



ARTICLE 8(J) WG-3 HIGHLIGHTS: THURSDAY, 11 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) considered a co-Chairs' text on the composite report on status and trends, and conference room papers (CRP) on the draft Akwé: Kon guidelines for impact assessments and on technology transfer. Sub-Working Group II (SWG-II) discussed co-Chairs' texts on participatory mechanisms and genetic use restriction technologies (GURTs), CRPs on participatory mechanisms and *sui generis* systems for the protection of traditional knowledge, and an L document on GURTs. A brief Plenary session was held in the afternoon to review progress.

SUB-WORKING GROUP I

COMPOSITE REPORT: SWG-I co-Chair John Herity (Canada) presented a co-Chairs' text on the composite report on status and trends of traditional knowledge.

Draft recommendations: CANADA suggested preambular references to the desirability of ongoing work, and to the prior informed consent (PIC) of knowledge holders.

Regarding the first phase of the report, the EUROPEAN COMMUNITY (EC) and BURKINA FASO requested linking information gathering to the report's revision. Liberia, on behalf of the AFRICAN GROUP, proposed including feasible information-gathering means, other than the Clearing-House Mechanism (CHM).

Delegates agreed to retain a reference to assessing registers' advantages and limitations. The INTERNATIONAL INDIGENOUS FORUM ON BIODIVERSITY (IIFB) requested establishing an indigenous advisory committee to assist in the report's preparation. Delegates debated the necessity of a peer review, and agreed to a proposal by BURKINA FASO and the IUCN that the indigenous advisory group, provided for in Annex I of decision VI/10 on the outline of the composite report, undertake the review.

Regarding the second phase of the report, BURKINA FASO proposed that field studies be undertaken by stakeholders, with the IIFB requesting that they be carried out according to community guidelines for obtaining consent for access and to conduct research.

Regarding developing an action plan, the EC, with CANADA and the IUCN, stressed the need to identify actors and timeframes, and develop the annexed elements before adopting the plan. Delegates agreed, inviting Parties' action on the suggested elements.

Draft action plan: The IIFB requested, and delegates agreed, to delete a section on definitions. The WORLD CONSERVATION MONITORING CENTRE of the UN Environment Programme

suggested, and delegates agreed, that indigenous people participate in preparations of a questionnaire for the compilation of thematic reports on CBD Article 8(j).

On indicators, delegates opposed referring to indigenous population data. The EC cautioned against the premature development of indicators. On research ethics, CANADA encouraged the use and development of codes of ethics. Pakistan, on behalf of the ASIAN GROUP, called for respecting indigenous rights while establishing new protected areas.

Delegates debated CANADA's proposal to delete language encouraging fair and equitable resolution of land claims. They agreed to retain the reference, and state that land claims be subject to national law and international obligations. The IIFB called for respecting the rights of uncontacted or voluntarily isolated peoples.

SWG-I approved the document as amended.

IMPACT ASSESSMENTS: Co-Chair Herity presented a CRP on the draft Akwé: Kon guidelines (UNEP/CBD/WG8J/3/SWG.I/CRP.2). The IIFB explained that Akwé: Kon means "everything," referring to the customary rule not to exclude any outcome when negotiating.

Draft recommendations: Italy, on behalf of EC Member States and acceding countries (EU), requested recalling decision VI/7 A of the Conference of the Parties (COP) on guidelines for incorporating biodiversity-related issues into environmental impact assessment legislation, and CANADA Annex II of decision VI/10 on recommendations for impact assessments. ARGENTINA and BRAZIL suggested preambular language on using the guidelines in a manner consistent with international obligations. The IIFB and the AFRICAN GROUP opposed referring to a compilation of sacred sites.

Draft guidelines: Many opposed a proposal by the ASIAN GROUP to define sacred sites as areas declared as such by national governments. Delegates agreed to refer to areas held to be of particular importance by national governments or indigenous and local communities.

The IIFB proposed, and CANADA and the US supported, retaining a definition of customary law.

On social impact assessments, KENYA proposed assessing socioeconomic aspects. The AFRICAN GROUP requested including economic aspects in all assessments. Delegates agreed to retain original language on social impact assessments, and to interpret it to include economic aspects, as proposed by the EU.

Delegates agreed that assessments should identify the actors responsible for liability, redress, insurance and compensation for preventable adverse impacts of development projects.

On indigenous participation, CANADA said communities should be invited, rather than obliged, to participate. The IIFB requested record of its opposition to language requiring PIC of communities when required by national legislation. Regarding bracketed language on articulating legal responsibilities and juris-



dictional matters, delegates agreed with a proposal by the BAHAMAS to clarify legal responsibilities for matters arising from the conduct of assessments, including enforcement, and liability and redress measures. CANADA suggested requesting Parties to include assessment-related information in their national reports.

SWG-I approved the guidelines as amended.

TECHNOLOGY TRANSFER: Co-Chair Herity presented a CRP on technology transfer and cooperation (UNEP/CBD/WG8J/3/SWG.I/CRP.1), recommending that COP-7 take into account communities' traditional and innovative technologies and, following an amendment by the IIFB, mechanisms for ensuring that transfer of these technologies respect communities' rights. SWG-I approved the draft recommendation as amended.

SUB-WORKING GROUP II

PARTICIPATORY MECHANISMS: The Secretariat introduced a co-Chairs' text on participatory mechanisms for indigenous and local communities.

CANADA, supported by the IIFB, SAINT LUCIA, COSTA RICA and TANZANIA, proposed encouraging mechanisms to enhance participation of indigenous and local communities throughout the CBD process. BRAZIL, UGANDA and the EU opposed, noting logistical, financial and procedural concerns. Delegates agreed to encourage incorporating practical measures to enhance communities' participation, where appropriate, in CBD's COP, Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA) and working groups.

MEXICO, supported by CUBA and the IIFB, and opposed by CANADA, called for guaranteeing communities' right to information. UGANDA requested strengthening, and the IIFB guaranteeing, indigenous participation. Following discussion, delegates agreed to delete a recommendation to maximize opportunities for participation in other international processes.

On inviting Parties to include information on community participation in their national reports, NAMIBIA proposed including measures and approaches to enhance participation.

On a voluntary funding mechanism for participation, ARGENTINA, supported by BRAZIL, MEXICO and UGANDA, suggested that it facilitate community participation from developing countries and countries with economies in transition. The EU, with CHINA, MEXICO, UGANDA and NAMIBIA, and opposed by ARGENTINA, proposed that the COP take into account UN practices when developing guidelines and criteria for the funding mechanism.

On further developing a thematic focal point on Article 8(j) under the CHM, NEW ZEALAND suggested providing information in appropriate and accessible languages of communities. On developing communication networks, the IIFB requested communities' consultation, with ARGENTINA, BRAZIL and UGANDA suggesting consultation through national focal points.

In the afternoon, the Secretariat introduced a CRP (UNEP/CBD/WG8J/3/SWG.II/CRP.2). Working Group Chair Hans Hoogeveen (the Netherlands) explained revisions to the Canadian proposal to enhance indigenous participation in other CBD bodies, noting that participation should be enhanced, where appropriate, in accordance with the rules of procedure. ARGENTINA opposed specific references to other CBD bodies.

BRAZIL and TANZANIA suggested, and delegates agreed, enhancing the capacity of communities to collaborate with national research institutions to identify research and training needs. MEXICO, the EU and the IIFB proposed, and delegates accepted, language on promoting synergies between conventions.

On the voluntary funding mechanism, the EU, NEW ZEALAND and the IIFB, opposed by ARGENTINA, reiterated the need to facilitate participation of communities from developing countries and countries with economies in transition "in particular." The reference was bracketed.

SWG-II approved the text as amended and bracketed.

GENETIC USE RESTRICTION TECHNOLOGIES: SWG-II co-Chair Diann Black Layne (Antigua and Barbuda) presented a co-Chairs' text on GURTs.

Regarding an invitation to develop capacity-building programmes, EL SALVADOR stressed the need for prior need and gap analyses.

Regarding a recommendation that COP-7 request the Article 8(j) Working Group to consider the report of the *Ad Hoc* Technical Expert Group (AHTEG) on GURTs at its next meeting, EL SALVADOR said COP should examine the report. The EU requested that the Working Group review Article 8(j)-related aspects of the report, and a reference to deliberations of SBSTTA-10.

The UN FOOD AND AGRICULTURE ORGANIZATION drew attention to its study on GURTs' implications on agricultural biodiversity, and BRAZIL, ARGENTINA and the IIFB proposed that it be considered at the Working Group's next meeting.

In the afternoon, SWG-II considered and approved without amendment UNEP/CBD/WG8J/3/WG.II/L.1.

SUI GENERIS SYSTEMS: The Secretariat introduced a CRP on elements of a *sui generis* system for the protection of traditional knowledge (UNEP/CBD/WG8J/3/SWG.II/CRP.1).

Preamble: Regarding recognition of communities' right to grant, refuse and determine the level of access, CHINA, opposed by the IIFB, said it should be subject to national legislation, and the EU to international law. On recognizing that the continued use of traditional knowledge already accessed without communities' PIC should only be granted with their PIC, the EU proposed that the use be subject to national and international law. CHINA and MALAYSIA requested bracketing proposed references to international law.

Operative paragraphs: Regarding a recommendation on future work of the Article 8(j) Working Group, delegates agreed with MEXICO to refer to systems and measures for the protection of traditional knowledge. The IIFB, opposed by BRAZIL, said benefit-sharing arrangements should only be referred to in the Annex containing potential elements for *sui generis* systems.

Delegates agreed with the EC to delete a recommendation on cooperation with other conventions. CANADA proposed deleting the Annex. Delegates retained the Annex, agreeing that it outlines draft elements.

SWG-II approved the CRP as amended and bracketed.

PLENARY

SWG-I co-Chairs Herity and Earl Stevenson (Peguis First Nation), and SWG-II co-Chairs Black Layne and Lucy Mulenkei (African Indigenous Women's Network) reported on completion of SWG-I and SWG-II's work, respectively. The IIFB presented Working Group Chair Hoogeveen and CBD Executive Secretary Hamdallah Zedan with indigenous handicrafts.

IN THE CORRIDORS

With timely completion of their work and no contact group sessions, one delegate remarked that participants clearly favored late night Christmas shopping sprees to late night drafting sessions. Noting the meeting's exceptional smooth running, some expressed concerns that explosive presents may be presented to the closing Plenary, such as a proposal to replicate the indigenous participation model of the 8(j) Working Group in other CBD bodies.

Reflecting on the week's discussions, some delegates feared that the momentum gathered at the previous meetings of the Working Group was melting away, while others remained optimistic that the efficiency of the discussions reflected improved indigenous participation.

THINGS TO LOOK FOR TODAY

PLENARY: The closing Plenary will convene at 10:00 am in Room I to discuss recommendations from the UN Permanent Forum on Indigenous Issues, adopt the meeting's recommendations and report, address other matters that Parties may wish to raise, and hear closing statements.

ENB REPORT: The *Earth Negotiations Bulletin* report containing a summary and analysis of this meeting will be available online on Sunday, 14 December, at <http://www.iisd.ca/biodiv/wg8j-3/>