



WORKING GROUP ON ARTICLE 8(J) HIGHLIGHTS: MONDAY, 7 OCTOBER 2013

The Working Group on Article 8(j) opened on Monday, 7 October 2013, in Montreal, Canada. Delegates met in plenary throughout the day.

OPENING PLENARY

Otsi.tsa.ken:RA (Charles Patton) of the Mohawk Nation welcomed delegates to Mohawk traditional territory and opened the meeting in the way of his ancestors. Co-Chair Hem Pande (India), on behalf of COP 11 President, urged the Working Group to move forward. CBD Executive Secretary Braulio Diaz highlighted: tasks 7, 10 and 12, and the possibility to develop guidelines on preventing misappropriation of traditional knowledge, prior informed consent (PIC) and benefit-sharing; and task 15 on repatriation of traditional knowledge. He also reported that the Nagoya Protocol attracted 25 ratifications.

ORGANIZATIONAL MATTERS: Delegates adopted the meeting agenda (UNEP/CBD/WG8J/8/1) and organization of work (UNEP/CBD/WG8J/8/1Add.1/Rev.1) without amendment. They elected Boukar Attari (Niger) as Rapporteur of the meeting; and appointed Lucy Mullenkei, Gam Shimray Awungshi, Yvonne Vizina, Polina Shulbaeva, Gunn-Britt Retter, Maria Eugenia Choque Quispe and Gina Malia Sui Lin Nobrega as Indigenous Friends of the Bureau.

GENERAL STATEMENTS: The International Indigenous Forum for Biodiversity (IIFB) called for: increasing targeted funding for full ILC participation in all CBD processes; establishing an expert group to address best-practice guidelines on repatriation of traditional knowledge; including capacity building as a priority action under task 7; and using the term “indigenous peoples and local communities” under the Convention. The Indigenous Women’s Biodiversity Network (IWBN) highlighted the need for full and effective participation of women in all CBD processes, and in international and local projects related to traditional knowledge. INDIGENOUS YOUTH called for greater participation by youth in the CBD.

Lithuania, for the EU, emphasized the role of traditional knowledge in biodiversity conservation, sustainable use, climate change mitigation and adaptation, and health care; and considered participation crucial for decision-making, planning and monitoring of programmes on sustainable use. Bosnia and Herzegovina, for CENTRAL AND EASTERN EUROPE (CEE), recommended addressing socioeconomic consequences of traditional knowledge loss. Kiribati, for ASIA-PACIFIC, highlighted the need for targeted capacity building for full and effective ILC participation, and additional financial and technological resource mobilization. Senegal, for the AFRICAN GROUP, lamented insufficient funds and called for increased ILC participation, especially from Africa, in CBD work. PERU highlighted protection of customary practices, work on *sui*

generis systems, and indicators. INDONESIA and SUDAN reported on ratifying the Nagoya Protocol. WIPO reported on a draft traditional knowledge documentation toolkit and the renewed IGC mandate for 2014-15.

PROGRESS IN IMPLEMENTATION

The Secretariat introduced the progress report on the implementation of Article 8(j) work programme and mechanisms to promote effective ILC participation in CBD work (UNEP/CBD/WG8J/8/2), including progress on indicators (UNEP/CBD/WG8J/8/9).

NORWAY, the EU, NEW ZEALAND, CANADA, BRAZIL, INDIA, CHINA and JORDAN supported holding one inter-sessional meeting of the Article 8(j) Working Group before COP 13. PERU supporting holding it before COP 12 or COP 13. MEXICO called for capacity building based on the Article 8(j) work programme. BRAZIL noted that this is the first time that the Article 8(j) Working Group meeting is financed by the Voluntary Trust Fund, and called for effective use of existing tools.

CANADA recommended considering how community-based monitoring and reporting can contribute to national reporting. The EU urged parties to fully integrate traditional knowledge as a cross-cutting issue in implementing all CBD work programmes and welcomed IIFB work on indicators, noting community-based monitoring and information systems’ contribution to meeting Aichi Target 18 (traditional knowledge). THAILAND proposed inviting IPBES to discuss these contributions and requesting the Secretariat to facilitate international and regional technical workshops, and transmit information to IPBES. The PHILIPPINES drew attention to the International Labour Organization (ILO) work on International Standard Classification of Occupations, which includes traditional occupations. PERU called for a methodology on intercultural dialogue with ILCs on the CBD and its protocols, and greater emphasis on the development of specific operational indicators.

The IIFB called for: contributions to the Voluntary Trust Fund; progress on communication, education and public awareness (CEPA); and integration of traditional knowledge into the policy-science interface. BOLIVIA highlighted the need for clear, effective and transparent participation of indigenous peoples. The IWBN highlighted the importance of recognizing the complementarity of science and traditional knowledge systems.

CUSTOMARY SUSTAINABLE USE

The Secretariat introduced relevant documentation (UNEP/CBD/WG8J/8/7/Rev.1). The EU welcomed the draft plan of action and recommended entitling it “plan of action on customary sustainable use of biological diversity”; and called for increased collaboration between the CBD and ITPGR on sustainable use, including farmers’ rights. The PHILIPPINES proposed a new task for the plan of action to



develop mutually reinforcing mechanisms in the context of Article 8(j) for implementing farmers' rights in collaboration with ITPGR. MEXICO requested an in-depth evaluation of the implementation of the Article 8(j) work programme to identify accomplishments and remaining challenges in mainstreaming traditional knowledge.

Brazil, for GRULAC, prioritized identifying and compiling best practices, before elaborating guidelines. CANADA: called for reporting on implementation of the action plan through national reports; noted that certain issues are dealt with under the Nagoya Protocol and WIPO; and, opposed by the IIFB, suggested limiting financial and technical support to ILCs from developing-country parties. NORWAY favored supporting ILCs in implementing the action plan. BRAZIL preferred to refer to "considerations of special relevance," rather than to "specific principles" in the draft plan of action. The IIFB requested reference to: traditional institutions, focus on women, and respect and protection of territoriality of indigenous peoples.

On identifying best practices, CHINA, SENEGAL, SUDAN and TOGO expressed concern about focusing on protected areas, with CHINA pointing to broader uses outside of protected areas. The IIFB requested reference to PIC.

REPATRIATION OF TRADITIONAL KNOWLEDGE

The Secretariat introduced draft best-practice guidelines for the repatriation of traditional knowledge relevant to the conservation and sustainable use of biodiversity (UNEP/CBD/WG8J/8/5).

JORDAN and COLOMBIA supported the draft best-practice guidelines. THAILAND emphasized engaging institutions holding traditional knowledge in the implementation of the guidelines. Welcoming the draft's explicit inclusion of repatriation of traditional knowledge from gene banks, the PHILIPPINES called for guidelines for entities storing traditional knowledge, and expressed concern about the absence of reference to ILC rights to their inventions.

CANADA: lamented unclear and contradictory concepts in the guidelines; stressed that cultural property does not fall under the Working Group's mandate; and opposed convening an expert meeting. The EU recommended that the guidelines take into account practical implications and the needs of all interested parties.

Lamenting that the proposal does not address future access to repatriated traditional knowledge, BRAZIL, supported by GABON and the IIFB, proposed that: repatriation means sharing traditional knowledge with the ILCs that developed or shared it; repatriation should not affect ILCs' rights, including the right to prevent the use of traditional knowledge without PIC; terms of repatriation should be agreed to by ILCs; dissemination of traditional knowledge should be subject to agreement of ILCs to whom traditional knowledge was repatriated; and repatriation should contribute to the traceability of traditional knowledge.

The IIFB, SAUDI ARABIA, MEXICO and ARGENTINA supported convening an expert group. The IIFB also underscored the need to begin drafting guidelines for national legislation on traditional knowledge associated with biodiversity. GABON, JAPAN and ARGENTINA underlined the need for collaboration with WIPO and UNESCO, with SWITZERLAND noting the need for a common, coherent working definition of traditional knowledge in all fora. JAPAN stressed that repatriation concerns strictly biodiversity-related traditional knowledge. PERU called for a definition of repatriation.

The Secretariat proposed establishing a contact group to continue discussions on the draft recommendation, but not the draft guidelines.

TASKS 7, 10 AND 12

The Secretariat introduced relevant documentation (UNEP/CBD/WG8J/8/4/Rev.2).

Supporting the draft recommendation, JORDAN suggested mobilizing resources. The PHILIPPINES welcomed consideration of international and national mechanisms for ILCs to report unlawful appropriation of traditional knowledge. MEXICO noted the need to consider *sui generis* systems and ensure complementarity with the IGC. BRAZIL suggested addressing the protection of traditional knowledge covered by Article 8(j) beyond "traditional knowledge associated with genetic resources"; and adding reference to *sui generis* systems.

BRAZIL, INDIA, URUGUAY and ARGENTINA considered the development of guidelines useful for building national capacity to implement the Nagoya Protocol. SWITZERLAND preferred a compilation of existing regulations and model clauses to developing guidelines.

The EU called for: focusing on additional measures to complement and support implementation of the Nagoya Protocol; supported by NORWAY, making available the outcome of this meeting to the third meeting of the Intergovernmental Committee for the Nagoya Protocol (ICNP 3); and, with AUSTRALIA, reviewing work to be carried out under tasks 7, 10 and 12 in light of intervening international developments. THAILAND requested that the Secretariat provide an analysis of progress on tasks 7, 10 and 12. CANADA cautioned against duplication of work with the ICNP and, supported by ARGENTINA, with IGC.

The IIFB called for systematic references to "free PIC" in line with UNDRIP and specifying that "approval and involvement" means the same international standard than free PIC. NORWAY preferred using Nagoya Protocol language on "prior informed consent or approval and involvement."

SUI GENERIS SYSTEMS

The Secretariat introduced a note on *sui generis* systems (UNEP/CBD/WG8J/8/6) and draft elements of *sui generis* systems including a glossary (UNEP/CBD/WG8J/8/6/Add.1). JORDAN stressed the importance of *sui generis* systems for protecting cross-border traditional knowledge. BRAZIL requested reference to "community protocols and other forms of legal provisions," and considered a disclosure requirement in patent applications as the most effective measure to protect traditional knowledge. MEXICO requested reference to progress in other fora. AUSTRALIA stressed that work should focus on biodiversity, not IPRs. The EU said that all elements of *sui generis* systems must be in accordance with international obligations and that the IGC is the primary international forum on intellectual property and the protection of traditional knowledge.

On the glossary, BRAZIL noted it is non-exhaustive and suggested drawing also on the WIPO glossary on intellectual property and traditional knowledge (WIPO/GRTKF/IWG/2/INF/2). AUSTRALIA pointed out that a number of terms have evolved, such as "utilization" under the Nagoya Protocol. The EU suggested further work on the glossary under task 12.

IN THE CORRIDORS

The first day of the Article 8(j) Working Group marked an important historic date for indigenous peoples in Canada – the 250-year anniversary of the Royal Proclamation recognizing indigenous rights to land and governance. It also marked a global day of action for the implementation of indigenous rights, and coincided with the first day of the official visit of the UN Special Rapporteur on the Rights of Indigenous Peoples to Canada. Against this backdrop, many indigenous representatives underscored the importance of work under CBD Article 8(j). Other delegates, however, noted that debates about consistent references to "indigenous peoples" and "prior informed consent" under the Convention remain. Some therefore wondered whether these different views will work themselves out during the week, as the Working Group moves towards repositioning its work vis-à-vis the Nagoya Protocol, UNDRIP, ITPGR, WIPO and UNESCO, among others.