

SUMMARY OF THE FOURTH MEETING OF THE WORKING GROUP ON ARTICLE 8(J) OF THE CONVENTION ON BIOLOGICAL DIVERSITY: 23-27 JANUARY 2006

The fourth meeting of the *Ad hoc* Open-ended Intersessional Working Group on Article 8(j) and related provisions of the Convention on Biological Diversity (CBD) met from 23-27 January 2006, in Granada, Spain. Approximately 370 participants attended the meeting, representing 95 governments, as well as indigenous and local community groups, UN agencies, intergovernmental and non-governmental organizations (NGOs), academia and industry.

Delegates at the fourth meeting of the Working Group considered and adopted nine recommendations for COP-8 on: progress in the implementation of the programme of work; collaboration with the Working Group on Access and Benefit-Sharing on the negotiations for an international regime on access to genetic resources and benefit-sharing (ABS); participatory mechanisms; elements of an ethical code of conduct for the respect of the cultural and intellectual heritage of indigenous and local communities; indicators of progress towards the 2010 biodiversity target linked to Article 8(j); elements for *sui generis* systems of traditional knowledge protection; potential socioeconomic impacts of genetic use restriction technologies (GURTs); recommendations to the UN Permanent Forum on Indigenous Issues (UNPFII); and a composite report on status and trends of traditional knowledge. These recommendations will be submitted to COP-8, to be held from 20-31 March 2006, in Curitiba, Brazil.

The meeting was held in a cooperative spirit, with all recommendations adopted by Friday at noon and progress achieved on some important issues. On an ethical code of conduct, a participatory and time-bound process was established, aiming for adoption by COP-9. The creation of a voluntary funding mechanism for indigenous and local community representatives to participate in the CBD process was also hailed as an important step towards improving inclusiveness and enhancing indigenous participation in the framework of the Convention. On GURTs, the situation remains almost unchanged, as the Working Group reaffirmed a previous COP Decision, invited the World Intellectual Property Organization

(WIPO) to report on GURTs patents and recommended studies on their socioeconomic impacts. Finally, progress was perceived to be slow on collaboration with the Working Group on Access and Benefit-Sharing regarding the negotiation of an international ABS regime.

A BRIEF HISTORY OF THE CBD AND ARTICLE 8(J)

The CBD, negotiated under the auspices of the UN Environment Programme (UNEP), was opened for signature on 5 June 1992, and entered into force on 29 December 1993. There are currently 188 parties to the Convention, which aims to promote the conservation of biodiversity, the sustainable use of its components, and the fair and equitable sharing of benefits arising from the use of genetic resources.

Article 8(j) of the CBD states that its parties will, subject to national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation

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and sustainable use of biodiversity; promote their wider application with the approval and involvement of knowledge holders; and encourage the equitable sharing of benefits arising from the utilization of such knowledge. Related provisions address the customary use of biological resources in accordance with traditional cultural practice (Article 10(c)), information exchange (Article 17.2) and cooperation in the development and use of technologies (Article 18.4). Access to genetic resources, including facilitating access, prior informed consent (PIC), mutually agreed terms (MAT) and benefit-sharing are addressed by Article 15, with related articles referring to technology access and transfer (Article 16.3), and handling and distribution of benefits of biotechnology (Article 19).

The Convention's work on Article 8(j) commenced at the third meeting of the Conference of the Parties (COP-3) (November 1996, Buenos Aires, Argentina) calling for an intersessional workshop to advance work on implementation of Article 8(j). The workshop was held in November 1997 in Madrid, Spain, and suggested terms of reference for an open-ended working group on Article 8(j), which were later adopted by COP-4 (May 1998, Bratislava, Slovakia).

The Working Group on Article 8(j), composed of CBD Parties and representatives from indigenous and local communities, was established by COP decision IV/9 to provide advice to the COP and, where relevant, to the Subsidiary Body for Scientific, Technical and Technological Advice (SBSTTA) on the implementation of CBD Article 8(j) and related provisions.

ARTICLE 8(J) WG-1: The first meeting of the Working Group on Article 8(j) (March 2000, Seville, Spain) considered elements for a programme of work on Article 8(j), and also addressed forms of protection for traditional knowledge.

COP-5: At its fifth meeting (May 2000, Nairobi, Kenya), the COP extended the mandate of the Working Group on Article 8(j) to review progress in implementation and explore ways for increased participation. A programme of work on Article 8(j) was adopted, comprising elements and tasks on: participatory mechanisms; status and trends of traditional knowledge; traditional cultural practices for conservation and sustainable use; benefit-sharing; exchange and dissemination of information; and monitoring and legal elements. It also established the Working Group on ABS to develop guidelines and other approaches on: PIC; MAT; participation of stakeholders; benefit-sharing mechanisms; and the preservation of traditional knowledge.

ARTICLE 8(J) WG-2: At its second meeting (February 2002, Montreal, Canada), the Working Group on Article 8(j) considered: an outline for the composite report on the status and trends of traditional knowledge; recommendations for the conduct of cultural, environmental and social impact assessments; participatory mechanisms; and the effectiveness of existing instruments impacting the protection of traditional knowledge, particularly intellectual property rights (IPRs).

COP-6: At its sixth meeting (April 2002, The Hague, the Netherlands), the COP identified actions to be taken with respect to the integration of Article 8(j) into CBD thematic work programmes, and adopted the outline of the composite report. The COP also adopted the Bonn Guidelines on ABS and also considered: other approaches, including capacity building; the role of IPRs in the implementation of ABS arrangements; and

the relationship with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) of the World Trade Organization (WTO).

ARTICLE 8(J) WG-3: At its third meeting (December 2003, Montreal, Canada), the Working Group considered: recommendations from the UNPFII; GURTs; elements for a *sui generis* system for the protection of traditional knowledge; participatory mechanisms; the Akwé: Kon guidelines for the conduct of cultural, environmental and social impact assessments; and the composite report.

COP-7: At its seventh meeting (February 2004, Kuala Lumpur, Malaysia), the COP confirmed the mandate for the Working Group on Article 8(j) to ensure further implementation of the programme of work on Article 8(j) and adopted the Akwé: Kon Guidelines and a series of decisions regarding participatory mechanisms. It also adopted the Action Plan on capacity building for ABS, mandated the ABS Working Group to negotiate an international regime on ABS and agreed on the terms of reference for such a negotiation.

UN WORLD SUMMIT: The 2005 UN World Summit (14-16 September 2005, New York) reaffirmed the value of the preservation of indigenous knowledge, innovations and practices in the conservation and sustainable use of biodiversity, and encouraged the equitable sharing of the benefits arising from their utilization.

REPORT OF THE MEETING

Mohamad Bin Osman (Malaysia), on behalf of Dato' Seri Law Hieng Ding, President of the CBD COP, opened the fourth meeting of the Article 8(j) Working Group on Monday, 23 January 2006, 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) Working Group 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, Andalusia's Counselor for the Environment, emphasized the need to continue advancing work on benefit-sharing for local communities. Leire Pajin, Spain's Secretary of State for International Cooperation, expressed her country's continued support for the work of the Article 8(j) Working Group, 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 and guidelines 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. Following this ceremony, delegates elected Amb. José Cuenca (Spain) as Chair and Antonio Matamoros (Ecuador) as Rapporteur. Delegates confirmed the COP Bureau as Bureau for the meeting, and also elected indigenous representatives, nominated by the International Indigenous Forum on Biodiversity (IIFB), as Friends of the Bureau.

Delegates then adopted the meeting's agenda (UNEP/CBD/WG8J/4/1 and Add.1) 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 Mullenkei (IIFB) as Co-Chairs of SWG-II.

General statements by regional groups, indigenous groups and UN bodies followed, highlighting the interest of participants in discussing: indigenous peoples' *sui generis* systems and laws; a ban on GURT seeds; participation in the negotiations on an international regime on ABS; and effective protection of traditional knowledge to ensure fair and equitable sharing of benefits with the involvement and approval of all holders of such knowledge.

PROGRESS REPORTS

PROGRESS IN WORK PROGRAMME

IMPLEMENTATION AND INTEGRATION: The agenda items on implementation of the work programme on Article 8(j) and integration of its relevant tasks into the CBD thematic programmes (UNEP/CBD/WG8J/4/2, 4/3, and 2/Add.1) were addressed jointly by SWG-I on Wednesday and Thursday. Plenary adopted the recommendation on Friday.

On implementation of the work programme, delegates regretted having a lack of sufficient information due to the limited number of national reports submitted, and urged the Secretariat to continue reporting on progress. Many reported on national initiatives, highlighting participatory mechanisms for indigenous and local communities in their national legislation and international development policy. On the in-depth review, IIFB recommended further work on CBD provisions related to Article 8(j).

Discussion on a draft recommendation for COP-8 focused on the need to initiate work on tasks related to traditional cultural practices for conservation and sustainable use, with many opposing Australia and New Zealand's requests for deletion. Delegates finally agreed that the Article 8(j) Working Group, at its next meeting, should address as a priority the timeframe for initiating work on the remaining tasks of the work programme.

Recommendation: In the recommendation (UNEP/CBD/COP/WG8J/4/L.7), the Article 8(j) Working Group recommends that COP-8 decide that the next meeting of this WG should be organized prior to COP-9 and request:

- governments that have not yet submitted information to do so, in consultation with indigenous and local communities;
- the Executive Secretary to continue reporting on progress on implementation and integration; and
- the Article 8(j) Working Group to address as a priority the timeframe to initiate work on the remaining tasks of the programme of work, and to provide advice on how the Article 8(j)-related provisions may be further advanced.

COMPOSITE REPORT ON TRADITIONAL

KNOWLEDGE STATUS AND TRENDS: Delegates discussed the composite report on status and trends in traditional knowledge and elements of an action plan for traditional knowledge retention (UNEP/CBD/WG8J/4/4 and Add.1, and UNEP/CBD/WG8J/4/INF/1 to 12) from Monday to Thursday in SWG-I, focusing on registers of traditional knowledge and PIC. They adopted the recommendation in plenary on Friday.

Proposed references to an international register raised several countries' concerns, with Kiribati arguing that it could provide free access to traditional knowledge without ensuring community PIC and benefit-sharing. Eventually, delegates agreed to delete references to an international register. On local and national registers, the African Group, Brazil, Kiribati, on behalf of the Pacific subregion, and IIFB opposed them. Austria, on behalf of the European Union (EU), and Canada proposed only deleting text recommending the "development" of national and local registers and stressing that they are only one approach to traditional knowledge protection. Finally, delegates agreed to recommend that registers should be only one approach to traditional knowledge protection and that their establishment should be voluntary.

Another widely debated point was the reference to PIC in relation to national and local registers and the development of technical guidelines for traditional knowledge documentation. Argentina stressed the need for effective indigenous participation in the establishment of registers, the EU for full cooperation and approval of the knowledge holders, and IIFB and Saint Lucia for control, PIC and ownership by indigenous communities. India said these three elements should be subject to national legislation, and was opposed by IIFB, Norway and Ethiopia, who suggested either deleting the clause or inserting a reference to consistency with international and human rights obligations. Canada, opposed by the Philippines and IIFB, suggested developing technical guidelines not only on documenting, but also on access to traditional knowledge. Finally, delegates agreed to: recommend that registers should be established with the PIC of indigenous and local communities, and to delete references to their ownership and control, and to national legislation; and to request the development of guidelines on traditional knowledge documentation with the full and effective participation of indigenous communities.

On the mandate of the Advisory Group, New Zealand and Australia recommended, and delegates agreed, to focusing it on phase two of the composite report, rather than on the whole programme of work on Article 8(j), as suggested by others.

Recommendation: The recommendation (UNEP/CBD/WG8J/4/L.3) includes a section on the composite report and one on the elements of an action plan for traditional knowledge retention. The Article 8(j) Working Group recommends that COP-8:

- request the Executive Secretary to further develop phase two of the composite report;
- recommend to parties and governments to bear in mind that registers are only one approach to the protection of traditional knowledge, and their establishment should be voluntary and with the PIC of indigenous and local communities;

- request the Executive Secretary to explore the possibility of developing technical guidelines for documenting traditional knowledge, and to analyze the potential threats to the rights of traditional knowledge holders, including with the full and effective participation of indigenous and local communities;
- renew the mandate of the Advisory Group to continue providing advice on phase two of the composite report;
- urge parties and governments to further advance the elements of the action plan; and
- request the Executive Secretary to continue gathering and analyzing information for further development of the action plan.

INTERNATIONAL ABS REGIME

Deliberations on an international regime on ABS took place in SWG-I from Monday to Thursday, on the basis of the consolidated text of comments and proposals regarding the regime (UNEP/CBD/WG-ABS/4/2). A recommendation was adopted in plenary on Friday.

Debate focused on ways of collaboration between the Article 8(j) Working Group and the ABS Working Group, and on the degree of participation of indigenous representatives in the ABS Working Group.

Many delegates suggested identifying practical ways of cooperation between the two Working Groups, noting that work in the Article 8(j) Working Group should be focused and non-duplicative. They also emphasized the importance of national consultations with indigenous communities prior to meetings and urged timely circulation and translation of CBD background documents to this end, and favored the inclusion of indigenous representatives in national delegations. IIFB with the African Group, however, stressed the need for full and effective indigenous participation throughout CBD discussions on ABS, and requested the creation of an indigenous advisory group, to review progress in the ABS negotiations and provide advice to the Article 8(j) and ABS Working Groups.

Discussions on the substance of the regime were limited, with Kiribati, Cuba, IIFB and others recommending that the Article 8(j) Working Group consider the elements of the regime relevant to traditional knowledge associated with genetic resources. Friends of the Earth-Global Forest Coalition opposed the negotiation of an ABS regime before undertaking studies of the impacts of ABS on indigenous peoples.

On Wednesday, the SWG-I Co-Chairs presented a draft recommendation compiling participants' proposals. Many delegates commented that the draft incorporated the IIFB proposals, but omitted many others, and requested time for regional consultations. They also noted that the recommendation needed to focus on ways to collaborate with the ABS Working Group.

Discussions resumed on Thursday afternoon, on the basis of a proposal tabled by the Latin America and Caribbean Group in the morning. The proposal included a recommendation to the COP requesting the Article 8(j) Working Group to: invite parties and indigenous and local communities to provide their views on elements of the regime related to traditional knowledge; request ways and means to facilitate the participation of indigenous and

local communities in the ABS Working Group; and urge parties to include indigenous representatives on national delegations to the Article 8(j) and ABS Working Groups.

Following a suggestion by the EU, delegates agreed that COP-8 should take action directly, rather than refer tasks to the Article 8(j) Working Group. The EU also proposed: extending the mandate of the Advisory Group on Article 8(j) to contribute to the work on the ABS regime; and developing participatory mechanisms for indigenous representatives within the ABS Working Group. Australia, Canada, China and New Zealand opposed these proposals, and they were not included in the final recommendation.

After adopting the recommendation in plenary, the EU, with Switzerland, Norway and the African Group, regretted that the recommendation did not fully reflect the need for enhanced dialogue between the Article 8(j) and ABS Working Groups, and for appropriate involvement of indigenous representatives in the ABS discussions. Regarding a request to make documentation available three months prior to a meeting of the Article 8(j) Working Group, CBD Executive Secretary Djoghlaif noted that, according to UN rules, documentation is required to be made available six weeks in advance, but said the Secretariat will endeavor to make available advance copies in one language three months before the meeting.

Recommendation: In the recommendation (UNEP/CBD/WG8J/4/L.10), the Article 8(j) Working Group recognizes that five elements considered for inclusion in an international regime on ABS are closely related to Article 8(j), including:

- measures to ensure compliance with PIC of indigenous and local communities holding traditional knowledge;
 - disclosure of origin of genetic resources and associated traditional knowledge in IPR applications;
 - recognition and protection of the rights of indigenous and local communities over their traditional knowledge;
 - customary law and traditional cultural practices; and
 - instruments to ensure benefit-sharing with indigenous and local communities.
- It emphasizes the need to avoid overlap and duplication of efforts between the Article 8(j) and ABS Working Groups, and recommends that COP-8:
- request the views of the Article 8(j) Working Group on the traditional knowledge-related elements of an international regime;
 - invite indigenous and local communities to provide comments on their experience with effective measures for traditional knowledge protection, and governments and donor organizations to provide the ways and means to facilitate preparation and participation of indigenous representatives in the ABS Working Group;
 - request the Executive Secretary to make the necessary arrangements for the two Working Groups to be convened back to back, and to endeavor to make documentation available three months prior to a meeting of the Article 8(j) Working Group, to facilitate consultations with indigenous representatives, and;
 - urge parties to include indigenous representatives in national delegations to the Article 8(j) and ABS Working Groups.

PARTICIPATORY MECHANISMS

The role of the thematic focal points under the CBD’s Clearing-House Mechanism (CHM) (UNEP/CBD/WG8J/4/6) was discussed in SWG-II on Monday and Thursday, together with the voluntary funding mechanism (“the fund”) (UNEP/CBD/WG8J/4/5), which was also addressed on Wednesday. A joint recommendation was adopted in plenary on Friday.

ROLE OF THE THEMATIC FOCAL POINT UNDER THE CLEARING-HOUSE MECHANISM: 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 IIFB encouraged alternate communication mechanisms. Mexico also requested timely translation of documents into official languages to allow for further translation into indigenous languages. As noted below, the joint recommendation that was adopted reflected the above discussion.

VOLUNTARY FUNDING MECHANISM: 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. Mexico stressed the need to use existing mechanisms. The EU proposed three guiding principles for identifying eligible participants: transparency, objectivity and qualification. The Indigenous World Association proposed ensuring equal funding for representatives from all regions based on the UNPFII classification of geo-cultural regions and including indigenous representatives from developed countries. Brazil, and Uganda, on behalf of the African Group, opposed, asking that indigenous representatives from least developed countries (LDCs), small island developing States (SIDS), and countries with economies in transition be prioritized. Canada preferred using the five UN regions, and, opposed by IIFB, supported funding priority for elected representatives and larger organizations. Brazil questioned the process of nominating indigenous and local community-funded participants, and of validating their representativeness. Finally, delegates agreed on criteria for funding and geographical representation as well as to finance capacity building for indigenous participants by extending a broader invitation to potential funding sources, rather than referring to the CBD financial mechanism.

Recommendation: The recommendation (UNEP/CBD/COP/WG8J/4/L.6) comprises: two sections on criteria for the operation of the fund and on the role of the thematic focal point under the CHM; one annex on the draft criteria for the operation of the fund; and an appendix containing the application form for applicants from indigenous and local communities or organizations to participate in the deliberations of the fund.

On the role of the thematic focal points under the CHM, the Article 8(j) Working Group recommends that COP-8:

- convene, subject to availability of funding, regional and subregional workshops on new information and web-based technologies to assist indigenous communities in their use;
- launch, subject to availability of funding, pilot projects in developing countries to enhance the CHM’s role in providing information to indigenous and local communities;

- provide, in a timely fashion, documentation for CBD meetings in the six UN languages, to facilitate translation by national authorities for indigenous and local communities; and
- invite parties, governments and funding institutions to provide financial support to developing country parties for the translation of CBD documentation into local languages. On the fund, the Article 8(j) Working Group recommends that COP-8:

- adopt the draft criteria annexed to the recommendation to fund indigenous and local community participants’ attendance at CBD meetings;
- urge parties, governments and funding institutions to make voluntary contributions to the fund; and
- provide financial support to developing country parties, in particular LDCs and SIDS, and countries with economies in transition, for capacity building and training for representatives of indigenous and local communities in CBD meetings.

The annexed draft criteria include: gender balance; age balance; special priority for participants from developing countries, SIDS, and countries with economies in transition, but not excluding indigenous participants from developed countries; broad geographical representation based on the seven UNPFII geo-cultural regions; and nomination by indigenous and local communities. The annex further provides that in the selection of beneficiaries, the Executive Secretary will consult with an advisory selection committee composed of seven representatives nominated by indigenous and local communities from the seven UNPFII geo-cultural regions.

SUI GENERIS SYSTEMS FOR THE PROTECTION OF TRADITIONAL KNOWLEDGE

Discussions on *sui generis* systems for traditional knowledge protection (UNEP/CBD/WG8J/4/7, and INF/15 and 18) started on Tuesday in SWG-I and continued through to Thursday, mainly focusing on the elements of an international framework and the relationship between the CBD and WIPO. Plenary adopted the recommendation on Friday.

Initially, delegates made general statements. India emphasized that only an international regime can protect traditional knowledge, while New Zealand favored a flexible and non-binding system and, with Canada, said that development of such a system at the international level is premature. IIFB and Saint Lucia emphasized this system should be based on customary laws and link traditional knowledge to the control of lands and resources. Canada recommended that the Article 8(j) Working Group should focus on a thorough examination of existing customary laws before proceeding to the development of elements of an international system. Australia, Colombia and Canada proposed referring only to the development of elements identified in the Annex to Decision VII/16H (mandate of Article 8(j) on *sui generis* systems). Delegates later discussed at length whether the development of *sui generis* systems of traditional knowledge protection should only be “non-IPR-based,” as argued by Australia, New Zealand, Switzerland and Canada, or leaving both “IPR-based and non-IPR-based” options open for consideration noting the preliminary stage of discussions, as proposed by Brazil, Colombia and Mexico.

Following informal consultations, delegates agreed to Co-Chair Bodegård's proposal on: preambular language recalling Decision VII/16H, in particular paragraphs 6(a) referring to non-IPR based *sui generis* forms of traditional knowledge protection, and 6(b) on developing elements for *sui generis* systems listed in the annex of this decision.

Another point of contention was the relationship between the CBD and its Article 8(j) Working Group and other relevant organizations, particularly WIPO. New Zealand and Australia cautioned against duplicating the work of WIPO on traditional knowledge, while the Philippines suggested identifying future steps to continue the work in parallel with that of other international organizations. Colombia and Ecuador suggested encouraging WTO and WIPO to take account of CBD work. The EU, Switzerland and Canada preferred language on the mutual supportiveness of the work of CBD and WIPO. 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 from the CBD to other relevant organizations; and acknowledging the work of WIPO on IPR-aspects of *sui generis* systems for traditional knowledge protection and ongoing discussions in the WTO on the CBD-TRIPS relationship.

Recommendation: The Article 8(j) Working Group's recommendation (UNEP/CBD/WG8J/4/L.11) recalls Decision VII/16H, in particular paragraphs 6(a) (non-IPR-based *sui generis* forms of traditional knowledge protection), and 6(b) (elements for *sui generis* systems listed in the annex) and recommends that COP-8, *inter alia*:

- urge parties to develop, adopt and/or recognize, as appropriate, national and local *sui generis* models for traditional knowledge protection with full and effective participation and PIC of indigenous and local communities;
- invite parties with transboundary distribution of some biological and genetic resources and associated traditional knowledge to consider the establishment of regional *sui generis* frameworks for traditional knowledge protection, with participation and PIC of indigenous and local communities;
- acknowledge the work of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore and the ongoing discussions in the WTO on the CBD-TRIPS relationship;
- request the Executive Secretary to continue gathering and analyzing information to further develop the possible elements listed in the annex to Decision VII/16H for consideration by the Article 8(j) Working Group at its next meeting; and
- inform, in the spirit of mutual supportiveness and to avoid duplication of efforts, other relevant international organizations of the potential elements to be considered in the development of *sui generis* systems.

ELEMENTS OF AN ETHICAL CODE OF CONDUCT

Delegates considered the draft 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) from Monday to Thursday in SWG-II. A Friends of the Chair group

also met on Tuesday and a contact group met on Tuesday and Wednesday. The recommendation was adopted in plenary on Friday.

Initial discussions focused on the code's scope, its voluntary nature, and CBD's mandate regarding some of the proposed elements, with some delegates noting that it touched on issues falling under the mandate of other international bodies, such as the UN Commission on Human Rights. Mexico highlighted the need for developing a comprehensive code. On scope, IIFB requested that it apply to *ex situ* research and to past research results, and the Maori Universities-Call of the Earth said the code should not apply to internal research of indigenous and local communities.

A Friends of the Chair group presented a proposal to ensure broad consultation on the draft elements of a code, especially at the national level, and for the Article 8(j) Working Group to report back to the UNPFII. Norway highlighted that the draft recommendation sets up a process leading to the code's adoption by COP-9. Delegates approved the draft recommendation finalized by the contact group, including an annex with a list of issues for consideration in continuing work on the code.

Recommendation: In the recommendation (UNEP/CBD/WG8J/4/L.4), the Article 8(j) Working Group recommends that the COP invite parties, indigenous and local communities, and other relevant stakeholders to engage in consultations and submit their views and comments on the elements of an ethical code. It further recommends that the COP request the Article 8(j) Working Group to develop the draft elements of an ethical code of conduct for consideration at COP-9.

The recommendation also contains an annex, listing nineteen issues raised during an initial exchange of views regarding further development of a code, such as consistency with the CBD mandate, respect to national legislation, ethical principles, and integrity of indigenous peoples' collective rights.

GENETIC USE RESTRICTION TECHNOLOGIES

Delegates discussed the potential socioeconomic impacts of GURTs (UNEP/CBD/WG8J/4/9) from Tuesday to Thursday in SWG-II and in a contact group on Thursday, adopting the recommendation in plenary on Friday.

During initial discussions, participants were divided on the nature and impacts of GURTs, with many developing countries, NGOs and indigenous groups calling for a lasting ban on their field testing and commercial use, and Australia and others opposing a ban and instead calling for case-by-case risk assessments of any new GURTs. The EU underscored the need for a precautionary approach, capacity building and further research. Several delegates highlighted national measures to prevent GURTs dissemination, while some NGOs expressed concern with recently granted GURTs patents. Brazil and Argentina proposed reaffirming COP Decision V/5 section III (GURTs).

On a draft recommendation submitted by the SWG-II Co-Chairs, delegates debated references to: the precautionary approach; positive and negative impacts of GURTs; case-by-case risk assessments; traditional knowledge, innovations and practices; and technology transfer. Many supported a proposal by the Philippines to request WIPO to prepare a report on all GURTs patents issued and pending worldwide. A disagreement

arose as to whether the draft recommendation should “note,” “recall” or “reaffirm” the COP decision on GURTs. IIFB called on parties to grant advisory functions to the Article 8(j) Working Group in future consideration of GURTs.

A contact group reached an agreement approved by SWG-II on Thursday to include a reference to case-by-case risk assessment with respect to different categories of GURTs, and retain references to the precautionary approach. During the closing plenary, Austria, as Co-Chair of the contact group, added a footnote stipulating that the case-by-case risk assessment is meant to be “with respect to different variations of different categories of GURTs.”

Recommendation: In the recommendation (UNEP/CBD/WG8J/4/L.8), the Article 8(j) Working Group recognizes that GURTs present complex issues that require further scientific research and studies as well as the evaluation of potential impacts on the basis of the precautionary approach, and notes the range of their potential socioeconomic impacts. It recommends that the COP reaffirm its Decision V/5 section III (GURTs) and invites parties to:

- respect the right of farmers and indigenous and local communities to use, save and exchange their farm-saved seeds; and
- undertake further research and studies on potential impacts of GURTs, including on a case-by-case risk assessment basis with respect to different categories of GURTs subject to the precautionary approach.

It also invites WIPO, UNESCO and the UN Commission on Human Rights to undertake studies on granted and pending GURTs patents, and on the ethical and spiritual consequences of GURTs.

COP-8 is also recommended to urge parties and others to:

- promote technology transfer and capacity building for risk assessment;
- support smallholder farmers and indigenous and local communities in the application of the COP decision on GURTs; and
- promote and facilitate the full and effective participation of indigenous and local communities in all future discussions on GURTs under the CBD.

INDICATORS FOR ASSESSING PROGRESS TOWARDS THE 2010 BIODIVERSITY TARGET

Delegates discussed indicators for assessing progress towards the 2010 biodiversity target (UNEP/CBD/WG8J/4/10) in SWG-II on Tuesday and Wednesday, adopting the recommendation in plenary on Friday.

The EU suggested identifying and considering a limited number of qualitative and quantitative indicators that would serve the purpose of determining the status and trends of traditional knowledge. Mexico added that it was premature to approve the indicators in Annex 2, due to lack of information, and suggested instead a compilation of comparable data. The Indigenous World Association proposed drawing upon existing models such as the UN Human Development Index. IIFB emphasized the need to address all indicators relevant to the work of the Article 8(j) Working Group in an integrated manner, and offered to coordinate indigenous and local communities’

inputs on indicators. Delegates agreed to a proposal by New Zealand to delete the list of proposed indicators, noting they require further refinement.

Recommendation: In the recommendation (UNEP/CBD/WG8J/4/L.2), the Article 8(j) Working Group underlines the need for a limited number of meaningful and measurable indicators based on reliable and comparable data to facilitate the establishment of trends of traditional knowledge. It emphasizes the importance of indigenous and local community-based self-administered indicators, and appreciates the IIFB initiative on developing a work plan on indicators in a comprehensive and coordinated manner.

It further recommends that the COP consider a more structured technical process to guide further work on indicators, and invite parties and others, in consultation with indigenous and local communities, to contribute information thereon.

RECOMMENDATIONS OF THE UN PERMANENT FORUM ON INDIGENOUS ISSUES

Recommendations of the UNPFII (UNEP/CBD/WG8J/4/8) were addressed in SWG-II on Wednesday and adopted in plenary on Friday without amendment. During a brief discussion, delegates welcomed cooperation with the UNPFII, especially the workshop on the Akwé: Kon Guidelines, held in May 2005 in Tokyo.

Recommendation: In the recommendation (UNEP/CBD/WG8J/4/L.5), the Article 8(j) Working Group welcomes the close cooperation between the CBD and the UNPFII. It also takes note of the UNPFII’s request to the Article 8(j) Working Group to advance its mandate to develop mechanisms for effective *sui generis* systems of protection based on customary laws of indigenous peoples.

CLOSING PLENARY

On Friday morning, Article 8(j) Working Group Chair Cuenca convened the closing plenary session, thanking delegates for their spirit of cooperation and compromise, and invited the SWG Co-Chairs to present the reports and recommendations of their respective SWGs for adoption.

SWG-I Co-Chairs Bodegård and Fortier presented, and delegates adopted, the report of their SWG (UNEP/CBD/WG8J/4/L.1/Add.1) and all recommendations approved by SWG-I.

SWG-II Co-Chairs Abete-Reema and Mullenkei reported on the work of their SWG, with Mullenkei highlighting the importance of indigenous representatives’ participation as Co-Chairs during the meeting. Delegates adopted the SWG-II report (UNEP/CBD/WG8J/4/L.1/Add.2) and all the recommendations approved by SWG-II.

Following the adoption of the report of the meeting (UNEP/CBD/WG8J/4/L.1) presented by Rapporteur Matamoros, Mohamad Bin Osman, on behalf of the COP President, tabled a proposal for a tribute to the Government and people of Spain, which includes a request for the Spanish Minister of Environment to present the results of this meeting to the Ministers attending the High-level Segment of COP-8. Delegates approved it with a standing ovation.

Brazil, as COP-8 host, invited participants to the next COP in March 2006. Representing indigenous and local communities, IIFB called for the Article 8(j) Working Group's participatory nature to become a model in the UN system, and noted the absence of many parties at this meeting. She also expressed concern about the lack of political will to recognize indigenous rights and said the final documents represent a step backwards and do not respond to their concerns about GURTs and the ABS regime. She hoped that indigenous peoples would be invited to "sit at the table with an open heart" to have a "just outcome" in the ABS process.

Regional groups then reflected on the outcomes achieved during the week. A group of NGOs expressed concern over the outcomes on GURTs, hoping to strengthen this recommendation at COP-8.

CBD Executive Secretary Djoghlafl highlighted as an achievement of the meeting the establishment of the voluntary fund to enhance indigenous and local communities' participation in the CBD process. Chair Cuenca closed the meeting at 12:17 pm.

A BRIEF ANALYSIS OF THE MEETING

The venue of the fourth meeting of the Working Group on Article 8(j) – Granada, Spain – offered a historic backdrop for deliberations on indigenous issues. It was at the city's Alhambra castle in 1492, that Columbus was given the mandate to set out on his epic voyage that led him to what later became known as the Americas, giving rise to many indigenous issues debated to date, including in the context of the Convention on Biological Diversity (CBD). More than five hundred years later, some 370 indigenous and government representatives traveled to Granada to work together towards the protection of traditional knowledge and biological diversity.

The process to secure indigenous involvement in multilateral environmental negotiations started at the Earth Summit in Rio in 1992, exactly five hundred years after Columbus' sailing, when the CBD was signed. This was followed by two meetings in Spain: a workshop on Article 8(j) held in Madrid in 1997, and the first meeting of the Article 8(j) Working Group in Seville in 2000. At these meetings, discussions focused on the extent of indigenous participation within the Article 8(j) Working Group and the development of the programme of work on Article 8(j). Now that the Working Group has returned to Spain, discussions focused on how indigenous representatives should be involved in the work of other CBD bodies, most notably the Working Group on Access and Benefit-Sharing (ABS). This brief analysis will use the cross-cutting issue of participation to examine discussions on the main agenda items and outcomes of the fourth meeting of the Working Group on Article 8(j), focusing on the establishment of a voluntary funding mechanism for indigenous participation, the outset of a consultation process on the elements of an ethical code of conduct, and the collaboration with the Working Group on ABS.

Looking at the accomplishments of the meeting, the establishment of a voluntary funding mechanism to facilitate indigenous and local community participation in the CBD's work was hailed by governments and indigenous representatives alike as a concrete step towards greater indigenous involvement in

the CBD process. Following the example of other UN bodies, the fund is to be administered in a transparent fashion with the involvement of indigenous and local communities. The funding mechanism will be structured according to the UN Permanent Forum on Indigenous Issues classification of seven geo-cultural regions, rather than the conventional five UN regions used by the CBD. Discussions on regional classification and criteria to award funding evidenced that some governments and indigenous participants are pondering over who should represent indigenous and local communities at CBD meetings. They suggested, for example, further streamlining to ensure a balance between gender, geographical origin, and representativeness of indigenous and local communities.

The recommendation on the development of an ethical code of conduct to ensure respect for the cultural and intellectual heritage of indigenous and local communities carries the promise of becoming one of the distinctive features of the work on Article 8(j). Discussions at the meeting centered on how to establish an adequately broad consultation process at national and regional levels to enable substantive discussions at COP-9, expected to be held in 2008. Some countries thought indigenous communities' opinions should be reflected in the general opinions of their governments through their own internal consultation mechanisms, while others proposed that indigenous community positions should be coordinated through the International Indigenous Forum on Biodiversity (IIFB). Most agreed that, at this stage, setting up a process, including a time schedule allowing for completion of the elements of the code by COP-9, was a tangible step towards the establishment of what may become an essential instrument for the protection of traditional knowledge.

Participation was also the cornerstone of the deliberation on another item carrying significant weight, the international regime on ABS. Those seeking in-depth discussions, including indigenous representatives and some African and Pacific countries, came to Granada hoping to analyze the impacts that an international ABS regime could have on traditional knowledge, and the elements that should be considered to protect it (such as measures to ensure compliance with the prior informed consent of indigenous and local communities and disclosure of origin in intellectual property rights applications). Most government delegates on the other hand considered it premature to enter into substantive discussions, as these have not yet started in the ABS Working Group, and instead focused on a specific process of collaboration with the Working Group on ABS. As a result, despite the limited debate on the content of the ABS regime, the meeting saw some proactive attempts to set up a formalized mechanism for indigenous participation in the ABS Working Group. However, any procedural innovation would only take effect after COP-8. Efforts to secure indigenous participation at the upcoming meeting of the ABS Working Group, for example through an indigenous and local community advisory body, did not succeed, leaving a number of governments and indigenous representatives unsatisfied.

The extent to which indigenous voices are heard during the fourth meeting of the ABS Working Group is, thus, yet to be determined. However, the fact that the two Working Groups are held back-to-back is definitely an advantage for indigenous

participants, as many of them will stay and follow the ABS discussions, and delegates who advocated for their enhanced participation, will have the chance to reiterate their positions. If, however, participation is not enhanced during the fourth meeting of the ABS Working Group, the next opportunity will present itself in March in Curitiba, Brazil, where COP-8 will address the long-term interlinkages between the two Working Groups, possibly even at the High-Level Ministerial Segment. At any rate, what has become apparent from this fourth meeting of the Article 8(j) Working Group is that the work in Granada only marks the beginning of a long road ahead.

UPCOMING MEETINGS

ABS WG-4: The fourth meeting of the Convention on Biological Diversity's *Ad Hoc* Open-ended Working Group on Access and Benefit-Sharing will convene from 30 January - 3 February 2006, in Granada, Spain. For more information, contact: CBD Secretariat; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: secretariat@biodiv.org; internet: <http://www.biodiv.org/doc/meeting.aspx?mtg=ABSWG-04>

UN WORKING GROUP ON THE DRAFT

DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES: The eleventh session (resumed session) of the Intersessional Working Group on the draft UN Declaration on the Rights of Indigenous Peoples will take place from 30 January-3 February 2006, in Geneva, Switzerland. For more information, contact: Secretariat of the Working Group on the draft Declaration on the Rights of Indigenous Peoples; fax: +41-22-917-90-08; e-mail: WGindigenous@ohchr.org; internet: <http://www.ohchr.org/english/issues/indigenous/groups/groups-02.htm>

UNFF-6: The sixth session of the UN Forum on Forests will be held from 13-24 February 2006, at UN headquarters in New York. This meeting will seek to reach conclusion on issues that were not resolved at UNFF-5. For more information, contact: Elisabeth Barsk-Rundquist, UNFF Secretariat; tel: +1-212-963-3262; fax: +1-917-367-3186; e-mail: barsk-rundquist@un.org; internet: <http://www.un.org/esa/forests>

UN WORKING GROUP ON MARINE BIODIVERSITY

BEYOND NATIONAL JURISDICTION: The meeting of the UN *Ad Hoc* Open-ended Working Group on Conservation and Sustainable Use of Marine Biodiversity in Areas beyond National Jurisdiction will meet from 13-17 February 2006, at UN headquarters in New York. For more information, contact: Division for Ocean Affairs and the Law of the Sea; tel: +1-212-963-3962; fax: +1-212-963-5847; e-mail: doalos@un.org; internet: <http://www.un.org/Depts/los/biodiversityworkinggroup/biodiversityworkinggroup.htm>

SECOND MEETING OF THE WORKING GROUP ON LIABILITY AND REDRESS IN THE CONTEXT OF THE BIOSAFETY PROTOCOL:

The second meeting of the *Ad Hoc* Open-ended Working Group on Liability and Redress in the context of the Cartagena Protocol on Biosafety will meet from 20-24 February 2006, in Montreal, Canada. For more information, contact: CBD Secretariat; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: secretariat@biodiv.org; internet: <http://www.biodiv.org/doc/meeting.aspx?mtg=BSWGLR-02>

MEETING OF THE IMOSEB INTERNATIONAL

STEERING COMMITTEE: The first meeting of the International Steering Committee of the consultative process towards an International Mechanism of Science Expertise on Biodiversity will be held on 21-22 February 2006, in Paris, France. For more information, contact: Didier Babin, IMoSEB; tel: +33-4-6759-3743; e-mail: didier.babin@imoseb.net; internet: http://www.imoseb.net/international_steering_committee

BIOSAFETY COP/MOP-3: The third meeting of the Conference of the Parties serving as the Meeting of the Parties to the Cartagena Protocol on Biosafety will take place from 13-17 March 2006, in Curitiba, Brazil. For more information, contact: CBD Secretariat; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: secretariat@biodiv.org; internet: <http://www.biodiv.org/doc/meeting.aspx?mtg=MOP-03>

FOURTH WORLD WATER FORUM: LOCAL ACTIONS

FOR A GLOBAL CHALLENGE: The Fourth World Water Forum will take place from 16-22 March 2006, in Mexico City, Mexico. This conference aims to raise awareness on global water issues. For more information, contact: Secretariat of the Fourth World Water Forum; tel: +52-55-5174-4480; fax: +52-55-5174-4722; e-mail: feedback@worldwaterforum4.org.mx; internet: <http://www.worldwaterforum4.org.mx>

EXPERT WORKSHOP ON PROTECTED AREAS: This workshop will be held on 17-18 March 2006, in Curitiba, Brazil. For more information, contact: CBD Secretariat; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: secretariat@biodiv.org; internet: <http://www.biodiv.org/doc/meeting.aspx?mtg=002335>

CBD COP-8: The eighth meeting of the CBD Conference of the Parties will take place from 20-31 March 2006, in Curitiba, Brazil. For more information, contact: CBD Secretariat; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: secretariat@biodiv.org; internet: <http://www.biodiv.org/doc/meeting.aspx?mtg=COP-08>

GLOSSARY

ABS	Access to genetic resources and benefit-sharing
CBD	Convention on Biological Diversity
CHM	Clearing-House Mechanism
COP	Conference of the Parties
GURTs	Genetic Use Restriction Technologies
IIFB	International Indigenous Forum on Biodiversity
IPRs	Intellectual property rights
MAT	Mutually agreed terms
PIC	Prior informed consent
SBSTTA	Subsidiary Body for Scientific, Technical and Technological Advice
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
UNEP	United Nations Environment Programme
UNPFII	United Nations Permanent Forum on Indigenous Issues
WIPO	World Intellectual Property Organization
WTO	World Trade Organization