

WORKING GROUP ON ARTICLE 8(J)

HIGHLIGHTS:

TUESDAY, 24 JANUARY 2006

On Tuesday, delegates convened in two Sub-Working Groups (SWGs) and addressed: an international regime on access to genetic resources and benefit-sharing (ABS); genetic use restriction technologies; the composite report; *sui generis* systems for the protection of traditional knowledge (TK); indicators; and an ethical code of conduct. A contact group and a Friends of the Chair group on the code of conduct also met.

SUB-WORKING GROUP I

INTERNATIONAL ABS REGIME: In the morning, delegates continued the consideration of this topic, with the INTERNATIONAL INDIGENOUS FORUM ON BIODIVERSITY (IIFB), supported by SAINT LUCIA, recommending that the Article 8(j) WG elaborate specific elements relevant to TK protection and urge the ABS WG to develop participatory mechanisms for indigenous representatives. The PHILIPPINES and IIFB also proposed convening an international workshop to evaluate the potential impacts of the regime on TK, biological resources and indigenous rights, the report of which would be considered by both WGs.

On coordination between the Article 8(j) and ABS WGs, AUSTRALIA, supported by ARGENTINA, requested clarification by the COP on the role of the Article 8(j) WG, to ensure efficiency and non-duplication. COLOMBIA said discussions on ABS in Article 8(j) WG are preliminary, as indicated by the lack of a background document; and, with ARGENTINA and CANADA, suggested long-term collaboration between the two WGs. CUBA, COSTA RICA and others called for clarifying that the Article 8(j) WG mandate on ABS includes discussion on prior informed consent (PIC), role of authorities, contracts on access, and disclosure of origin. THAILAND recommended discussing the role of customary law and practices in the international ABS regime. Ethiopia, on behalf of AFRICA, reiterated that the Article 8(j) WG should recommend that the ABS WG address TK as a component of the international regime on ABS.

On an international regime on ABS, FRIENDS OF THE EARTH-GLOBAL FOREST COALITION opposed negotiation of an ABS regime before undertaking impact studies on indigenous peoples. INDIA stressed that the international regime should address TK and called for disclosure of origin in patent applications.

NEW ZEALAND suggested compiling national ABS practices incorporating implementation of Article 8(j). The INTERNATIONAL CHAMBER OF COMMERCE noted that development of national regimes is required to implement the CBD ABS provisions, and stressed the need for coordination with other international organizations.

On indigenous participation, AUSTRALIA, with NEW ZEALAND, MEXICO, ARGENTINA, CANADA and the EU, emphasized national consultations with indigenous communities prior to meetings, and urged timely circulation and translation of CBD background documents to this end. CANADA and SAINT LUCIA favored the inclusion of indigenous representatives in national delegations, while AFRICA recommended the inclusion of indigenous community representatives in the ABS WG.

SWG-I Co-Chairs will prepare a draft recommendation.

COMPOSITE REPORT: In the afternoon, SWG-I Co-Chair Bodegård introduced a draft recommendation on the composite report.

NEW ZEALAND and AUSTRALIA recommended focusing the renewed mandate of the advisory group on phase II of the report, rather than on the whole programme of work on Article 8(j).

On registers, delegates welcomed deletion of references to international registers, with AFRICA, IIFB, and Kiribati, on behalf of the PACIFIC SUBREGION, calling for deletion of all remaining references to registers. The EU and CANADA proposed only deleting references to the development of registers. EGYPT reiterated its proposal to explore implications of establishing registers for TK. GUATEMALA proposed that the Article 8(j) WG analyze the implications of registers.

On documenting TK, BRAZIL, supported by many, preferred developing technical guidelines rather than standards. ECUADOR requested a reference to the right of self-determination of indigenous peoples. The PHILIPPINES called for consultations with indigenous communities and international organizations, and the IIFB for participation of indigenous communities and documentation of possible threats to TK. SWG-I Co-Chairs will prepare a revised draft.

SUI GENERIS SYSTEMS: On *sui generis* systems for TK protection (UNEP/CBD/WG8J/4/7, and INF/15 and 18), BRAZIL, the IIFB and AFRICA noted the inadequacy of intellectual property rights (IPRs) for TK protection. INDIA said that only an international regime can protect TK. NEW ZEALAND favored a flexible and non-binding system and, with CANADA, said that development of such a system is premature at the international level. BRAZIL said a *sui generis* system should incorporate protection measures to safeguard TK from misappropriation and erosion at the community level. The IIFB

and SAINT LUCIA emphasized the system should be based on customary laws, and link TK to the control of lands and resources. CUBA said an international *sui generis* system should not be limited to transboundary issues.

The EU and SWITZERLAND stressed linkages with work conducted by WIPO and UNESCO. Noting that the CBD may not be the appropriate forum, NEW ZEALAND with AUSTRALIA cautioned against duplicating the work of WIPO on TK, while the PHILIPPINES suggested identifying future steps to continue the work in parallel with that of other international organizations.

Regarding a recommendation calling for views on definitions, MEXICO opposed it as premature, and CANADA proposed that indigenous communities be also invited to communicate their views. A Co-Chairs' text will be prepared.

SUB-WORKING GROUP II

ETHICAL CODE OF CONDUCT: In the morning, delegates continued discussions on the draft elements of an ethical code of conduct. THAILAND suggested making adherence to the code a prerequisite for research funding. Recalling the mandate to devise model instruments, NEW ZEALAND noted that the current draft strays too far into other areas, such as the work of the UN Commission on Human Rights. Uganda, on behalf of AFRICA, asked that the code should also cover cases where the interests of different indigenous communities overlap, with ETHIOPIA noting that in some areas there is still discussion about who is considered indigenous.

Pointing to the voluntary nature of the code, COLOMBIA proposed referring to "observe" rather than to "implement" in the text. AUSTRALIA suggested inviting comments, including by researchers and industry. MEXICO asked that comments not be limited to elements but focus on developing a comprehensive code. The IIFB requested the code apply to *ex situ* research and to past research results. Considering the code a minimum standard, MAORI UNIVERSITIES – CALL OF THE EARTH said communities could enforce higher standards and the code should not apply to their internal research.

SWG-II Co-Chair Abete-Reema set up a Friends of the Chair group, which met and presented a proposal to ensure broad consultation on the code especially at the national level, and report back to the UN Permanent Forum on Indigenous Issues (UNPFII). A contact group was established, co-chaired by Norway and Uganda.

GENETIC USE RESTRICTION TECHNOLOGIES

(GURTS): Co-Chair Abete-Reema invited delegates to consider potential socioeconomic impacts of GURTs (UNEP/CBD/WG8J/4/9). Many opposed GURTs, with MEXICO urging case-by-case and risk analyses of the technology, and KENYA, the PHILIPPINES and RED DE COOPERACION AMAZONICA calling for a continuing moratorium on field trials and their commercialization. AFRICA said GURTs undermine the objectives of the CBD and the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGR), the rights of smallholder farmers, and food security. EGYPT proposed national measures to prevent the approval of GURTs for field testing and commercial use. The IIFB encouraged countries to adopt a COP decision banning field testing, commercial use and the granting of IPRs on GURT seeds. INDIA noted its national ban on GURTs imports.

AUSTRALIA opposed the ban on field testing and commercial use and, with the US, CANADA, NEW ZEALAND, ARGENTINA and the PUBLIC RESEARCH AND REGULATION INITIATIVE, supported further research on GURTs, with a case-by-case risk assessment of any new product.

The EU stressed the need for a precautionary approach and, with NORWAY, supported capacity building on the nature and impacts of GURTs.

Highlighting the negative impacts of GURTs, the BAN TERMINATOR CAMPAIGN expressed concern over two new patents granted to GURT seeds. The SPANISH UNION OF SMALL FARMERS pointed to positive effects of genetic modification of seeds. The FEDERATION OF GERMAN SCIENTISTS warned that GURT seeds do not guarantee containment.

BRAZIL and ARGENTINA proposed reaffirming references to GURTs in existing COP Decision V/5 (Agricultural biodiversity), and SBSTTA Recommendation X/11 (Advice on the report of the *Ad Hoc* Technical Expert Group on GURTs).

A Co-Chairs' text will be prepared.

INDICATORS: In the afternoon, Co-Chair Abete-Reema opened discussions on indicators on progress towards the 2010 biodiversity target (UNEP/CBD/WG8J/4/10).

The EU suggested identifying and considering available data that can be replicated, and called for the combined use of qualitative and quantitative indicators. MEXICO considered it premature to approve the indicators in Annex II and report on them, due to lack of information, and proposed instead requesting submissions and compilation of comparable data. NEW ZEALAND supported further consideration of indicators and a modified timeframe. The IIFB emphasized the need to address all indicators under the mandate of the Article 8(j) WG after COP-8 in an integrated manner and, supported by TERRA LINGUA and the RUSSIAN ASSOCIATION OF INDIGENOUS PEOPLES OF THE NORTH, proposed an expert workshop to develop a work plan, and a coordinating committee. The INDIGENOUS WORLD ASSOCIATION underscored the need to draw upon existing models such as the UN Human Development Index.

AFRICA said indicators should be measurable and concise to avoid a reporting burden on parties. Noting that the proposed indicators will not serve the purpose of providing information on the status and trends of TK, COLOMBIA urged consultations with parties on refining indicators, and pointed to the absence of an indicator on benefit-sharing. The IIFB, supported by CANADA, said alternative reliable resources, other than national reports, should be used. UNESCO reported on their work on linguistic indicators and highlighted the need for additional work on the most complex indicators. A Co-Chairs' text will be prepared.

CONTACT GROUP ON THE ETHICAL CODE OF CONDUCT

Delegates met throughout the evening and focused their deliberations on the draft recommendations in order to devise a process for consideration and possible adoption of the code by COP-9. They also discussed how to involve the UNPFII in the process.

IN THE CORRIDORS

While some participants enjoyed lively, implementation-focused discussions at side events, other delegates speculated on the silence of a number of governments traditionally active in TK-related negotiations. Also noticeable was the absence of several seasoned ABS negotiators, which some interpreted as a tactical move to keep their cards close to the chest until next week. Others, however, lamented the resulting low-key discussions on TK-related ABS issues. This may also explain the non-confrontational atmosphere in both Sub-Working Groups. Even the usually heated issue of GURTs came and went without much of a bang, leaving some wondering whether the ensuing recommendation will finally wrap up this seemingly never-ending debate.