



ARTICLE 8(J) WG-3 HIGHLIGHTS: WEDNESDAY, 10 DECEMBER 2003

Delegates to the third meeting of the Open-ended Intersessional Working Group on Article 8(j) and Related Provisions of the Convention on Biological Diversity (CBD) convened in sub-working group sessions throughout the day. Sub-Working Group I (SWG-I) continued discussions on draft guidelines for impact assessments, and considered technology transfer and recommendations from the UN Permanent Forum on Indigenous Issues (PFII). Sub-Working Group II (SWG-II) discussed a co-Chairs' text on *sui generis* systems for the protection of traditional knowledge. A brief Plenary session was held in the afternoon to review progress.

SUB-WORKING GROUP I

IMPACT ASSESSMENTS: Draft guidelines: SWG-I co-Chair John Herity (Canada) invited views on draft guidelines for the conduct of cultural, environmental and social impact assessments (UNEP/CBD/WG8J/3/5).

Integration of assessments: On social impact assessments, JAMAICA said evaluation of changes to traditional economies should include economic valuation of negative social impacts. Regarding their scope, the INTERNATIONAL INDIGENOUS FORUM ON BIODIVERSITY (IIFB) proposed considering traditional lifestyles, and CARE EARTH-INDIA impacts on access to biological resources for livelihoods. Regarding areas to be addressed when conducting baseline studies, Liberia, on behalf of the AFRICAN GROUP, suggested considering human settlements, the IIFB use of traditional medicines, and PAKISTAN involuntary resettlement and expulsion of indigenous peoples from their lands.

MEXICO said benefits of proposed developments should include payment for environmental services. BURKINA FASO highlighted threats of expropriation of traditional lands. On health and safety aspects, SAINT LUCIA and LITHUANIA suggested referring to medicinal species rather than plants.

Ways and means: On capacity building, ARGENTINA and the IIFB recommended including indigenous experts in impact assessment teams. Delegates also agreed to include traditional knowledge experts. BURKINA FASO and the IIFB requested including other awareness-raising means than web-based ones, with the IIFB calling for traditional communication means. SAINT LUCIA and PAKISTAN proposed language on financial, technical and legal resources to ensure indigenous participation in all aspects of impact assessment.

General considerations: The IIFB proposed that the section include: prior informed consent (PIC); strategic environmental impact assessments (EIAs) and community development plans; legal considerations; ownership, protection and control of tradi-

tional knowledge; mitigation and threat-abatement measures; transparency; review and dispute resolution procedures; and reporting.

On PIC, the IIFB requested, *inter alia*, recognizing indigenous rights and knowledge, and providing sufficient time and accurate information. CANADA and JAMAICA preferred wording agreed upon by the Conference of the Parties (COP) on PIC, subjecting PIC to national legislation.

On strategic EIAs, the IIFB suggested, and delegates agreed, encouraging communities to formulate community development plans, including strategic EIAs and poverty alleviation mechanisms, and requiring development projects to: balance economic, social, cultural and environmental concerns; maximize opportunities for biodiversity conservation; and share benefits and protect traditional knowledge.

On legal considerations, the IIFB proposed language recognizing indigenous rights to territories and to control access, and addressing jurisdictional matters, and liability and redress. Several delegates said jurisdiction and liability and redress issues are beyond the guidelines' scope.

Regarding traditional knowledge, the IIFB stressed the need to respect communities' customary laws and intellectual property rights (IPRs) over their traditional knowledge, PIC of knowledge holders, and access protocols established by the communities.

The IIFB also called for transparency and public accountability at all assessment phases, and for information in national reports on measures adopted on the basis of the guidelines. JAMAICA stressed the need for general language to accommodate national specificities. CANADA proposed that all human rights be respected, including social, cultural and environmental rights.

Use of terms: On outstanding issues related to use of terms, JAMAICA suggested that EIAs include appropriate mitigation measures. MEXICO proposed that social impact assessments address impacts on economic, social, cultural, civil and political rights.

The IIFB suggested, and delegates agreed, naming the guidelines "Akwekon Guidelines," according to the Mohawk place name for Montreal. Co-Chair Herity said a co-Chairs' text will be prepared.

RECOMMENDATIONS FROM THE UN PERMANENT FORUM ON INDIGENOUS ISSUES: Co-Chair Herity presented recommendations from the PFII on progress in environmental development, and EIA and cultural diversity (UNEP/CBD/WG8J/3/8). SWEDEN, NORWAY and CANADA encouraged cooperation with the PFII and, with others, supported organizing a workshop on protecting sacred places and ceremonial sites. The IUCN highlighted its work on protected areas and sacred sites. The BAHAMAS expressed concern over establishing a mandatory



legal framework for impact assessments. CANADA suggested convening a side event on the guidelines during the next PFII session.

Regarding a recommendation to develop a UN report on implementing indigenous peoples-related chapters of Agenda 21, the IIFB suggested that the CBD Executive Secretary coordinate preparation of the report and ensure communities' participation.

Co-Chair Herity said a draft recommendation will be forwarded to the Working Group Chair.

TECHNOLOGY TRANSFER: SWG-I co-Chair Herity invited comments on outstanding issues from the ninth meeting of the Subsidiary Body on Scientific, Technical and Technological Advice regarding technology transfer and cooperation. MEXICO, supported by many, suggested recommending that COP-7 take into account mechanisms to ensure that transfers of traditional and innovative technologies fully respect the rights of those who have developed them.

Co-Chair Herity said a conference room paper (CRP) will be prepared.

SUB-WORKING GROUP II

SUI GENERIS SYSTEMS: SWG-II co-Chair Diann Black Layne (Antigua and Barbuda) invited comments on a co-Chairs' text on elements for a *sui generis* system to protect traditional knowledge. The UN Conference on Trade and Development (UNCTAD) called for adopting a holistic approach to the protection of traditional knowledge, not only IPR-related measures.

Preamble: The IIFB requested referring to the use and control of, rather than access by, communities to biological resources, and their lands and territories.

The IIFB stressed that *sui generis* systems should respect the rights of interested communities rather than be sensitive to their interests. CANADA noted the need to develop such systems with community participation.

CANADA proposed, and delegates agreed, to recognize that communities have their own traditional knowledge maintenance and transmission systems, as part of their customary laws.

BRAZIL, supported by SAINT LUCIA, proposed that registers be free of charge and not create obstacles to the protection of traditional knowledge. Delegates agreed to a proposal by CANADA: recognizing the need for funding and capacity building for communities to participate in registers; and stating that registers be voluntary, not a requirement for protection, and established with communities' PIC and participation. Delegates discussed referring to "effective" or "full and effective" community participation when establishing registers, and agreed on full and effective participation. The IIFB and ETHIOPIA called for establishing registers on the basis of customary laws. Delegates agreed that such laws be taken into consideration, as proposed by BRAZIL. HAITI, SAINT LUCIA and ETHIOPIA requested referring to customs, in addition to customary laws and practices.

On recognizing that traditional knowledge may be subject to various degrees of access, INDIA underscored the difficulty of controlling access to knowledge held by several communities. Delegates agreed to recognize that traditional knowledge is sometimes accessed without communities' consent and, reflecting proposals from the IIFB, CANADA and THE COORDINATING ORGANIZATION OF ARGENTINIAN INDIGENOUS PEOPLES ASSOCIATIONS, to stress that communities have the right to deny, grant and determine the level of access. UGANDA, COSTA RICA, MALAYSIA and CANADA proposed distinguishing *in situ* and *ex situ* traditional knowledge. The IIFB stressed the need for relevant communities' PIC for continued access to *ex situ* traditional knowledge. EL SALVADOR suggested referring to consent rather than PIC. After discussion, delegates agreed not to refer to subjecting access to *ex situ* traditional knowledge to national legislation.

Delegates debated the nature of traditional knowledge, and agreed that it is collective and inter-generational, but could not agree on whether genetic resources are collective and inter-generational.

They also debated whether some or all genetic resources and associated knowledge are transboundary, and agreed that only some are transboundary.

BRAZIL proposed, and delegates agreed, to new preambular paragraphs on benefit-sharing arrangements and mechanisms to halt the misuse of traditional knowledge.

On collaboration with other organizations, delegates agreed to refer to UNESCO, UNCTAD and the World Trade Organization.

Operative paragraphs: Regarding provision of information, CANADA proposed including information on measures supporting customary law. Italy, on behalf of European Community (EC) Member States and acceding countries (EU), opposed by BRAZIL, proposed a reference to the work of the World Intellectual Property Organization (WIPO).

Regarding a glossary of Article 8(j)-relevant terms, the EC requested cooperation with the Working Group on ABS. BRAZIL and ARGENTINA proposed, and delegates agreed, not to convene a technical experts group on the glossary.

The EU proposed that the COP request the Article 8(j) Working Group to review the relevance of the Bonn Guidelines on ABS and an international ABS regime to the protection of traditional knowledge, and assess the role of databases and registers. Delegates agreed with a proposal by the IIFB and BRAZIL to consider whether registers facilitate unauthorized access. BRAZIL, opposed by the IIFB and SWITZERLAND, recommended that a *sui generis* system include benefit-sharing arrangements.

Delegates opposed requesting the Article 8(j) Working Group to identify elements of a regime for *sui generis* traditional medicines, while CANADA encouraged cooperation with fora addressing the issue. The EU called for integrating biodiversity concerns into policies of other fora, and UNCTAD suggested cooperating with trade-related fora. MEXICO called for examining mechanisms of IPRs complying with CBD Article 8(j). Regarding cooperation with WIPO, the EU, opposed by the IIFB, asked that WIPO's relevant findings on the protection of traditional knowledge be conveyed to the Article 8(j) Working Group.

A revised co-Chairs' text will be prepared, including written comments on the Annex containing a list of elements for *sui generis* systems.

IN THE CORRIDORS

Some SWG-I delegates feared that the late tabling of the revised draft guidelines on impact assessments would necessitate striving for last minute solutions over sensitive issues such as references to PIC and customary law. Others appeared confident that the Bonn Guidelines will soon have an indigenous cousin: the Akwekon guidelines on cultural, environmental and social impact assessments.

SWG-II's tormented discussions on the co-Chairs' text on elements for *sui generis* systems saw the tide turning on registers and databases, with a number of Parties upholding indigenous peoples' concerns that these instruments may become means of unauthorized access and work against the goal of protecting traditional knowledge. One delegate ventured that ABS-related concerns voiced in SWG-II would be alleviated by the Working Group Chair's promise of spirited benefit-sharing in exchange for timely completion of work by Thursday evening.

THINGS TO LOOK FOR TODAY

SUB-WORKING GROUP I: SWG-I will convene at 10:00 am in Room I to discuss co-Chairs' texts on the composite report on status and trends, and the draft guidelines on impact assessments. Delegates will also consider a CRP on technology transfer. Discussions on these items will continue in the afternoon.

SUB-WORKING GROUP II: SWG-II will convene at 10:00 am in Room II to discuss a revised co-Chairs' text on *sui generis* systems, and co-Chairs' texts on participatory mechanisms and genetic use restriction technologies. Discussions on these items will continue in the afternoon.

PLENARY: Plenary will meet at 5:30 pm to review progress.