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## SUMMARY OF THE WORKSHOP ON TRADITIONAL KNOWLEDGE AND BIOLOGICAL DIVERSITY: 24-28 NOVEMBER 1997

The Workshop on Traditional Knowledge and Biological Diversity convened in Madrid, Spain, from 24-28 November 1997. Approximately 330 individuals representing 62 governments and 148 indigenous and local community groups and NGOs attended the Workshop. Participants first met in a Committee of the Whole to consider a background document on traditional knowledge and biodiversity prepared by the Executive Secretary of the Convention on Biological Diversity. Two Working Groups then produced reports that provide advice to the Convention's Conference of the Parties on the possibility of developing a workplan on Article 8(j) of the Convention and examine the need to establish an open-ended intersessional working group or a subsidiary body to address the role of traditional knowledge.

The Workshop produced a report to advise the Conference of Parties on how it might proceed to further the implementation of Article 8(j). The report, however, consisted of a long and often contradictory list of non-negotiated options and proposals that reflected considerable differences among participants on the specific scope, nature and objectives of the Workshop, and highlighted the striking contrast between indigenous and governmental perspectives on the nature of traditional knowledge and biodiversity. On the other hand, the Workshop provided a unique opportunity for indigenous peoples and governments to engage in a dialogue on equal terms and under relatively open and flexible circumstances, and laid the groundwork for meaningful dialogue and future collaboration between Parties and indigenous and local communities.

### A BRIEF HISTORY OF THE WORKSHOP

At the third Conference of Parties (COP) to the Convention on Biological Diversity (CBD), held in Buenos Aires, Argentina, from 4-16 November 1996, Parties took a decision regarding implementation of Article 8(j), which addresses knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity. Decision III/14 decided that an intersessional process should be established to advance further work on the implementation of 8(j) and related provisions with a view to producing a report for consideration at COP-4, and requested the Executive Secretary to hold a five-day intersessional workshop, involving governments and indigenous and local communities, on such issues as the interaction between traditional and other forms of knowledge relating to biodiversity, the influence of current laws and policies on traditional knowledge, and incentive measures. It further requested the Execu-

tive Secretary to produce a background document and to invite representatives of indigenous and local communities to provide input to the meeting.

The Annex to Decision III/14 lays out the terms of reference for the Workshop, which should seek to:

- identify the extent to which the various organizations, individually or collectively, could address interests in 8(j);
- identify any gaps which would help set future priorities of the COP;
- consider the background document prepared by the Executive Secretary;
- consider input provided by indigenous and local communities;
- consider information provided by the Parties on national implementation under 8(j) and related articles to assist in an assessment of priorities for future work by Parties;
- provide advice to the COP on the possibility of developing a workplan on 8(j) and related articles, including modalities for such a workplan; and
- examine the need to establish an open-ended intersessional working group or a subsidiary body to address the role of traditional knowledge.

### REPORT OF THE WORKSHOP

The Workshop on Traditional Knowledge and Biological Diversity opened on Monday, 24 November, with a ceremony of prayer led by seven representatives of indigenous peoples. They gave thanks to Mother Earth for sustaining all life, to the sun for giving spirit to life, to

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"the first one to speak" for providing guidance for living a responsible life on earth, to the grandmother for wisdom and knowledge, to the nephew for his vision of the future, and to the mother for strength, teachings and respect of relying on one other for survival on Mother Earth.

Raed Bani Hani (Jordan), Vice President of the Bureau of COP-3, officially opened the meeting on behalf of the President of the Bureau of COP-3. He introduced the Minister of the Environment of Spain, Isabel Tocino Biscarolasaga, who noted that the Workshop was the first step of an intersessional process to advance the objectives of Article 8(j) of the CBD. She called on the representatives of indigenous peoples and local communities to help direct the work and on governments to devote the necessary attention and resources to promote their participation.

UNEP Deputy Executive Director Reuben Olemba stressed the need to develop pragmatic solutions while avoiding the political posturing common to international discussions. He noted the growing importance of people, particularly indigenous communities, in the creation of a new paradigm of sustainable development.

Calestous Juma, Executive Secretary of the CBD, said the Workshop offered an opportunity to review the achievements made thus far and to lay the basis for a work programme to be adopted at COP-4. He said the COP looked forward to the Workshop's advice on how to advance implementation of 8(j).

Fernando Villalonga Campos, Spain's Secretary of State for International Cooperation, stated that in designing programmes for international cooperation, two complementary principles should be considered: the duty of industrialized countries to contribute to the conservation of natural resources, together with developing countries, and the obligation to encourage, respect and preserve the knowledge and lifestyles of indigenous and local communities. He emphasized that the Workshop had an important ethical component to address the need to repair and defend indigenous and local communities' rights to culture and different models of development.

Francesco Mauro (Italy), Chair of the CBD's Subsidiary Body on Scientific, Technical and Technological Advice's (SBSTTA) Working Group considering 8(j), discussed the context of indigenous knowledge within the CBD. He highlighted the lack of clear definitions of concepts, such as indigenous, local, community and traditional knowledge, and noted the direct link between biological and human diversity.

Two representatives of indigenous peoples presented the outcomes of the Second International Indigenous Forum on Biodiversity (IIFB-2), which took place from 20-23 November 1997 in Madrid in preparation for the Workshop. Jannie Lasimbang (Kadazan) expressed hope that the Workshop would result in a new relationship between indigenous peoples and governments, because the future, territories, spirituality and culture of indigenous peoples are at stake. Nilo Cayuqueo (Mapuche Nation) stated that indigenous peoples at IIFB-2 had agreed that an open-ended working group on 8(j) and related articles should be established as one of many measures needed to ensure indigenous peoples' participation in implementing the CBD and the protection of

their knowledge, innovations and practices. He proposed that the Workshop appoint an indigenous Co-Chair to ensure the equal participation of governments and indigenous peoples at this meeting. (Editor's note: On the second day of the Workshop, participants agreed to form a Group of Friends of the Bureau, which included seven individuals nominated by indigenous groups.)

Following the opening speeches, delegates elected Raed Bani Hani (Jordan) as Chair of the Workshop and Manuel Piñeiro (Spain) as Chair of the Committee of the Whole (COW), and adopted the provisional agenda, as contained in UNEP/CBD/TKBD/1/Rev.1.

Delegates spent the remainder of the first day and the entirety of the second day in the COW considering the background document on traditional knowledge and biodiversity (UNEP/CBD/TKBD/1/2). On Wednesday, two Working Groups were established to consider the remaining agenda items. Working Group I discussed assessment of priorities for future work and provision of advice to the COP on developing a workplan and its modalities. Working Group II considered the extent to which various organizations could address 8(j) and the need to establish an open-ended intersessional working group or subsidiary body to address the role of traditional knowledge. Each Working Group was chaired by an indigenous representative with a government delegate acting as an advisory Co-Chair. The Working Groups concluded their work on Thursday evening. On the final day, participants considered and adopted the Reports of the two Working Groups and the Report of the Meeting.

#### COMMITTEE OF THE WHOLE

Following the opening Plenary, Workshop participants met in a COW, chaired by Manuel Piñeiro. The Secretariat introduced the background document on traditional knowledge and biodiversity (UNEP/CBD/TKBD/1/2), which:

- considers the linkages between 8(j) and related issues;
- elaborates key terms and concepts in 8(j) and related articles;
- outlines the activities of relevant organizations; and
- examines the possible elements of a workplan on 8(j) and the need for an open-ended intersessional working group or subsidiary body on 8(j).

Delegates devoted a majority of their two-day discussion of the background document to the section that outlines key provisions of the CBD related to the importance of indigenous and local communities to the conservation and sustainable use of biodiversity (Articles 8(j), 10(c), 17(2) and 18(4)) and their linkages to related issues, including technology transfer, access to genetic resources, intellectual property rights, alternative systems of protection of knowledge, innovations and practices, and incentives.

The background document notes that in 8(j), the CBD recognizes the importance of indigenous and local communities to the conservation and sustainable use of biodiversity, calling on Parties to respect, preserve and maintain traditional knowledge, to promote its wider application with the approval and involvement of holders of such knowledge, and to encourage the equitable sharing of benefits arising from its utilization.

Several articles referring to indigenous and local communities are also outlined, namely 10(c) (customary use of biological resources), 17(2) (information exchange) and 18(4) (cooperation for indigenous technology development and use). The background document specifies the need to embed provisions in national legislation that explicitly cover the use of indigenous and traditional technologies with respect to such matters as access, prior informed consent (PIC), mutually agreed terms, intellectual property protection and benefit-sharing.

The document also highlights other relevant issues in the Convention, including the need to:

- protect the intellectual property rights (IPR) of indigenous knowledge and to strengthen current IPR regimes and/or consider alternative systems of protection;

#### ARTICLE 8(J) OF THE CONVENTION ON BIOLOGICAL DIVERSITY

Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices.



- promote successful development and implementation of legislative, administrative and policy measures and guidelines on access, including procedures for PIC, and build capacity to enable the full participation of indigenous and local communities in policy formulation and implementation;
- implement incentive measures to promote the maintenance of traditional knowledge; and
- focus on national legislation for implementation of 8(j) and consider establishing guidelines on which such national laws could be based.

In the COW's consideration of the background document, a number of interventions were made about the importance of respecting, preserving and maintaining indigenous knowledge as articulated in 8(j). The MAORI AOTEAROA delegation of New Zealand stated that the Maori have a responsibility to protect and conserve their ancestors' traditional knowledge of biodiversity by passing it on to future generations. EQUATORIAL GUINEA highlighted the lack of respect for indigenous rights at the national level, and proposed that the Workshop issue a Declaration of Madrid to guarantee indigenous peoples their rights. The INTERNATIONAL ALLIANCE OF THE INDIGENOUS/TRIBAL PEOPLES OF THE TROPICAL FORESTS (INTERNATIONAL ALLIANCE) stressed that the role of indigenous peoples in saving biodiversity cannot be discussed without recognition of their fundamental rights, and that self-determination and self-governance, recognition of collective rights and autonomous control over knowledge and resources are crucial to the survival of indigenous peoples and the protection of biodiversity. WWF INTERNATIONAL stressed that safeguarding the rights of indigenous peoples, particularly to land and resources, is central to the maintenance of indigenous knowledge, innovations and practices.

MALI, the BIO-RESOURCES DEVELOPMENT AND CONSERVATION PROGRAMME and GUINEA ECOLOGIE underscored that biodiversity conservation is directly linked to the fight against poverty. FIJI stated that implementation of 8(j) must involve close cooperation between governments and indigenous peoples. Supported by the ASIAN INDIGENOUS WOMEN'S NETWORK and the NEPAL FEDERATION OF NATIONALITIES (NEFEN), CANADA called for the full and equal participation of women in the implementation of the CBD and 8(j), and respect for their wealth of traditional knowledge. SWEDEN said implementation of 8(j) and related articles should take place in cooperation with the activities of other relevant organizations concerned with indigenous populations. GERMANY recommended identifying conditions to enable indigenous and local communities to maintain their knowledge and practices, addressing such issues as legal assistance, capacity-building, equitable benefit-sharing, PIC procedures, and traditional land and utilization rights.

A number of delegates made interventions on instances where traditional knowledge is not being respected and maintained and benefits are not being shared equitably. The ALL INDIA COORDINATING FORUM OF INDIGENOUS/ADIVASI PEOPLES stated that removal of tribal people from forests for ecosystem rehabilitation or wildlife conservation in India is causing the loss of indigenous culture and lives. COMUNIDAD NATIVA ASHANINKA reported on increasing poverty and decimation of its peoples, noting the Peruvian Government's failure to comply with its obligations under ILO Convention No. 169 (Indigenous and Tribal Peoples Convention of 1989) and the CBD. An indigenous person on the AUSTRALIAN delegation expressed concern over pending national legislation that would prevent indigenous peoples from challenging violations of their rights, and stressed the need for national legislation to protect indigenous rights and advisory bodies for national decision-making.

FIJI voiced concern over the patenting of genetic resources and called for a moratorium on the collection of human genetic resources until acceptable *sui generis* systems are established by indigenous peoples. VIACAMPOSINA, RURAL ADVANCEMENT FOUNDA-

TION INTERNATIONAL (RAFI) and NEFEN condemned the Human Genome Diversity Project. GENETIC RESOURCES ACTION INTERNATIONAL (GRAIN) highlighted new legislation under consideration by the EU—the EU Biotechnology Patent Directive—that would allow for the indiscriminate patenting of all life forms and, thus, expropriate indigenous peoples' rights. Supported by the ASIAN INDIGENOUS WOMEN'S NETWORK, RAFI and VIACAMPOSINA, GRAIN urged the EU to ensure that any Patent Directive supports the objectives of the CBD. The INDIGENOUS ASSOCIATION OF ARGENTINA and the WORLD COUNCIL OF INDIGENOUS PEOPLES called on EU countries to defer consideration of the EU Directive to allow input by indigenous peoples.

CONSEJO DE ANCIANOS MAYA noted that many of the sacred sites of indigenous peoples are privately owned and access is prohibited, contributing to the loss of traditional knowledge. RUSSIA noted that in its new era of democracy, transnational corporations have created new threats for its indigenous peoples. The ASIAN INDIGENOUS WOMEN'S NETWORK claimed that government biases toward transnational corporations and markets effectively result in the genocide of indigenous peoples and cultural diversity. RAFI noted how industries by-pass CBD provisions on indigenous knowledge by developing patents on products from *ex situ* collections without recognizing and compensating their sources of origin. The BIORESOURCES DEVELOPMENT AND CONSERVATION PROGRAMME highlighted the lack of private sector involvement in the Workshop.

GUINEA ECOLOGIE noted the failure of some multinational pharmaceutical companies to share benefits and called for support of pilot projects on traditional plant knowledge. BRAZIL noted that it is taking concrete administrative steps to protect and recognize rights of indigenous people. In response, the INSTITUTO SOCIOAMBIENTAL expressed concern that indigenous peoples and NGOs have been prevented from participating in governmental discussions in this regard. The TREATY OF WAITANGI FISHERIES COMMISSION noted the benefits of fishing rights for the Maori people, who have become active managers of the tribal fisheries system instead of passive subsistence harvesters.

The BIORESOURCES DEVELOPMENT AND CONSERVATION PROGRAMME stressed that corporate entities should go beyond existing legal requirements for the fair and equitable sharing of benefits. AUSTRALIA called for compensation for past and present expropriation and use of indigenous knowledge and resources, capacity-building efforts and ethical guidelines for the "scientific" use of indigenous knowledge.

Several speakers highlighted the need for national legislation to address these issues. PAPUA NEW GUINEA underscored the need for national legislation to protect biological resources and traditional knowledge. GUINEA emphasized that traditional knowledge must be integrated into sectoral policies. Noting that 8(j) establishes different goals for the dissemination of knowledge, innovation and practices, the US said one model may not apply to all issues concerning traditional knowledge and biodiversity, and suggested the development of national models. He noted the unique legal relationship between the US Government and federally recognized Indian tribes and stated that some tribes may be wary of international legislation that could compromise their relations. In response, the INTERNATIONAL INDIAN TREATY COUNCIL (IITC) said the US has violated several hundred treaties with its indigenous peoples. He also noted that some international laws and conventions conflict with treaties with indigenous peoples, such as the North American Free Trade Agreement, and suggested that the main problem is that tribal governments are not conventional forms of governance. ZAMBIA stressed that the CBD should not be used to impose legislative reforms on developing countries in the name of legislative guidelines, and that national biodiversity programmes must be country-driven and locally relevant. The COORDINATING BODY FOR THE INDIGENOUS PEOPLES'



ORGANIZATION OF THE AMAZON BASIN (COICA) expressed concern that governments, while recognizing the importance of traditional knowledge at the international level, have subjected the participation of indigenous peoples to national legislation that minimizes this international recognition by claiming national sovereignty over biodiversity. He urged the CBD to recommend that governments ensure indigenous peoples' participation in drafting national legislation.

The FAO called for incentive measures to ensure that communities have an interest in maintaining species and ecosystems. UGANDA stressed the need for governments, especially in the South, to promote, through incentives, the conservation of indigenous peoples' skills and knowledge in the face of an increasing emphasis on modern "scientific" knowledge. TOGO called for policies to foster education on ethics and respect for the environment.

Regarding Article 17(2) (exchange of information), ZIMBABWE stressed the need for information-gathering and research on indigenous knowledge. UGANDA said the dissemination of indigenous knowledge can only be achieved through cooperation among indigenous peoples, governments and international organizations. GUINEA proposed that the Workshop contemplate strengthening existing institutions or creating new institutions to disseminate indigenous knowledge. NEPAL stressed that indigenous knowledge must be returned to indigenous communities.

Delegates also addressed the activities of relevant organizations and their possible contribution to implementation of 8(j) and related articles, as outlined in the background document. BURKINA FASO stated that the background document's list of competent organizations cannot be considered exhaustive. The MAORI of NEW ZEALAND emphasized that the CBD cannot be divorced from other international instruments regarding the rights of indigenous peoples. COICA urged the CBD to recommend that international instruments dealing with indigenous issues take into account the recognition of local communities, indigenous peoples and peasant communities in accordance with ILO Convention No. 169.

ETHIOPIA and VIACAMPOSINA proposed linkages between 8(j) and the FAO's Commission on Plant Genetic Resources for Food and Agriculture (CPGRFA) negotiations to harmonize the International Undertaking (IU) with the CBD. The SOUTHERN AFRICAN TRADITIONAL LEADERS' COUNCIL FOR THE MANAGEMENT OF NATURAL RESOURCES asked governments to prevent discussions under the CPGRFA and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) from impeding CBD implementation. RAFI warned against subsuming the protection of indigenous knowledge to other international processes, such as the World Trade Organization (WTO) and the World Intellectual Property Organization (WIPO). GRAIN said that any mechanism for the implementation of 8(j) should provide a coherent framework, at the international level, for the recognition and protection of the collective *a priori* rights of indigenous, farming and local communities over biodiversity and related knowledge. The ASIAN INDIGENOUS WOMEN'S NETWORK called for an assessment of the impact of other processes and institutions on indigenous knowledge, and, with VIACAMPOSINA, for an exploration of alternative IPR systems since existing systems are inadequate to protect indigenous rights.

Representatives from several international organizations highlighted their activities relating to indigenous issues. The UN COMMISSION ON HUMAN RIGHTS (UNCHR) highlighted: development of a Draft UN Declaration on the Rights of Indigenous Peoples and Draft Principles and Guidelines for the Protection of the Heritage of Indigenous Peoples; a recent decision by the Working Group on Indigenous Populations to consider codes of conduct for the mining and energy sectors; and progress on the possible establishment of a Permanent Forum on Indigenous People in the UN system. He stressed that a dynamic process is underway in the UN regarding indigenous peoples' issues, and suggested that existing forms of consultation must be examined before new ones are created. The INTERNATIONAL

PLANT GENETIC RESOURCES INSTITUTE highlighted its ongoing research activities on plant genetic resources and expressed its readiness to contribute to discussions, particularly on participatory plant breeding strategies.

WIPO stressed the need for accurate technical information on the principles and operations of the existing IPR system and for the transfer of skills and expertise in the effective management and use of intellectual property. UNCTAD announced the creation of an advisory council of the Biotrade Initiative that welcomes the participation of indigenous peoples. The FAO highlighted its efforts to promote self-reliance among indigenous and local communities, and, noting the memorandum of understanding between the FAO and the CBD Secretariat, offered to share information aimed at enhancing the rights of indigenous peoples.

Workshop participants also addressed the possible elements of a workplan for the implementation of 8(j) and related articles and the need for an open-ended intersessional working group or a subsidiary body on the issue of 8(j), as outlined in the background document. SWEDEN, supported by the US, SPAIN and the UK, suggested that the Workshop develop a wide range of options regarding the development of a workplan for consideration by the COP.

AUSTRALIA, noting that CBD Parties are at different stages of implementation, said the workplan must be broad enough to address the needs of all participants. SWEDEN suggested the CBD Secretariat establish an inter-agency task force to facilitate implementation in cooperation with the activities of other relevant organizations. CANADA suggested that the Workshop consider the UN Commission on Sustainable Development's Intergovernmental Forum on Forests and its Inter-Agency Task Force as potential models for how to proceed on implementation of 8(j).

COICA recommended that the workplan include a proposal to establish a world university of indigenous peoples to study, promote and protect traditional knowledge. The KADAZANDUSUN CULTURAL ASSOCIATION stated that decisions on the implementation of 8(j) and related articles must be monitored with indigenous peoples' involvement, and suggested that the Workshop's conclusions be disseminated to indigenous peoples. FUNDACION ABYA YALA urged the COP to establish a constructive dialogue between governments and indigenous peoples to ensure their involvement in decision-making on an equal footing with COP representatives in matters directly affecting them.

SWEDEN, supported by ZAMBIA, PAPUA NEW GUINEA, ETHIOPIA and RAFI, recommended developing a permanent subsidiary body working separately but in conjunction with SBSTTA. PAPUA NEW GUINEA stressed that the Workshop should establish priorities for a subsidiary body such as: incentives to preserve indigenous knowledge; protection of genetic resources from bio-prospecting and bio-piracy; capacity-building; and formulation of enforceable legislation to protect IPR. RAFI proposed that a subsidiary mechanism address negative impacts of IPR, bio-piracy and farmers' rights as considered under the IU.

SWEDEN also outlined other progressively weaker options: an *ad hoc* working group; an advisory body to SBSTTA; and an advisory panel to the Executive Secretary. NEW ZEALAND supported creation of an intersessional process under the CBD that would complement discussions in other international fora. GUINEA supported the formation of an advisory panel to the Executive Secretary.

COLOMBIA, CHILE, COSTA RICA, ECUADOR, NORWAY, RUSSIA, COICA, IITC, the ASIAN INDIGENOUS WOMEN'S NETWORK, COMUNIDAD NATIVA ASHANINKA, the INDIGENOUS ASSOCIATION OF ARGENTINA, the INTERNATIONAL ALLIANCE, NEFEN, the SAAMI COUNCIL, VIACAMPOSINA, the WORLD COUNCIL OF INDIGENOUS PEOPLES, WWF INTERNATIONAL and the TREATY OF WAITANGI FISHERIES COMMISSION called for the creation of an open-ended working group. ECUADOR recommended that the working group be open and



have a three year time-line to explore mechanisms to implement 8(j) and other related CBD provisions. FIJI and COICA specified that it be a permanent working group. The INTERNATIONAL ALLIANCE stated that a working group should address the issue of definitions and that indigenous peoples be allowed to define themselves and their problems. COLOMBIA emphasized that the working group be open, transparent and democratically composed. COSTA RICA proposed that the working group focus on impediments to the development of indigenous knowledge, innovations and practices, and access issues. NORWAY stated that creation of an open-ended working group and workplan could be a first step towards establishing a permanent working group under the CBD.

### WORKING GROUP I

Working Group I, chaired by Stella Tamang (NEFEN), addressed assessment of priorities for future work and provision of advice to the COP on developing a workplan on 8(j). Raed Bani Hani (Jordan) acted as the advisory Co-Chair. The Co-Chairs opened the first meeting of the Working Group by introducing a draft on elements for a workplan for the implementation of 8(j). Delegates conducted their deliberations based on this draft, along with a proposal by Sweden, on behalf of the Nordic countries, and the document resulting from the IIFB-2.

The Co-Chairs' draft identified possible elements for inclusion in a workplan:

- review of existing frameworks on protection of traditional knowledge;
- identification and monitoring;
- research;
- compilation of a database on traditional knowledge and exchange of information; and
- measures of implementation.

Implementation measures could include:

- standards and guidelines on protection, maintenance and development of traditional knowledge, prevention of bio-piracy, monitoring of bio-prospecting, access to genetic resources, PIC, IPR and benefit-sharing;
- capacity-building;
- pilot programmes on co-management of natural resources;
- economic incentives; and
- dialogue between governments and indigenous people at the national level.

The proposal presented by SWEDEN, on behalf of the Nordic countries (Denmark, Finland, Norway and Sweden), employed a structure previously utilized in SBSTTA, organized around the following components:

- general recommendations;
- status and trends;
- conservation and sustainable use;
- equitable sharing of benefits; and
- development of recommendations for action at the national level.

The document emanating from the IIFB-2, also presented as a proposal for discussion, contained recommendations for elements for the formulation of a workplan, such as development of mechanisms to ensure control over lands and territories and standards and guidelines for protection, maintenance and development of indigenous knowledge.

Regarding the Co-Chairs' draft, the US suggested that the proposed review of existing frameworks elaborate national experiences, whereas ETHIOPIA argued that it should also address international dimensions. FINLAND requested development of principles and guidelines for use in national implementation of 8(j). The NATIONAL ABORIGINAL AND ISLANDER LEGAL SERVICES SECRETARIAT proposed an element on monitoring and evaluation to assess Parties' progress on the implementation of 8(j). ZIMBABWE

proposed an element on monitoring national and international developments on IPR to identify violations of existing commitments and indigenous rights. The US suggested including a reference to the Council on TRIPs, which already monitors compliance in WTO member countries.

The EMANTI FOOD AND PEACE DEVELOPMENT CENTRE stressed that research on indigenous knowledge should be conducted by indigenous and local communities. The US noted that the proposal to compile a database should take into account that indigenous people may not want to nor are they obliged to share their knowledge in all cases. The ALL INDIA COORDINATING FORUM OF INDIGENOUS/ADIVASI PEOPLES proposed the development of a mechanism to disseminate information on decisions taken at national and international levels that affect indigenous peoples. The CANADIAN INDIGENOUS CAUCUS urged development of an indigenous clearing-house mechanism to help protect and exchange traditional knowledge to meet indigenous peoples' needs and the CBD's objectives.

MOVIMIENTO AUTORIDADES INDIGENA called for a moratorium on access to indigenous resources and knowledge until effective international mechanisms are developed for protection of indigenous rights. VANUATU suggested developing an inter-jurisdictional body to ensure indigenous peoples' PIC on access issues, given the transboundary nature of bio-piracy. COSTA RICA stressed that bio-prospecting must be distinguished from bio-piracy. WWF INTERNATIONAL proposed that the workplan should, *inter alia*: develop guidelines for legal and political measures to enable repatriation of information to indigenous peoples; assess existing formal IPR systems and propose alternatives, including special regimes recognizing collective property and *sui generis* systems of protection; and suggest principles and guidelines for instruments of indigenous approval on access to knowledge and biological resources that are adaptable to diverse local jurisprudential conditions.

CANADA called for the development of: guiding principles and standards to strengthen the complementary use of traditional knowledge and "modern science;" ethical guidelines and standards for research on traditional knowledge by indigenous people; practical guidelines for access to, control of and equitable sharing of benefits from traditional knowledge; case studies illustrating how existing IPR regimes and other mechanisms might be utilized to implement 8(j) and where they do not fully reflect the nature of traditional knowledge; and research to consider the rationale and facilitate the possible creation of national *sui generis* systems and/or alternative forms of protection.

ETHIOPIA, on behalf of the African Group, stated that the COP should: consider the need for a protocol on the protection of traditional knowledge, innovations and practices; ensure that access to traditional knowledge incorporates PIC and the principle of fair and equitable benefit-sharing; and examine the implications of the TRIPs Agreement on implementation of 8(j) and related provisions. The NATIONAL INDIGENOUS CONGRESS OF MEXICO called for recognition of indigenous territories as protected areas. The SAAMI COUNCIL, on behalf of the INUIT and RUSSIAN INDIGENOUS PEOPLES OF THE NORTH, called on the COP to adopt an Arctic programme, including a marine component, to examine the effects of climate change, persistent organic pollutants and modern fishing technology on Arctic biodiversity and indigenous peoples. They also called on the COP to direct the Executive Secretary to facilitate the mobilization of funds from foundations to implement 8(j).

The ORGANIZATION OF INDIGENOUS PEOPLES OF SURINAME suggested inclusion of text supporting the establishment of the permanent forum for indigenous peoples in the UN. COLOMBIA, the NATIONAL INDIGENOUS CONGRESS OF MEXICO and the FEDERATION OF GUYANAN AMERINDIANS supported the use of the Forum's proposal as the basis for consideration of future work under 8(j), and VANUATU requested that it be recognized in the Workshop's final report. On behalf of FRANCOPHONE AFRICA,



one delegate stressed that the IIFB-2 proposal did not reflect a consensus of all indigenous peoples. NORWAY, ETHIOPIA, COSTA RICA, ITALY, the US and the UK noted the need for a variety of alternatives and suggested that all proposals be forwarded to COP-4 for consideration.

Delegates agreed to employ the structure of the Nordic proposal, and the Co-Chairs formed a drafting group, composed of two representatives of indigenous people and two government representatives, to formulate a new draft. This revised draft incorporated the substance of the original Co-Chairs' draft, the Nordic and IIFB-2 proposals and all delegates' interventions. This revised draft, entitled "Structure and Elements of a Workplan", contained a chapeau noting that all elements suggested during the Workshop were included in the document, that the Workshop decided to forward these elements to the COP for consideration in their original form, and that the COP may wish to consider the proposed elements if deciding to develop a workplan. The draft contained 97 paragraphs organized under sections on: general recommendations; recommendations for elements of a workplan for future elaboration under the framework of the CBD; and development of recommendations for action at the national level.

In the Working Group's discussion of this draft, the UK, supported by the US, FRANCE and CANADA, proposed that the document's title, chapeau and section titles clearly indicate that the document presented "options" for the structure and elements of a workplan, "options for recommendations" for elements of a workplan, and "options for recommendations for actions at the national level." ETHIOPIA preferred that the document be titled "recommendations" for the structure and elements of a workplan and the sections be titled "specific recommendations for elements" and "recommendations for actions at the national and international levels." SWEDEN proposed additional language for the chapeau, noting that: the options were not consensus recommendations but proposals for options for structure and elements of a workplan compiled for consideration by the COP; the IIFB-2 presented a number of recommendations in their working document, which was annexed; all proposals were included verbatim and often did not use the language of the CBD; and neither the report, its elements nor its terms should be taken as negotiated or consensus text.

ETHIOPIA commented that if Sweden's chapeau was added to the document, it would imply that the Workshop had been a futile exercise, as delegates could have simply submitted their proposals in writing to the Secretariat and not even come to Madrid. A number of indigenous peoples' representatives highlighted the diversity of viewpoints expressed at the Workshop, and stated that while indigenous peoples could not have been expected to speak in technical UN language, they knew what issues they wanted in the document. The US said that highlighting the non-negotiated nature of the document did not reflect failure, and emphasizing that the proposals may not use CBD language could encourage Parties to contemplate the ideas behind the text rather than dismiss them due to inconsistent terminology.

The drafting group then met briefly and reformulated the chapeau, deleting the clause noting that the proposals often do not use the language of the Convention. The Working Group agreed to the document with the chapeau as amended.

## WORKING GROUP II

Working Group II was chaired by Roy Taylor (North American Indigenous Peoples Biodiversity Project), with Manfred Schneider (Austria) serving as an advisory Co-Chair. The Group's discussion primarily focused on examination of the need to establish an open-ended intersessional working group or a subsidiary body.

A Co-Chairs' draft was distributed to assist the Group in its deliberations. The draft posed questions on the most appropriate form of body, including to whom it should report and its participation, duration, financing and frequency of meetings. The draft also outlined proposed options for such a body: an open-ended working group

reporting to the COP; a permanent advisory committee to SBSTTA for intersessional work, to be followed by a future COP decision on establishing a specific body; a subsidiary body; an *ad hoc* working group; an advisory body under SBSTTA; an *ad hoc* technical panel advising the Executive Secretary; or an expert meeting. The draft also suggested terms of reference for the body, including the development of a workplan, addressing elements of a workplan to be identified by Working Group I, and considering work carried out by other relevant international conventions, organizations and processes.

Regarding options for the form the body should take, several delegates requested clarification as to the legal distinctions between a subsidiary body, an open-ended working group, an *ad hoc* working group and an expert panel. SWEDEN explained that all bodies are subsidiary to the COP; the COP decides the name, task, function and duration of any body it appoints.

Representatives of indigenous peoples supported the formation of an open-ended working group reporting to the COP, as outlined in the recommendation of the IIFB-2. The open-ended working group would have equal representation of indigenous peoples and governments, and would be *ad hoc* in that it operates until the permanent forum on indigenous peoples is constituted. Funding would be provided by voluntary contributions from the COP and financial resources of multilateral organizations and the GEF.

SWEDEN agreed to forwarding the indigenous peoples' proposal to the COP, and suggested adding language expressing the need for urgent action by Parties. ECUADOR supported an open-ended working group that would report to the COP and meet annually for three years. COLOMBIA supported an open-ended working group of a three- to five-year duration. NORWAY suggested that COP appoint an *ad hoc* working group.

SWEDEN preferred the terminology "subsidiary" body, indicating its long-term nature, as opposed to an "*ad hoc*" working group, which is limited in duration. The subsidiary body would report to the COP. SWEDEN, supported by COLOMBIA, said funding should come from the CBD budget because dependence on voluntary contributions would weaken the indigenous position. CANADA said options regarding the form of the body should consider the substance of the pending workplan. For instance, if the COP requires ongoing advice from indigenous peoples, a SBSTTA-like body, possibly reporting to the COP, may be appropriate, or, if the COP requests a range of studies, it could establish a task force or hold a workshop. The UK supported an open-ended body that would report to the SBSTTA.

Regarding terms of reference, the UK supported the Co-Chairs' draft, with the exception of the suggested appointment of an inter-agency task force to coordinate work on 8(j) with relevant organizations. CANADA supported the task force initiative. ITALY suggested the creation of an indigenous peoples expert in the SBSTTA. The US suggested two options: topic-oriented workshops and the gathering of information and reporting on national experiences to be used for assessment by the COP. ECUADOR and the INTERNATIONAL ALLIANCE said the Group's report should contain no more than two options, one reflecting the preferences of indigenous peoples and the other of governments. The ITC said indigenous peoples advocate the option that will guarantee maximum participation. A number of indigenous representatives requested the deletion of options for the establishment of an advisory body under SBSTTA and of an *ad hoc* technical panel to advise the Executive Secretary. The AUSTRALIAN INDIGENOUS DELEGATION explained that forwarding too many options to COP-4 presented a danger that the indigenous peoples' option would be watered down in an effort to reach consensus. The UK noted that over 100 Parties to the CBD did not attend the Workshop, although they would be at the COP, and therefore they must be provided with a broad range of options, particularly since some of these Parties may not support the establishment of such a body.



A revised Co-Chairs' draft incorporating the above interventions was submitted to the Group for comments. The Group suggested amendments and the merging of text. A representative of indigenous peoples, supported by the US and the UK, requested that the recommendation of the IIFB-2 appear as an annex to the Group's report.

Regarding the section addressing the need to establish an open-ended intersessional working group or a subsidiary body, ECUADOR said the Group should restrict its consideration to the two options that had received the strongest support: the indigenous peoples' proposal to establish an open-ended working group, and the proposals by governments to establish some form of subsidiary body. ECUADOR, on behalf of VENEZUELA, COLOMBIA, SURINAME, the DOMINICAN REPUBLIC and COSTA RICA, and supported by SPAIN, presented an additional option comprised of discrete sections of other options that were similar to the indigenous peoples' proposal. COLOMBIA, supported by SPAIN, also attempted to synthesize the options, but in the form of an alternative text that would entirely replace the current draft. A number of indigenous peoples' representatives supported the efforts by ECUADOR and COLOMBIA to merge similar options, noting that a lengthy list of options may appear confusing and suggest to the COP that views were divergent.

SWEDEN, supported by the UK, the US and NORWAY, said while any representative and delegation has the right to introduce proposals and have them reflected in the draft, all proposals, including that of Colombia, should be integrated into the established structure of the draft. If each government were to submit its proposal as a separate package, each with its own structure, the product would be extremely long and the process of synthesizing cumbersome. SWEDEN noted that the structure of the current draft, organized into seven headings, with a series of options under each, will ease the work of the COP by facilitating selection among options.

Noting that several proposed options had been excluded from the Ecuadorian synthesis option, the UK said that while it supported the aim to reduce options, it recalled that at the outset the Group had agreed to consider all options without deletion or amendment. The process of amending text would require lengthy discussions, for which there was insufficient time. The US said it was not prepared to narrow the list of options at present, but a report with a range of options would help in its preparation for COP-4.

Delegates were presented with a revised draft Report of the Chair of Working Group II. The report was adopted by the Group for submission to the COW.

#### **COMMITTEE OF THE WHOLE**

On Friday, 28 November, Stella Tamang presented the Report of the Chair of Working Group I (UNEP/CBD/TKBD/1/CW/L.1) for consideration and adoption by the COW. ETHIOPIA requested inclusion of a second chapeau and section subtitles identifying the content as "Recommendations" for Structure and Elements of a Workplan, to parallel the existing chapeau and subtitles that outlined "Options for Structure and Elements." The INUIT noted omission of an earlier suggestion that Parties respond in writing to the Secretariat on the IIFB-2 statement, which the Chair noted. The COW adopted the report.

Roy Taylor presented the Report of the Chair of Working Group II (UNEP/CBD/TKBD/1/CW/L.2) for consideration by the COW, where a number of textual amendments were noted. COLOMBIA said local communities should be added wherever indigenous peoples are mentioned, consistent with the language of 8(j). He also requested the Chair to consider an initiative to hold consultations two months prior to COP-4 so that indigenous peoples can provide input to governments. MOVIMIENTO INDIGENA COLOMBIANO noted that confusion remained regarding the scope of a subsidiary body. The COW adopted the Report, and Chair Piñeiro brought the COW to a close.

#### **CLOSING PLENARY**

Workshop Chair Bani Hani presented the Report of the Workshop (UNEP/CBD/TKBD/1/L.1) for consideration and adoption by the Plenary. The US read a statement to be appended to the report stating that one government noted that some interventions had used the term "indigenous peoples," and the use of this term in the Report reflects its use in specific interventions during the Workshop and does not imply any rights which may attach to the term under international law. The UK added a tribute to the Government and people of Spain for hosting the meeting.

Antonio Gonzales, on behalf of indigenous peoples, thanked Workshop participants, the Secretariat and the people and Government of Spain. He stated that participants had dedicated themselves to embark on a long road together, a road with many rocks to be cleared, but he expressed certainty that together they could clear the road. He said the indigenous peoples at the meeting did not come to give away the traditional knowledge that they have inherited from their ancestors and guard for their children, and neither time nor oppression can extinguish their rights. He stressed that much remains to be resolved. He was perplexed by the US' statement regarding indigenous peoples and requested that it be retracted and struck from the final Report. He called on all to be accountable to future generations and to the creator, and to remember this in their work.

Mino Castro, COMUNIDAD NATIVA ASHÁNINKA, expressed thanks for the awareness that indigenous peoples and communities are part of the process and emphasized that Mother Earth is the only guarantee that we have for future generations. CANADA stated that the Workshop had taken a big step and had proven that effective collaboration is possible, as evidenced by the indigenous Chairs and advisors and the inclusion of indigenous peoples' comments in full in the Report. He underscored the need to ensure that this effective collaboration continues.

Chair Bani Hani noted that the report of the meeting had been adopted by acclamation. He thanked the people and Government of Spain and the Chairs of the Working Groups and commended Workshop participants. The meeting came to a close at 2:30 pm on Friday, 28 November 1997.

### **FINAL OUTCOME**

#### **REPORT OF THE CHAIR OF WORKING GROUP I**

The Report (UNEP/CBD/TKBD/1/CW/L.1) contains a chapeau and 114 paragraphs in three sections: general recommendations/options for general recommendations; specific recommendations/options for recommendations for elements of a workplan for future elaboration under the CBD; and development of recommendations for actions at the national level/recommendations for actions at the national and international levels/options for recommendations for actions at the national level. The Report of the Second International Indigenous Forum on Biodiversity is attached as an annex.

The chapeau notes that the report: contains options for structure and elements for a workplan on 8(j) compiled for consideration by the COP; includes all proposals presented in Working Group I verbatim with no attempt to exclude options or revise language; and should not be taken as negotiated or consensus text. It states that the COP may consider the proposed elements if deciding to develop a workplan on 8(j) and related provisions.

#### **GENERAL RECOMMENDATIONS/OPTIONS FOR GENERAL RECOMMENDATIONS**

This section suggests that the workplan could, *inter alia*:

- ensure that implementation of 8(j) considers existing indigenous declarations and proposals;
- develop mechanisms to ensure full and equal participation of indigenous and local communities including women in all CBD



implementation processes;

- develop procedures to generate and allocate human and financial resources to capacity-building initiatives;
- promote public awareness of the importance of traditional knowledge to global sustainability;
- provide material and non-material incentives for maintaining and enhancing biodiversity;
- include a component on the definition of key terms;
- formulate guidelines for study and evaluation of indigenous women's contribution to conserving and transmitting local knowledge;
- take full account of, collaborate with and complement work in other fora;
- develop modalities for international information-sharing; and
- develop the proposed options for standards, principles and/or guidelines on traditional knowledge within the national context.

#### **SPECIFIC RECOMMENDATIONS/OPTIONS FOR RECOMMENDATIONS FOR ELEMENTS OF A WORKPLAN FOR FUTURE ELABORATION**

This section contains six sub-sections.

**PARTICIPATORY MECHANISM FOR INDIGENOUS PEOPLE AND LOCAL COMMUNITIES:** This sub-section suggests that the workplan could, *inter alia*:

- support the initiative to establish a permanent forum for indigenous peoples within the UN system;
- recognize indigenous peoples and local communities as Parties to the CBD;
- develop mechanisms to ensure full participation of indigenous peoples and local communities in strategies to designate and manage protected areas;
- incorporate the right to objection and to PIC in all mechanisms to ensure participation of indigenous peoples and local communities; and
- ensure the involvement of indigenous people and local communities at the international, multilateral and national levels.

**STATUS AND TRENDS IN RELATION TO ARTICLE 8(J):** This sub-section suggests that the workplan could, *inter alia*:

- analyze the context and constraints of 8(j) implementation under different national legal systems;
- rehabilitate and make official the culture and ancestral technology of indigenous and local knowledge;
- monitor trends and analyze causes of erosion of cultures and languages;
- develop guidelines for identification and documentation of indigenous and traditional knowledge; and
- undertake studies on the relationship between Farmers' Rights and the CBD.

**TRADITIONAL CULTURAL PRACTICES FOR CONSERVATION AND SUSTAINABLE USE:** This sub-section suggests that the workplan could, *inter alia*:

- require that research activities in traditional knowledge are given the same financial and policy support as "formal scientific" research and development activities;
- develop mechanisms and processes to ensure control by indigenous peoples and local communities over lands and territories to protect and enhance biodiversity;
- develop processes to repatriate the lands and territories of indigenous peoples and local communities;
- request the World Commission on Protected Areas to develop guidelines for the application of the recently redefined Categories of Protected Areas to indigenous lands and territories;
- examine how issues related to 8(j) and 10(c) could be integrated

into the CBD's sectoral areas;

- identify relevant incentives to strengthen the use of traditional knowledge; and
- adopt an Arctic programme to use traditional ecological knowledge to conserve Arctic biodiversity.

**EQUITABLE SHARING OF BENEFITS:** This sub-section suggests that the workplan could, *inter alia*:

- develop guidelines for the establishment of equitable and democratic measures for benefit-sharing and contractual agreements at the national level;
- develop benchmarks to establish formal and mutually agreed mechanisms for equitable sharing of monetary and non-monetary benefits;
- develop ethical guidelines and standards for research on traditional knowledge;
- develop practical guidelines for access to, control of and equitable sharing of benefits from traditional knowledge;
- establish a process involving relevant international and multi-lateral bodies, including WTO and WIPO, in developing a multi-lateral mechanism for certifying and/or confirming PIC for the use of traditional knowledge; and
- consider guidance to a financial mechanism to assist development of *sui generis* systems to protect and manage indigenous knowledge and the drafting of national legislation to implement 8(j) and related articles.

**EXCHANGE AND DISSEMINATION OF INFORMATION:** This sub-section suggests that the workplan could, *inter alia*:

- compile case studies on traditional knowledge, culture, practices and lifestyles;
- enhance the exchange and dissemination of information on traditional knowledge through existing mechanisms with PIC of indigenous and local communities;
- develop an indigenous clearing-house mechanism; and
- establish guidelines for the creation of permanent mechanisms for information exchange and capacity-building among indigenous peoples and local communities concerning customary knowledge and biodiversity-related international negotiations, policies and legislation.

**MONITORING ELEMENTS:** This sub-section suggests that the workplan could, *inter alia*:

- develop guidelines and recommendations for establishing regulations, mechanisms and procedures to ensure that adequate environmental impact assessments involve full participation of concerned communities;
- develop standards and guidelines to prevent bio-piracy and monitor bio-prospecting and access to genetic resources;
- effect a moratorium on all bio-prospecting in the territories of indigenous peoples and local communities until acceptable *sui generis* systems are established; and
- recognize the rights of indigenous peoples and local communities to access and repatriate genetic materials held in all *ex situ* collections.

**LEGAL ELEMENTS:** This sub-section suggests that the workplan could, *inter alia*:

- review existing frameworks of protecting traditional knowledge and lifestyles;
- elaborate relevant guidelines on the content of Parties' national legislation;
- identify, analyze and evaluate existing IPR regimes and propose alternatives, including special regimes that recognize collective ownership as well as *sui generis* systems to protect traditional knowledge;
- consider the need for a protocol to protect traditional knowledge,





innovations and practices; and

- examine the implications of the TRIPs Agreement on the implementation of 8(j) and related provisions.

#### **DEVELOPMENT OF RECOMMENDATIONS FOR ACTIONS AT THE NATIONAL LEVEL/RECOMMENDATIONS FOR ACTIONS AT THE NATIONAL AND INTERNATIONAL LEVELS/OPTIONS FOR RECOMMENDATIONS FOR ACTIONS AT THE NATIONAL LEVEL**

This section suggests that the workplan could, *inter alia*:

- provide guidelines to integrate traditional practices and knowledge into national biodiversity plans and strategies;
- consider how to include traditional knowledge, innovations and practices into relevant sectors;
- suggest mechanisms for legal recognition of customary systems for protection and control of traditional knowledge, technology, practices and biological resources;
- develop standards and guidelines that recognize the concept of collective rights and traditional agricultural systems and that incorporate existing political and legal systems of indigenous peoples and local communities and their customary use of resources;
- require the revitalization and maintenance of indigenous languages; and
- support the development of education systems based on indigenous values, including the establishment of an indigenous university.

#### **REPORT OF THE CHAIR OF WORKING GROUP II**

The Report (UNEP/CBD/TKBD/1/CW/L.2) contains options, grouped into nine sections, reflecting the proposals compiled for consideration by the COP. It is noted in a chapeau that: there has been no attempt to exclude options or revise language, ideas or concepts of the proposals introduced by participants; the Report and the terms used therein do not form a negotiated consensus document; and the options are not mutually exclusive but should reflect the broad needs of a workplan. The references to indigenous people should be understood as also referring to local communities embodying traditional lifestyles relevant to the conservation and sustainable use of biodiversity.

#### **THE NEED TO ESTABLISH AN OPEN-ENDED INTERSESSIONAL WORKING GROUP OR A SUBSIDIARY BODY**

The Report provides 13 options regarding the need to establish a body:

- 1) the establishment of an open-ended intersessional working group on 8(j) and related articles, noting that indigenous peoples are guided by the principles of procuring peace, harmony, development and ecological equilibrium through the respect of the fundamental freedom and rights, recognized in various international instruments, which have not been fulfilled because of historical circumstances;
- 2) the urgency for Parties to take decisive action to counteract the erosion, at an alarming rate, of knowledge, innovations and practices of indigenous and local communities, through the establishment of a subsidiary body of the COP;
- 3) that the need to establish an open-ended intersessional working group or a subsidiary body depends upon the identification of elements of a workplan to fully implement 8(j) and related articles;
- 4) a two-step approach with, as a first step, the establishment of a permanent committee of SBSTTA for sessional and intersessional work of governmental, indigenous and local community experts and, as a second step, a COP decision on the establishment of a specific body;

- 5) the establishment of a subsidiary body consisting of Parties with a mechanism for the participation of indigenous peoples and local communities;
- 6) the establishment of an *ad hoc* body, reporting to SBSTTA, with input from, among others, indigenous people, experts and other organizations;
- 7) that the CBD encourage a process of sharing national experiences and models (including national or locally-generated guidelines) for the implementation of 8(j) through such means as national reports, topical studies and informational workshops, and compile such information for the use of governments;
- 8) the establishment of supportive process options to facilitate indigenous participation in the entire COP process that might include, for example, regional workshops or the development of a mechanism for communication among indigenous peoples of the world;
- 9) the placement of 8(j)-related issues on the agenda of the COP on a periodic basis;
- 10) the convening of workshops, including regional workshops;
- 11) the establishment of an open-ended intersessional working group on indigenous peoples and local communities under the COP to formulate and propose content, mechanisms and instruments;
- 12) the merging of option 1, the provision for urgent action under option 2 and the provision for consideration of a body in conjunction with the proposed workplan under option 3; and
- 13) the establishment of an intersessional subsidiary body with equal participation of government representatives that functions under the COP to formulate and propose content, mechanisms and instruments, and incorporates the perspectives, interests and needs of indigenous peoples and local communities.

#### **MANDATE**

The Report provides five options for the mandate of the body:

- 1) the subsidiary body or intersessional working group should provide advice to the COP relating to Parties' implementation of 8(j) and related articles, *inter alia*, by providing advice on the development and implementation of a work plan;
- 2) the open-ended intersessional working group should: provide guidance on issues related to traditional knowledge, innovations and practices; elaborate guidelines and establish mechanisms with international scope; elaborate guidelines and establish mechanisms for international cooperation between indigenous peoples and for cooperation between governments and international organizations in technological and economic matters; define implications embedded in the CBD on matters of PIC, fair and equitable benefit-sharing and *in situ* conservation in indigenous lands; and review national legislation with respect to 8(j);
- 3) the contents of reports submitted by the Secretariat concerning the criteria for the implementation of 8(j) and related articles should be developed and new contributions by governments and indigenous peoples considered;
- 4) reporting mechanism(s) to aid States' understanding of various implementation approaches should be developed;
- 5) the contents and reports presented by the Secretariat regarding the criteria for the implementation of 8(j) should be developed, the correspondence between 8(j) and other international instruments established, and other joint mechanisms for implementation with other international organizations developed.

#### **REPORTING**

The Report provides five options for the reporting of the body:

- 1) the body should report to the COP, as this is the decision-making body;
- 2) the body should report to the COP, as a body under SBSTTA



- would not allow indigenous peoples and local communities to express their views to the decision-making body;
- 3) the body should report to SBSTTA, given the predominantly scientific and technical nature of many of the relevant issues;
  - 4) the body should provide advice to the Executive Secretary; and
  - 5) the working group would present annual reports to the COP and establish relationships with SBSTTA to present the results of their deliberations and would be entitled to request technical advice on aspects related to its mandate.

#### **DURATION OF THE BODY**

The Report provides seven options for the body's duration. The body could be:

- 1) *ad hoc* for a limited time, to be decided by the COP;
- 2) *ad hoc* for three years;
- 3) preliminarily established for three years;
- 4) a long-term process;
- 5) permanent;
- 6) developing its tasks over an initial three-year period, until the COP reviews the status of implementation of 8(j) and other relevant articles; and
- 7) an open-ended working group subject to compliance with the activities stipulated in the mandate.

#### **FREQUENCY OF MEETINGS**

The Report provides four options for the frequency of meetings:

- 1) the body should meet once a year;
- 2) the body should meet twice a year;
- 3) the frequency of meetings should be decided by the COP on the basis of the specific needs for such meetings; and
- 4) the body will function on the basis of the Convention budget, complemented by voluntary contributions by developed countries and other donor entities.

#### **COMPOSITION OF AND PARTICIPATION IN THE BODY**

The Report provides seven options for the body's composition and participation:

- 1) the working group/body should be comprised of equal numbers of representatives of indigenous peoples and governments from the various continents;
- 2) an open-ended working group/body should have equitable participation of indigenous peoples to guarantee their active participation;
- 3) the composition of the body should include representatives of indigenous peoples, equally women and men, and not experts;
- 4) the body should include participation of local community representatives;
- 5) there should be equitable participation of indigenous peoples;
- 6) equitable opportunities for full and active participation of indigenous peoples and local communities should be ensured in the subsidiary body's work, including through participation in drafting and contact groups and equal participation in Friends of Chair groups; and
- 7) the working group/body should be comprised of equal numbers of representatives of indigenous peoples and governments from various regions.

#### **FINANCING OF THE BODY**

The Report provides five options for financing:

- 1) voluntary contributions from the COP, funds provided by multi-lateral organizations and financial resources of the GEF;
- 2) the CBD budget;
- 3) the financial mechanism should not be addressed, as this issue is at the COP's discretion;

- 4) voluntary contributions; and
- 5) the CBD budget, complemented by voluntary contributions from developed countries and other donor entities.

#### **PARTICIPATION BY INDIGENOUS PEOPLES IN THE DECISION-MAKING PROCESS AT THE COP**

The Report states that the COP should appoint, on an *ad hoc* basis for the duration of the COP, a representative group of global indigenous peoples.

#### **COLLABORATION AND FURTHER CONSIDERATIONS**

The Report provides five options for collaboration:

- 1) the body should take into account the work carried out by other relevant international conventions, organizations and processes under, *inter alia*, the UNCHR, the CSD, ILO Convention No. 169, the Inter-American Declaration on Human Rights, WIPO, the World Bank, FAO, UNESCO, UNCTAD, UNEP, WTO, WCU, CGIAR, IPGRI and the IFF;
- 2) an inter-agency task force on indigenous and local knowledge, innovations and practices should be convened by the Executive Secretary;
- 3) a task force on specific topics should be established or international bodies, such as WIPO, referred to;
- 4) topic-oriented workshops on national experiences should be held; and
- 5) the establishment of a body should not hinder work on elements of the workplan that can currently be requested by the COP, such as a study on a *sui generis* system of traditional knowledge, innovations and practices.

#### **A BRIEF ANALYSIS OF THE WORKSHOP**

At first glance, the outcome of this unconventional process appears to be a smorgasbord of ideas and proposals without much consistency and with questionable utility in advising the COP. While the outcome reflected considerable differences among participants on the specific scope, nature and objectives of the Workshop, such divergence could have been expected, as this was the first opportunity under the CBD for governments and indigenous and local communities to voice their positions on relatively equal terms. For those hoping for a concrete, clear and negotiated outcome, the Workshop may have seemed a waste of precious time, but to others it involved not only a learning experience for all groups, but was also unprecedented in its flexibility. Whether the Workshop represented a lost opportunity or a significant first step forward remains to be seen as delegates return home and begin their preparations for COP-4, where they will consider this and other tough political decisions on a wide range of issues.

Many observers considered the Workshop to be a notable precedent within the CBD process regarding the participation of indigenous and local communities. Not only were many of these groups coming together for the first time to discuss biodiversity issues, but they participated on an equal footing with governments, unlike in the more formalized and restrictive formats of the COP and SBSTTA where government discussion dominates and participation of observers is limited. Of particular note was the nomination of indigenous representatives as Working Group Chairs and their participation in Bureau discussions. One indigenous delegate noted a sense of empowerment regarding the level to which indigenous groups had become a recognized part of the process. While deliberating on the success of the Workshop and the tasks ahead, many indigenous peoples remarked positively on the Workshop as an opportunity to network, strengthen ties between organizations and explore wider indigenous viewpoints. Similarly, the Workshop provided them with an opportunity to become more familiar and comfortable with the UN style of negotiation and to test the waters in identifying the political, institutional and logistical



obstacles in their path. On the other hand, governments gained a better appreciation for the problems and priorities of indigenous peoples and local communities.

The discussions throughout the week, however, brought into focus the striking contrast between indigenous peoples' and governments' perspectives on the nature of traditional knowledge and the use of biodiversity. Statements by indigenous peoples reflected strong convictions regarding deep historical, cultural and spiritual connections to nature, a holistic worldview, and the interlinkages between traditional knowledge, human rights and rights to resources, land and intellectual property. This approach stood in marked contrast to the considerations of many Northern governments regarding sober political realities and the tendency to compartmentalize topics into specific issue areas to be addressed separately and within the appropriate international fora. This revealed to many participants a fundamental difference in approaches to biodiversity and future progress on the issues, one addressing holistically the spiritual, cultural and moral imperative of relating biodiversity and rights, and another focusing separately on the distinct individual legal and topical issues.

Many governments expressed disappointment with the political nature of the dialogue and the lack of substantive exchange on key issue areas and experiences, such as linkages to other relevant institutions (e.g., UNCHR, WTO, WIPO), identification of gaps, and consideration of access and property rights regimes. In contrast, some indigenous representatives stressed that a guarantee for a body with a strong mandate is a necessary precondition for deeper discussion on specific issues. It was felt that dissecting and debating issues at this forum would have diluted their unified position for a strong process, thereby amounting to another intergovernmental talkshop with little means to ensure concrete action.

These differences came into focus not only in the general tone and content of interventions, but also in the Workshop's output and the process by which it was achieved. A number of governments repeatedly noted that the Workshop was not an established body with rules of procedure or a mandate to negotiate a consensus, but an open forum for dialogue and exchange of views that could provide advice to the COP. Some participants thought that pasting together each and every proposal and affixing a chapeau stipulating a non-consensus document revealed a failure to even attempt to work together to bridge differences and reach common ground. The "wish list," as some participants referred to the final outcome, contains options stemming from such divergent viewpoints that it may preclude broad political acceptance by the COP, and fails to lay out any clear path forward. Proposals ranging from case studies on determining species utilization (e.g., the best grasses for basket-making) to calls for a moratorium on access to genetic resources reveal the considerable political divides to be overcome.

The long list of unprioritized options headed to COP-4 for consideration and the absence of more than 100 Parties from the Workshop (including many with large numbers of indigenous and local communities) suggests that the most difficult political struggles lie ahead. Many observers expressed concern that an extended list of options presents numerous difficulties, as governments may select the self-same proposals they introduced, or, worse yet, view the options as so politically intractable that they might dismiss the Report outright. Furthermore, negotiations at COP-4 will revert back to negotiations between States Parties with little expectation for comparable levels of input and influence that indigenous and local community groups enjoyed in Madrid.

Yet many delegates did see the Workshop Report as containing a rich array of ideas and options for consideration. It was noted positively that the Report contained many highly contentious issues that otherwise would never have found their way into an official UN document headed for a COP. One government delegation noted that the text does in fact contain a number of options on which a middle ground could foreseeably be reached. With time and further debate, workable

options could emerge, the wish list could narrow and become more manageable, and Parties could be better equipped to proceed with the implementation of 8(j).

While the Workshop clarified the uphill battle that lies ahead on the road to Bratislava, it also laid the groundwork for meaningful dialogue and future progress. Governments and indigenous peoples engaged in a constructive exercise and took the first steps toward finding a common ground on which to better integrate traditional knowledge and the concerns of indigenous and local communities into the implementation of the CBD.

## THINGS TO LOOK FOR BEFORE COP-4

**FAO COMMISSION ON GENETIC RESOURCES FOR FOOD AND AGRICULTURE:** The CGFRA will hold its Fourth Extraordinary Session in Rome from 1-5 December 1997. The eighth session of the CGFRA will take place during the second half of April 1999. For information, contact FAO, Viale delle Terme di Caracalla, 00100 Rome, Italy; tel: +39-6-52251. Also try <http://www.fao.org> or <http://web.icppgr.fao.org>.

**THIRD INTERNATIONAL CONFERENCE ON WILDLIFE MANAGEMENT IN AMAZONIA:** This conference is scheduled from 3-7 December 1997 in Santa Cruz, Bolivia. For information, contact Dr. Richard Bodmar; University of Florida, USA; Tel: +1-352-392-6548; Fax: +1-352-392-0085; E-mail: [tcd@tcd.ufl.edu](mailto:tcd@tcd.ufl.edu).

**THIRD CONGRESS OF THE CONSERVATION OF CARIBBEAN BIODIVERSITY:** This conference will be held from 14-17 January 1998 in Santo Domingo, Dominican Republic. For information, contact the Univeridad Autonoma de Santo Domingo, DR; tel: +1-809-686-3348; fax: +1-809-687-5766.

**PREPARATORY MEETINGS FOR CBD COP-4:** The Asian Preparatory Meeting is tentatively scheduled for January 1998 in Beijing, China. The African Preparatory Meeting is tentatively scheduled for February 1998 in Morocco. The Latin American and Caribbean Preparatory Meeting is tentatively scheduled for February/March in a venue to be determined. The Preparatory Meeting for countries with economies in transition is scheduled for March 1998 in Almaty, Kazakstan. For more information, contact the CBD Secretariat, World Trade Centre, 393 St. Jacques Street, Montreal, Quebec, Canada H2Y 1N9; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: [chm@biodiv.org](mailto:chm@biodiv.org); Internet: <http://www.biodiv.org>.

**INTERNATIONAL CONFERENCE ON DIVERSITY AS A RESOURCE:** This conference will take place from 2-5 February 1998 in Rome, Italy. For information, contact COBASE, Via Vitorchiano 23, 00189 Rome, Italy; Tel: +39-6-3330078; Fax: +39-6-3330081; E-mail: [anna.borioni@inet.it](mailto:anna.borioni@inet.it).

**WORKING GROUP ON BIOSAFETY:** The fourth session of the Open-ended *Ad Hoc* Working Group on Biosafety will take place in Montreal from 9-18 February 1998. Delegates agreed that BSWG-5 should be held during the last two weeks of July and agreed that the final meeting of the BSWG and adoption ceremony should be held in early December. For information, contact the CBD Secretariat.

**INTERNATIONAL CONFERENCE ON MEDICINAL PLANTS CONSERVATION, UTILIZATION, TRADE AND BIOCULTURES:** This meeting is scheduled from 16-20 February 1998 at the National Institute of Advanced Studies, Indian Institute of Science Campus, Bangalore, India. For information, contact the Foundation for Revitalization of Local Health Traditions (FRLHT), No. 50, 2nd Stage, MSHLayout, Anandnagar, Bangalore 560 024, India; tel: +91 80 333 6909/0348; fax: +91 80 333 4167; email: [root@frlht.ernet.in](mailto:root@frlht.ernet.in).

**FOURTH CONFERENCE OF THE PARTIES TO THE CONVENTION ON BIOLOGICAL DIVERSITY:** COP-4 is scheduled for 4-15 May 1998 in Bratislava, Slovakia. For information, contact the CBD Secretariat.