

WORKING GROUP ON ARTICLE 8(J)

HIGHLIGHTS:

WEDNESDAY, 25 JANUARY 2006

On Wednesday, delegates convened in two Sub-Working Groups (SWG). SWG-I considered draft recommendations on the composite report on status and trends of traditional knowledge (TK), and *sui generis* systems; addressed progress reports; and decided to postpone discussions on the regime on access to genetic resources and benefit-sharing (ABS) pending regional consultations. SWG-II addressed participatory mechanisms and recommendations of the UN Permanent Forum on Indigenous Issues (UNPFII); and approved a recommendation on indicators for assessing progress towards the 2010 biodiversity target. Delegates continued consultations on the ethical code of conduct in a contact group.

SUB-WORKING GROUP I

COMPOSITE REPORT: In the morning, SWG-I Co-Chair Bodegård introduced a revised draft recommendation. NEW ZEALAND, CANADA and AUSTRALIA reiterated that the mandate of the advisory group only covers the composite report. The IIFB, supported by others, requested inclusion of pollution among threats to TK, and Austria, on behalf of the EU, suggested keeping the list of threats open.

On registers, IIFB and SAINT LUCIA emphasized the need for control by indigenous communities, together with their prior informed consent (PIC) and ownership, and INDIA requested these elements be subject to national legislation. On documenting TK, IIFB, BRAZIL and SAINT LUCIA proposed reference to the protection of the rights of TK holders. CANADA, opposed by the PHILIPPINES and IIFB, suggested developing technical guidelines not only on documenting, but also on access to TK.

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

INTERNATIONAL ABS REGIME: In the morning, the SWG-I Co-Chairs presented a draft recommendation compiling participants' proposals.

ARGENTINA commented that the draft incorporated the IIFB proposal, but omitted many others. Venezuela, on behalf of GRULAC, and the EU requested time for regional consultations. CANADA, NEW ZEALAND, CHINA, AUSTRALIA, COLOMBIA, BRAZIL and INDIA added that the recommendation needs to be shorter and focused on ways of collaboration with the ABS WG.

SAINT LUCIA supported the IIFB proposals included in the draft. FRIENDS OF THE EARTH-GLOBAL FOREST COALITION stressed that the Article 8(j) WG has a clear mandate to deal with all TK-related issues. The IIFB noted the draft contains points of critical importance for indigenous peoples, which fall within the mandate of the WG. Discussions were suspended and will resume on Thursday.

SUI GENERIS SYSTEMS: SWG-I Co-Chair Bodegård introduced a draft recommendation on *sui generis* systems. Delegates debated whether parties and governments should "develop and/or adopt" national and local systems. Highlighting the role of customary laws, IIFB proposed that governments "recognize and adopt" such systems. On national and local systems and regional frameworks, BURKINA FASO, BRAZIL and the PHILIPPINES requested that references to TK include innovations and practices.

On transboundary distribution of biological resources, IIFB preferred "considering the establishment of" regional frameworks rather than "establishing" them and, with the PHILIPPINES, requested full and effective participation of indigenous communities.

On relations between the Article 8(j) WG, WIPO and WTO, Egypt, on behalf of AFRICA, and others requested a reference to other relevant international organizations. COLOMBIA and ECUADOR suggested encouraging WTO and WIPO to take account of CBD work. WIPO emphasized the complementarity between WIPO and CBD on TK. The EU, SWITZERLAND and CANADA preferred language on the mutual supportiveness of the work of CBD and WIPO. In the afternoon, following informal consultations, COLOMBIA suggested new text referring to: mutual supportiveness, avoidance of duplication of efforts, and communication of information on the elements of *sui generis* systems to other relevant organizations; and acknowledging the work of WIPO on intellectual property rights aspects of *sui generis* systems for TK protection, and ongoing discussions in the WTO on the TRIPS-CBD relationship.

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

PROGRESS REPORTS: In the afternoon, the Secretariat introduced progress reports on the implementation of the work programme on Article 8(j) and on the integration of its relevant tasks into the CBD thematic areas (UNEP/CBD/WG8J/4/2, 3, and 2/Add.1).

Progress on implementation: The EU, THAILAND, INDIA and IIFB regretted lack of sufficient information due to the limited number of national reports submitted. The EU and IIFB called for information from indigenous organizations, with THAILAND adding NGOs and research institutions. KIRIBATI called for financial resources to overcome obstacles in implementation. IUCN highlighted the need to measure progress in implementation on the ground. Many delegates reported on national initiatives focusing on implementation, and participatory mechanisms for indigenous and local communities in their national legislation and international development policy.

On the in-depth review of the implementation of the programme of work, NEW ZEALAND urged avoiding duplication and focusing on practical advice. The IIFB recommended clarifying the programme of work regarding Article 8(j)-related provisions.

Progress on integration: The IIFB requested that FAO, as lead agency of the CBD work programme on agricultural biodiversity, should ensure indigenous participation according to the CBD model; and also called for the full and effective participation of indigenous and local communities in the establishment of marine protected areas. IUCN highlighted the difficulty for representatives of indigenous communities to participate in other CBD WGs.

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

SUB-WORKING GROUP II

PARTICIPATORY MECHANISMS: In the morning, participants considered a draft recommendation presented by the SWG-II Co-Chairs. NA KOA IKA IKA KALĀHUI – HAWAII expressed concern over applying the CBD regional classification of five global regions for selecting participants, proposing instead adhering to the UNPFII classification of seven regions. The EU supported this proposal, while CANADA requested bracketing relevant references to regional classification.

Uganda, on behalf of AFRICA, reiterated its concern over priority given to applicants already having partial support from other sources. BRAZIL requested clarification on the process of nominating indigenous and local community participants, and validating their representativeness. In response, IIFB noted that, as an advisory body, it should be consulted on this issue.

The RUSSIAN ASSOCIATION OF INDIGENOUS PEOPLES OF THE NORTH, supported by IIFB, called on delegates to create a CBD voluntary fund, building on past experiences in the UN system such as the UN Voluntary Fund for Indigenous Populations. The ANISHINAABE NATION requested a reference to indigenous peoples from the North; and SAINT LUCIA to least developed countries and small island developing States as candidates for pilot projects.

NEW ZEALAND requested bracketing references to the Advisory Group on Article 8(j), pending outcomes of the discussions in SWG-I.

Noting that the CBD's "financial mechanism" only provides funding according to countries' national priorities, the GEF suggested instead referring to its "funding mechanism" which is better suited to provide funding for capacity building and translation of documentation into local languages. The Secretariat clarified that the COP's funding mechanism can only finance participation and not capacity building. The US, supported by the EU, suggested extending a broader invitation to potential funding sources for capacity building.

The SWG-II Co-Chairs will prepare a revised draft.

RECOMMENDATIONS OF THE UNPFII: SWG-II Co-Chair Abete-Reema opened discussion on the recommendations of the UNPFII (UNEP/CBD/WG8J/4/8). AUSTRALIA supported the distribution of the report on the ethical code of conduct for consideration by the UNPFII, whereas NEW ZEALAND requested awaiting the outcome of the contact group on the code.

The EU welcomed cooperation with the UNPFII, especially the workshop on the Akwé: Kon Guidelines. The SWG-II Co-Chairs will prepare a draft recommendation, taking into account the outcome of the contact group deliberations.

INDICATORS: In the afternoon, the SWG-II Co-Chairs presented a revised text on indicators for assessing progress towards the 2010 target. The EU and others emphasized that indicators should be meaningful, practical and limited in number. Delegates agreed to NEW ZEALAND's proposal not to annex the list of proposed indicators to the draft recommendation. MEXICO suggested adding a paragraph on recognizing the value of the protection, conservation and use of the TK of indigenous and local communities.

The IIFB suggested addressing indicators on other relevant targets such as sustainable use and conservation of genetic diversity, and delegates agreed to add a paragraph on the need to harmonize the work on indicators within the CBD process.

MEXICO proposed deleting a paragraph on IIFB establishing a committee to coordinate the work and input of indigenous and local communities and their organizations on the proposed indicators. The IIFB and the EU opposed the deletion. After consultations, delegates agreed to delete the reference to coordination of input by indigenous and local communities to develop more holistic indicators.

Delegates approved the recommendation as amended.

CONTACT GROUP ON THE ETHICAL CODE OF CONDUCT

Participants met at lunchtime and agreed on the text of the draft recommendation on the ethical code of conduct, discussing procedures for conducting national consultations and inviting comments from the UNPFII on the code of conduct. In the evening, they considered: a proposal include both *in situ* and *ex situ* research in the code's scope; a chapeau to an annex referring to new issues for consultation; and a list of additional issues presented by indigenous representatives.

IN THE CORRIDORS

As the third day of the meeting drew to a close, debates on *sui generis* systems and the ethical code of conduct seemed to be nearing conclusion, while delegates geared up to tackle ABS on Thursday. In SWG-I, delegates were left wondering whether the compromise reached on the relationship between the CBD and WIPO on *sui generis* systems will end or perpetuate "a tale of two cities."

On another note, the consensus on setting up a consultation process on the ethical code of conduct was hailed by some participants as a positive first step towards what could become an innovative instrument for the implementation of Article 8(j), similar to the Akwé: Kon Guidelines. Finally, as discussions on ABS were suspended following widespread dissatisfaction with the first draft tabled, some participants expressed concern about leaving one of the most contentious items on the agenda to the last minute. The optimists, nonetheless, hoped that a proposal from GRULAC on ABS to be unveiled on Thursday would kick-start actual discussions.