

WORKING GROUP ON ARTICLE 8(J) HIGHLIGHTS: MONDAY, 23 JANUARY 2006

The fourth meeting of the *Ad hoc* Open-ended Intersessional Working Group on Article 8(j) and related provisions (Article 8(j) WG) of the Convention on Biological Diversity (CBD) opened in Granada, Spain, on Monday 23 January. In the morning, opening statements were followed by the adoption of the agenda and the organization of work, and general statements by participants. In the afternoon, sub-working groups I and II addressed: the composite report on traditional knowledge (TK); an international regime on access to genetic resources and benefit-sharing (ABS); participatory mechanisms; and an ethical code of conduct.

OPENING PLENARY

Mohamad Bin Osman (Malaysia), on behalf of the President of the CBD Conference of the Parties (COP), opened the meeting and expressed his appreciation to Spain for hosting it. José Torres, Mayor of Granada, welcomed delegates to the city of Granada.

Ahmed Djoghlaif, CBD Executive Secretary, called for active participation from all citizens of the world to significantly reduce the rate of biodiversity loss. He commended the work of the Article 8(j) WG in raising the profile of indigenous and local communities in the Convention, particularly through the development of the Akwé: Kon Guidelines, and encouraged delegates to enhance the implementation of the programme of work on Article 8(j).

Fuensanta Coves, Counselor for the Environment of Andalusia, emphasized the need to continue advancing on benefit-sharing for local communities.

Leire Pajin, Spain's Secretary of State for International Cooperation, assured her country's continued support for the work of Article 8(j) WG, emphasized the importance of cooperative multilateralism, and noted that the participatory mechanisms achieved by this WG are pioneering in promoting the participation of indigenous communities in other international forums.

Cristina Narbona, Spain's Minister of Environment, stressed the need for the Convention to move from recommendations to binding commitments, calling for a binding international ABS regime. She said that biological and cultural diversity co-exist and can only be protected by fighting poverty and respecting human rights.

Indigenous and local community representatives then said a prayer for the meeting.

ORGANIZATIONAL MATTERS: Delegates elected Amb. José Cuenca (Spain) as WG Chair; Antonio Matamoros (Ecuador) as Rapporteur; and confirmed the COP Bureau

as WG Bureau. They also elected the following indigenous representatives, nominated by the International Indigenous Forum on Biodiversity (IIFB), as Friends of the Bureau: Lucy Mulenkei, Fred Fortier, Vladimir Bocharnikov, Myrle Traverse, Leonor Zalabata and Jennifer Tauli-Corpuz.

Delegates then adopted the meeting's agenda and established two sub-working groups (SWGs). They elected Johan Bodegård (Sweden) and Fred Fortier (IIFB) as Co-Chairs of SWG-I, and Tererei Abete-Reema (Kiribati) and Lucy Mulenkei (IIFB) as Co-Chairs of SWG-II.

STATEMENTS: The IIFB said indigenous peoples are the holders of knowledge linked to their control of territories and resources, and this knowledge cannot be preserved without recognition of their inherent and inalienable right to self-determination. Stressing that their objective in the negotiation of the international regime on ABS is not to facilitate access, but to ensure respect of indigenous rights, he urged parties to recognize indigenous peoples' *sui generis* systems and laws. The IIFB also called for a lasting ban on GURTs' use, testing and granting them intellectual property rights. Highlighting indigenous peoples' contribution to the Millennium Development Goals, the UN Permanent Forum on Indigenous Issues (UNPFII) called for their full and effective participation in the work of the CBD.

Austria, on behalf of the European Community and its 25 Member States, and Bulgaria, Romania, Croatia, Macedonia, Albania, Bosnia and Herzegovina, and Serbia and Montenegro (EU), called for effective protection of TK to ensure fair and equitable sharing of benefits with the involvement and approval of all holders of such knowledge.

Ecuador, for LATIN AMERICA AND THE CARIBBEAN (GRULAC), expressed hope that the meeting will make progress on *sui generis* systems and the ethical code of conduct, as well as on implementation of equitable benefit-sharing.

Kiribati, for ASIA AND THE PACIFIC, urged greater involvement of the private sector and non-governmental organizations in implementing Article 8(j) in developing countries.

AUSTRALIA stressed the need to ensure intergenerational sharing of TK. MEXICO called for broader research on genetic use restriction technologies (GURTs), and case-by-case analysis of risks and benefits related to their use. She also welcomed the appointment of indigenous representatives as Friends of the Bureau, but noted that only parties should be appointed as Chairs.

The UN Food and Agriculture Organization (FAO) highlighted several relevant initiatives, including the International Treaty on Plant Genetic Resources for Food and Agriculture, and globally important agricultural heritage systems. UNESCO reported on the recent adoption of the Conventions on the Protection and Promotion of the Diversity of Cultural Expressions and on Safeguarding of the Intangible

Cultural Heritage. The World Intellectual Property Organization (WIPO) reported on its work on TK and cooperation with the Article 8(j) WG. FRIENDS OF THE EARTH-GLOBAL FOREST COALITION called for full and effective integration of Article 8(j) provisions into all areas of work under the CBD.

SUB-WORKING GROUP I

COMPOSITE REPORT: The Secretariat introduced the composite report on status and trends in TK and elements of an action plan for TK retention (UNEP/CBD/WG8J/4/4 and Add.1, and INF/1 to 12).

The EU noted that some TK may lose applicability because of rapidly changing environmental conditions. NORWAY and FINLAND welcomed the regional report focusing on the Arctic region. BURKINA FASO recommended taking into account drought and desertification. ECUADOR asked for further research on vulnerability of indigenous and local communities, and HAITI proposed to link it with rural exodus, poverty and culture shock.

CANADA said more information is needed on national activities, including on prior informed consent (PIC), and said solutions should be adapted to the specific needs and circumstances of communities. The IIFB urged consistency in qualifying PIC as free, and said the report fails to address adequate measures for TK protection. KIRIBATI noted that the Pacific sub-region was not fully consulted during the preparation of the report.

ARGENTINA stressed the need for ensuring the efficacy of registers and effective indigenous participation and, with ECUADOR and INDIA, for greater information on their role. BRAZIL, TUVALU, AUSTRALIA and the IIFB opposed recommendations on TK registers at the local, national and international level. EGYPT proposed an analysis of registers' implications on future intellectual property rights of TK owners and benefit-sharing. On local- and national-level registers, the EU said they should be established with the full cooperation and approval of the knowledge holders.

Regarding an international register, NEW ZEALAND and THAILAND expressed caution, and KIRIBATI opposed it, noting that it could provide free access to TK without ensuring community PIC and benefit-sharing. COLOMBIA said registers raise doubts and mistrust among communities.

SWITZERLAND recalled its proposal to the World Trade Organization (WTO) on an international portal on TK linking up existing regional and national databases. CHINA said work is required on the definition, scope and classification system for TK.

On elements of an action plan for TK retention, the IIFB called for establishing coordination between indigenous information centers and national focal points, and maintaining the integrity of TK of indigenous populations living in transboundary areas. IUCN prioritized action on the causes of TK loss, and suggested that the action plan include cross-references to indicators discussed in SWG-II. ARGENTINA called for identifying actors and timescales for all elements. A Co-Chairs' text will be prepared.

INTERNATIONAL ABS REGIME: The Secretariat introduced the consolidated text of comments and proposals regarding the international ABS regime (UNEP/CBD/WG-ABS/4/2).

The IIFB reiterated the need for full and effective indigenous participation throughout CBD discussions on ABS, and for recognizing the full breadth of indigenous peoples' rights over their land, natural resources and knowledge. The EU suggested integrating Article 8(j) into other relevant areas of CBD work, and improving links between the Article 8(j) and the ABS WGs.

KIRIBATI suggested considering TK associated with genetic resources in the ABS regime. MEXICO said the Article 8(j) WG should recommend that the ABS WG specifically address TK issues. NEW ZEALAND and NORWAY suggested identifying practical ways of cooperation between the two WGs, and

CANADA and BRAZIL said work in the Article 8(j) WG should be focused and non-duplicative. CANADA noted that priorities will be defined by COP-8 and, with NORWAY, that indigenous participation should be enhanced in the ABS WG. Discussion will resume on Tuesday.

SUB-WORKING GROUP II

PARTICIPATORY MECHANISMS: SWG-II Co-Chair Abete-Reema opened discussions on participatory mechanisms for indigenous and local communities in the work of the Convention, including criteria for the operation of the voluntary funding mechanism (UNEP/CBD/WG8J/4/5) and the role of the thematic focal point under the Clearing-house Mechanism (CHM) (UNEP/CBD/WG8J/4/6).

Voluntary funding mechanism: MEXICO stressed the need to use existing mechanisms, such as the UN Voluntary Fund for Indigenous Populations, instead of creating new ones and, supported by COLOMBIA, noted that the establishment of the voluntary fund should not result in an increase in parties' statutory contributions. The EU proposed three guiding principles for identifying eligible participants: transparency, objectivity and qualification. COLOMBIA highlighted ethnic equity in selecting participants and capacity building to ensure effective participation. The IIFB proposed establishing a board of trustees with five indigenous representatives to oversee the fund's operations. The INDIGENOUS WORLD ASSOCIATION OF HAWAII proposed using UNPFII's seven geographic regions to appoint members to the board and to ensure equal funding for representatives from all regions. BRAZIL, and Uganda on behalf of AFRICA, opposed, asking that indigenous representatives from developing countries, countries with economies in transition and small island developing States be prioritized. CANADA favored using CBD regional classification and, opposed by the IIFB, supported funding priority for elected representatives and larger organizations.

Role of the thematic focal point under the CHM: Participants commended the creation of an Internet-based portal for Article 8(j) and the thematic focal point under the CHM, with CANADA proposing implementing pilot projects in developing countries. Noting Internet access constraints, MEXICO, the EU and the IIFB encouraged alternate communication mechanisms. MEXICO also requested timely translation of documents into official languages to allow for further translation into indigenous languages. AFRICA said the financial mechanism could fund such translations, while NEW ZEALAND and the EU requested clarification on translation costs. COLOMBIA said the portal should have no implication on databases containing TK information.

ETHICAL CODE OF CONDUCT: Participants began consideration of the elements of an ethical code of conduct to ensure respect for the cultural and intellectual heritage of indigenous and local communities relevant to biodiversity conservation and sustainable use (UNEP/CBD/WG8J/4/8). BRAZIL and CANADA raised the issue of the code's scope, and the EU questioned CBD's mandate regarding some of the proposed elements. Discussions will resume on Tuesday.

IN THE CORRIDORS

As the city of Granada welcomed delegates to the meeting of the Article 8(j) Working Group, indigenous representatives were eager to secure guarantees for their rights on controversial issues such as GURTs and the negotiation of an international ABS regime. As far as ABS goes, participants were divided on whether the debate should be procedural – just referring to collaboration between the ABS and Article 8(j) Working Groups – or substantive. Some indigenous representatives cautioned, however, that if no progress is achieved this week, their limited participation in the ABS Working Group could result in their concerns being sidelined. Tuesday's debates on both ABS and GURTs will reveal if delegates are prepared to lift the game on these two prominent issues.