supportiveness. Numerous edits were also made, and the recommendation was adopted as amended.



Canada, supported by the EU, requested that the report of the meeting reflect indigenous and local communities' concerns on: unauthorized access and use of traditional knowledge, including establishment of databases; the need for community control; and the urgency of facilitating participation in CBD implementation and processes leading to the emergence of new regimes. He urged Parties to consult with indigenous communities, include their representatives in national delegations, and facilitate their participation in indigenous fora.

**FINAL TEXT:** The final text (UNEP/CBD/WG8J/2/L.7) notes the nature, collective or otherwise, of traditional knowledge and the possible inadequacy of conventional IPR systems to address its characteristics. It recognizes that: the CBD is the primary international instrument to address issues regarding the respect, preservation and maintenance of traditional knowledge; indigenous and local communities have their own systems for the protection and transmission of traditional knowledge as part of their customary law; national laws and policies need to be strengthened and synergies developed; and the work programme of the Working Group and ongoing work in WIPO are mutually supportive. It notes other relevant international and inter-governmental bodies, the ongoing work of the Working Group on ABS, and the African Model Legislation for the Recognition and Protection of the Rights of Local Communities, Farmers and Breeders, and for the Regulation of Access to Biological Resources.

The Working Group recommends that the COP, *inter alia*:

- note the work of other relevant fora and encourage further collaboration among them and the CBD;
- note the review process of the World Trade Organization's (WTO) Agreement on TRIPS;
- invite WIPO's Intergovernmental Committee to promote indigenous participation in its work and to consider mechanisms to protect traditional knowledge, such as the disclosure of the origin of relevant traditional knowledge in IPR applications;
- request the Executive Secretary to compile information submitted by Parties, the WTO and WIPO on measures to protect traditional knowledge, and make it available through the CHM;
- invite Parties and indigenous and other organizations to submit case studies for dissemination through the CHM;
- invite technical and financial assistance for establishing national registries and building the capacity of communities to develop protection systems; and
- invite exchange of experiences on incorporating elements of customary law in national legislation.

Parties and governments are invited to: develop and implement strategies, with the participation of indigenous and local community representatives, to protect traditional knowledge based on a combination of appropriate approaches, with full respect for customary laws and practices; and examine, upon indigenous communities' request, the feasibility of establishing national and community registries of traditional knowledge, considering issues such as modalities and terms for access, and security and confidentiality requirements.

On *sui generis* systems, the final text recommends that the COP request the Working Group to address the issue of *sui generis* systems focusing on a number of specific issues and taking into account the work of the WIPO Intergovernmental Committee and other existing initiatives.

On protection mechanisms, the COP is advised to:

- encourage coordination among national IPR bodies, CBD focal

points, and indigenous and local communities, with particular reference to documentation initiatives and community-based registries of traditional knowledge;

- encourage pilot projects to evaluate the effectiveness of existing and other systems for the protection of traditional knowledge;
- encourage the disclosure of the origin of relevant traditional knowledge in IPR applications;
- urge Parties to consider taking into account the CBD provisions on prior informed consent and mutually agreed terms in IPR applications, and take into account traditional knowledge in the examination of "novelty and an inventive step" in patent applications; and
- invite Parties to consider establishing appropriate dispute settlement or arbitration procedures, including CBD Article 27, to address cases of IPR relating to traditional knowledge.

### **PARTICIPATORY MECHANISMS FOR INDIGENOUS AND LOCAL COMMUNITIES**

On Tuesday, the Secretariat introduced the document on participatory mechanisms and indigenous and local communities, which contains sections on capacity building, participatory mechanisms, funding and specific recommendations for the involvement of indigenous and local communities in decision-making processes related to traditional knowledge and in the work of the CBD (UNEP/CBD/WG8J/2/4). During general discussion of the document, the St'at'imc Chiefs Council stressed the lack of mechanisms and information for true participation of indigenous peoples in CBD negotiations, noting that the recognition of indigenous rights and land title are essential for the CBD's continued success. Senegal highlighted a lack of resources for the participation of government and indigenous representatives in international meetings. Delegates also noted the need for a variety of approaches to reflect the diversity of indigenous groups.

Regarding the recommendations, the EU proposed developing guidelines on participatory mechanisms, which Bolivia, Brazil and Canada opposed. Canada instead suggested soliciting model examples. Delegates discussed terminology on stakeholders in a recommendation on national mechanisms, with the IIFB noting that indigenous and local communities are rights-holders and not merely stakeholders. Canada proposed broadening a recommendation on a consultation process with other environmental conventions to include relevant bodies such as WIPO. Brazil and Colombia suggested deleting the recommendation. Senegal, with Rwanda, proposed that indigenous and local communities be invited to establish communication strategies. The US stressed the need for capacity-building efforts for indigenous participation at international meetings. Delegates also proposed a reference to women's knowledge, an indigenous focal point for the CHM, case studies on national experiences, and the participation of competent national authorities.

On Wednesday, delegates considered a Chair's text (UNEP/CBD/WG8J/2/SWG.II/CRP.1), which incorporated elements from the preceding discussion. 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 (CCD) highlighted its work on traditional knowledge.





Regarding strategies for awareness-raising and access to information, delegates proposed reference to implementation and evaluation. Côte d'Ivoire, Kenya and Senegal highlighted the need for proper representation of African communities. Regarding capacity building for indigenous participation in decision-making processes, Niger requested reference to regional and subregional levels, while Fiji noted that governments should also have access to information on funding. The EU, with Côte d'Ivoire, suggested that the GEF give preference to projects with indigenous and local communities' participation.

The IIFB recommended that participation mechanisms recognize the principle of prior informed consent. Canada disagreed, stating that Article 8(j) does not include obligations on prior informed consent. The University of Saskatchewan, supported by Canada, the EU and Sri Lanka, proposed language on developing communication mechanisms among indigenous and local communities. Delegates also suggested inviting other international bodies to support indigenous participation and a preambular reference to Principle 10 of the Rio Declaration (Participation).

On Thursday, SWG-II Co-Chair Thomas introduced a revised Chair's 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 national conditions and situations. On communication mechanisms, the IIFB proposed reference to the Indigenous Biodiversity Information Network (IBIN). Referring to language on the GEF, the EU recommended that the COP review and update its guidance in accordance with the Working Group's outputs. The GEF proposed text regarding its policies on public involvement.

On the recommendation regarding support for capacity building, delegates debated reference to legal dues and recognition of rights. Regarding establishing participation mechanisms, Brazil proposed, and Bolivia opposed, deleting reference to indigenous participation in the management of biodiversity, noting that management is not addressed in Article 8(j). The IIFB recalled that the Working Group's mandate also addresses CBD provisions related to Article 8(j). Following extensive debate, delegates agreed on language promoting indigenous participation in the management of biodiversity, where those communities and governments deem appropriate, and encouraging capacity-building efforts to facilitate indigenous and local communities' access to national and international legal protection for their traditional knowledge.

On Friday, the closing Plenary adopted the final text without substantive amendments.

**FINAL TEXT:** The final text (UNEP/CBD/WG8J/2/L.6) recommends that the COP invite Parties and others to submit information on national experiences, case studies and best practices regarding participatory mechanisms, to be synthesized into a report for use as a basis to establish national and local mechanisms to promote indigenous participation in decision-making processes regarding traditional knowledge. It requests the Executive Secretary to:

- explore potential funding sources to facilitate indigenous participation in CBD meetings;
- establish an expert group to develop the roles and responsibilities of the focal point for the CHM on Article 8(j);
- consult with the secretariats of other relevant environmental conventions, such as the CCD, the UN Framework Convention on Climate Change, the Ramsar Convention, the Convention on

Migratory Species and the Convention on the International Trade in Endangered Species of Fauna and Flora, to explore collaboration regarding the participation and involvement of indigenous and local communities in discussions related to traditional knowledge; and

- communicate with the UN Permanent Forum on Indigenous Issues, UNCTAD, UNESCO, WIPO and other intergovernmental bodies to explore possible areas of coordination and collaboration. The final text urges Parties and others to:
- strengthen efforts supporting capacity building for indigenous participation in decision-making processes regarding traditional knowledge and for accessing national and international legal protection for their knowledge;
- promote, where deemed appropriate by governments and communities, indigenous participation in the management of biodiversity;
- support the development of communication mechanisms, such as the IBIN, among indigenous and local communities; and
- develop, implement and evaluate, with indigenous and local communities, strategies to promote awareness and enhance access to information relating to Article 8(j).

It further requests funding agencies, particularly the GEF, to provide information on their funding activities and procedures, and invites the GEF to give preference, where appropriate, to projects that contain elements of indigenous participation, and to apply the GEF's policy on public involvement to support the full and effective participation of indigenous and local communities.

#### **CLOSING PLENARY**

Following the adoption of the meeting's recommendations (UNEP/CBD/WG8J/2/L.2-7) and the report of the meeting (UNEP/CBD/WG8J/2/L.1), several delegates delivered closing statements.

Canada presented the *Equator Initiative*, sponsored by the UN Development Programme in partnership with the Canadian Government and others, which will recognize rural and indigenous communities that have demonstrated sustainable livelihoods using biological resources in tropical countries. The Netherlands invited all Parties and representatives of the IIFB to COP-6 meeting in The Hague.

Several delegations, including Togo, on behalf of the African Group; Ecuador, on behalf of GRULAC; Fiji, on behalf of Pacific Island States; Spain, on behalf of the EU; Norway, on behalf of JUSCANNZ; Latvia, on behalf of the Central and Eastern European Countries; and Costa Rica, thanked the Secretariat and the Government of Canada for the meeting's excellent preparation, and indigenous and local community representatives for their participation.

The IIFB stressed that indigenous peoples' traditional knowledge is a key to reversing the loss of biodiversity. He noted that several critical issues remain outstanding, including: self-determination; ownership of, control over and access to resources; exercise of customary laws; prior informed consent; inadequacy of existing IPR systems to protect indigenous knowledge; control over traditional knowledge; lack of accountability; continued imbalance between North and South; participation of women; and the relationship between the Working Group on ABS and the Working Group on Article 8(j).

CBD Executive Secretary Hamdallah Zedan stressed that this meeting took place at a key point in the preparations for World Summit on Sustainable Development (WSSD) and COP-6. He said that the commitment and efforts of participants at this meeting prove that the



CBD is an effective forum for ensuring the respect, preservation and maintenance of traditional knowledge and for expressing the views of indigenous and local communities.

An indigenous elder from Costa Rica commended the cooperative spirit of the meeting, where nations and indigenous peoples worked together in an effort to protect the earth. He emphasized that all human beings bear the responsibility of reflecting on their actions. Chair Fisher then gavelled the meeting to a close at 2:20 pm.

## **A BRIEF ANALYSIS OF THE SECOND MEETING OF THE WORKING GROUP ON ARTICLE 8(J)**

Compared with previous meetings on traditional knowledge, the second meeting of the Working Group on Article 8(j) proceeded with a more subdued and formalized demeanor. Many thought that this reflected a growing maturation of the process, as the Madrid workshop was generally remembered for its ground-breaking yet chaotic exchange of views and exploration of participatory procedures. The subsequent Seville meeting still reflected a wide range of inputs, while streamlining the operational procedures and organization. This meeting took a further step toward integrating Article 8(j) discussions more fully into the CBD, and away from views of the issue as a more esoteric subject under the Convention.

Despite these advances and the formalization of the work programme at COP-5, there was still a sense that this meeting's tasks were too broad and unmanageable, given their political and technical complexity as well as the limited time available to produce practical recommendations. The most substantive issues arising from the discussions related to participation, both within CBD decision-making processes as well as in implementation activities at the national level, and delineation of the CBD's jurisdiction on issues related to traditional knowledge in the arena of international IPR instruments. Underlying these issues, however, is a more fundamental difference between indigenous and governmental perspectives. This brief analysis will first explore these divergent perspectives and then examine issues of participation and IPR.

### **PERSPECTIVES**

Previous meetings explicitly noted divergent worldviews or "cosmo-visions" between governments and indigenous peoples on society, science and the environment. These different underlying perspectives continued to manifest themselves in discussions at this meeting, although in a more implicit manner. Indigenous representatives reiterated concerns that discussions lacked sensitivity to the linkages between traditional knowledge, cultural factors and land and resource rights. As with discussions in UN human rights fora, the indigenous approach to Article 8(j) has primarily been a "rights-based" approach, focusing on self-determination, governance, and territorial and cultural rights as a necessary precursor for ensuring the protection of traditional knowledge. In contrast, some have argued that governments in the CBD process have approached the issue primarily from an environmental and knowledge management perspective, which disassociates traditional knowledge from its original context. One area of discussion in which these differences were manifested was the composite report on status and trends. Indigenous representatives felt that they were being "studied to death" as the preparation of yet another report would not necessarily lead to concrete actions to address their plight.

This divergence in perspectives raises fundamental questions about the role, relevance and relations between the collective rights and customary laws of indigenous peoples, and national legal systems and international instruments. In this regard, the arguably top-down perspective of international and, in many cases, national law is often at odds with indigenous peoples' efforts to develop their own models based on their specific identities and spiritual attachments to land and the environment. Inevitably, this led to debates about legal status, viability and the compatibility of indigenous models with conventional legal ones, and more particularly about respect for customary law and qualifiers regarding national legislation.

### **PARTICIPATION**

Indigenous delegates reiterated their concerns about lack of adequate mechanisms for meaningful and effective participation, recalling earlier debates in the Working Group, as well as in other CBD and IPR-related fora. They expressed their frustration that relevant discussions have proliferated across fora from UN human rights bodies to the CBD, and more recently to WIPO and UNCTAD. While many indigenous delegates attended this meeting, the lack of resources, technical and legal expertise, and access to information continues to constrain their full and effective participation. The meeting also had some notable absences, including the Governments of Australia, Malaysia and Russia, as well as a low level of NGO participation in comparison with other CBD meetings. Within the actual discussions, delegates and indigenous participants alike noted that the process had matured to allow for unprecedented levels of indigenous input into the actual drafting of text and involvement in contact groups.

Participation also remains an issue at the national level. Questions arose as to whether "full and effective participation" connotes a consultative role in decision-making and implementation processes, or a more active role in the development of programmes and instruments to manage and protect traditional knowledge. This was specifically reflected in debates on impact assessment, which contrasted the role of governments in the conduct of such assessments with the rights and roles of those affected by development projects.

### **PROTECTION**

Attention to the protection of traditional knowledge within other international fora has proliferated in recent years, most specifically with regard to the work of WIPO, UNCTAD and the WTO. Many appreciated this growth as recognition of the importance of issues related to the protection of traditional knowledge, while recognizing that it has raised complex questions about the roles and jurisdiction of independent legal instruments. Some delegates and indigenous representatives were protective of the CBD's role, noting that WIPO, as a trade-related forum, has a more commercial orientation, which may not be as appropriate for addressing the concerns of traditional knowledge, and is less transparent or open to broad participation. Discussions on responsibility for developing elements of a *sui generis* system and databases and registries for the protection of traditional knowledge reflected such debates. The discussion on *sui generis* systems did not venture into significant detail, although questions did arise as to the need to examine and test new systems or to simply assess the adequacy of existing instruments at the national and international levels.



The Working Group roundly dismissed the idea of developing an international database or registry, which is currently within WIPO's work programme. Developing countries and indigenous delegates alike noted WIPO's focus on the role of intellectual property in trade and development, fearing that an international database could facilitate access to and reduce control over traditional knowledge. Instead, these delegates argued that local or national registries are preferable for maintaining indigenous ownership over their knowledge and contributing to the conservation and sustainable use of biodiversity.

In related discussions, some participants also highlighted the fact that much traditional knowledge currently in the public domain was placed there by third parties, such as academics and researchers, without the consent of the original knowledge-holders. The issue will re-emerge when the Working Group addresses the repatriation of traditional knowledge, although some delegates, reflecting on the similar issue of rights over *ex situ* resources collected prior to the CBD's entry into force, opined that the discussion was a political non-starter.

### **PROCESSES AND PROSPECTS**

The perhaps inevitable debates about the relation of indigenous rights to national law and State sovereignty continues to cause anxiety. Some countries, such as Argentina, Brazil and Canada, maintained their prerogative of national sovereignty and the primacy of national authorities and legislation. The struggle evident within the Working Group's deliberations was to balance language encouraging a commitment to implementation with language that is not overly prescriptive, thereby allowing opportunities for flexible interpretation and further development. Repeated references to national legislation, "as appropriate," and the use of "inviting" over "urging," had one Co-Chair making the analogy that the differences in legal language reflect the choice between a feather bed and a water bed – both are still soft.

Questions arose regarding traditional knowledge as a cross-cutting theme, particularly in other CBD discussions such as SBSTTA's work on impact assessments and the ABS process. Some delegates expressed fear that the Working Group's activities on impact assessments could be subsumed by SBSTTA, thereby emphasizing scientific and technical approaches over cultural and social concerns.

Looking forward to COP-6, most delegates, eyeing the heavy agenda, anticipate long days and even longer nights in The Hague. Few expect the COP to delve deeply into the underlying differences between customary and conventional approaches to traditional knowledge, or the political issue of rights and responsibilities. The challenge then, specifically with regard to Article 8(j), is to maintain momentum and commitment to the work programme's implementation at the national level, within the CBD and across related international fora.

## **THINGS TO LOOK FOR BEFORE COP-6**

**THIRD REGIONAL WORKSHOP ON SUSTAINABLE USE OF BIOLOGICAL DIVERSITY:** This meeting will be held in Quito, Ecuador, from 18-21 February 2002. For more information, contact: CBD Secretariat; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: [secretariat@biodiv.org](mailto:secretariat@biodiv.org); Internet: <http://www.biodiv.org/doc/notifications/2001/ntf-2001-12-14-suse-en.pdf>

**SECOND SESSION OF THE UN FORUM ON FORESTS:** UNFF-2 will take place at UN headquarters in New York, from 4-15 March 2002. This meeting will include a high-level ministerial segment. For more information, contact: Mia Soderlund, UNFF Secretariat; tel: +1-212-963-3262; fax: +1-212-963-4260; e-mail: [unff@un.org](mailto:unff@un.org); Internet: [http://www.un.org/esa/sustdev/unff\\_2002\\_ssm.htm](http://www.un.org/esa/sustdev/unff_2002_ssm.htm)

**WTO TRIPS COUNCIL:** This meeting will take place at WTO headquarters in Geneva, from 5-7 March 2002. For more information, contact: WTO Secretariat; tel: +41-22-739-5111; fax: +41-22-739-5783; e-mail: [enquiries@wto.org](mailto:enquiries@wto.org); Internet: [http://www.wto.org/english/tratop\\_e/trips\\_e/trips\\_e.htm](http://www.wto.org/english/tratop_e/trips_e/trips_e.htm)

**WSSD PREPCOM III:** This meeting will take place at UN headquarters in New York from 25 March–5 April 2002. For more information, contact: Andrey Vasilyev, DESA; tel: +1-212-963-5949; fax: +1-212-963-4260; e-mail: [vasilyev@un.org](mailto:vasilyev@un.org); Major groups contact: Zehra Aydin-Sipos; tel: +1-212-963-8811; fax: +1-212-963-1267; e-mail: [aydin@un.org](mailto:aydin@un.org); Internet: <http://www.johannesburgsummit.org>

**SEVENTH INTERNATIONAL WILDLIFE LAW CONFERENCE:** This meeting, sponsored by the American Society for International Law, will take place in Washington, DC, on 30 March 2002. For more information, contact: William Burns, Wildlife Interest Group; tel: +1-650-281-9126; fax: +1-801-838-4710; e-mail: [asilwildlife@pacbell.net](mailto:asilwildlife@pacbell.net); Internet: <http://eelink.net/~asilwildlife/programs2.shtml>

**SIXTH CONFERENCE OF PARTIES TO THE CBD:** CBD COP-6 will take place in The Hague, the Netherlands, from 7-19 April 2002. The COP is expected to receive reports from its subsidiary bodies, the Executive Secretary and the GEF, review the implementation of the programme of work, and focus on: forest biodiversity; invasive alien species; access and benefit-sharing; and the strategic plan, national reporting and operations of the Convention. For more information, contact: CBD Secretariat, Montreal, Canada; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: [secretariat@biodiv.org](mailto:secretariat@biodiv.org); Internet: <http://www.biodiv.org/meetings/cop-06.asp>