

Article 8(j) and DSI Working Groups Highlights: Thursday, 16 November 2023

The Working Group on Article 8(j) and Related Provisions (WG8j) met in plenary throughout the day and concluded its deliberations, addressing conference room papers (CRPs), and final draft recommendations. In the evening, the Working Group on digital sequence information (DSI) continued working under the Contact Group on benefit-sharing from the use of DSI on genetic resources.

WG8j Plenary

Working Group Co-Chair Ning Liu, China, opened the plenary session, inviting delegates to continue discussion on the CRPs “under the same collaborative and constructive spirit that guided our work so far.”

Recommendations from the UN Permanent Forum on Indigenous Issues (UNPFII) pertaining to the Convention on Biological Diversity (CBD): Co-Chair Liu introduced the CRP (CBD/WG8J/12/CRP.3). The UNPFII suggested organizing an inclusive *Ad hoc* Technical Expert Group (AHTEG) on the implications and consequences of confusing Indigenous Peoples with other groups in society and develop specific actions to avoid such confusion. He stressed that the AHTEG’s report should be considered by CBD parties, noting it will facilitate the application of the Kunming-Montreal Global Biodiversity Framework (GBF), in keeping with the UN Declaration on the Rights of Indigenous Peoples.

The Democratic Republic of the Congo (DRC), for the AFRICAN GROUP, supported by TOGO, UGANDA, ESWATINI, BURUNDI, LIBERIA, and INDONESIA, stressed the need to consider Indigenous Peoples and local communities (IPLCs) as a single, indivisible group, cautioning that, otherwise, “we will not achieve the GBF goals.” They pointed to terminology used under the CBD and emphasized that excluding local communities’ rights goes against the Convention’s objectives.

GUATEMALA, supported by MEXICO, underscored the years-long struggle of Indigenous Peoples for the recognition of their rights, lamenting that some states have been denominating Indigenous Peoples as local communities to reduce those rights.

Spain, for the EU, supported by NORWAY, AUSTRALIA, BRAZIL, and MEXICO, suggested compromise text by replacing the controversial provisions containing reference to Indigenous Peoples but not local communities, with a reference to the relevant part of the GBF (Section C, paragraph 7a on the contribution and rights of IPLCs). BRAZIL further suggested including a reference to Decision 15/4 (the GBF) in a footnote. NORWAY reminded delegates that the term IPLCs does not imply any position on rights but represents a compromise, as some parties do not recognize Indigenous Peoples at the national level.

Following informal consultations, the DRC, on behalf of the AFRICAN GROUP, stressed that questions on the document’s overall objective, rationale, and desired outcomes remain unanswered. He requested bracketing the entire document, opposed by GUATEMALA, CANADA, CHILE, and others.

Colombia, on behalf of GRULAC, reiterated support for the proposed compromise submitted by Brazil and the EU. CANADA, supported by CHILE, further emphasized the importance of dialogue, and ensuring adequate space for such exchanges towards advancing work and building common understanding.

Acknowledging the lack of consensus, Co-Chair Liu noted that the entire document will be bracketed.

In the afternoon, Co-Chair Liu introduced the final draft recommendation (CBD/WG8J/12/L.5). Following an exchange of views on the exact placement of the brackets, delegates adopted an entirely bracketed recommendation.

Updated draft knowledge management component of the GBF: Co-Chair Liu introduced the relevant CRP (CBD/WG8J/12/CRP.1/Rev.1), which was approved with no comments.

In the afternoon, delegates adopted the final recommendation (CBD/WG8J/12/L.4).

In-depth dialogue: “The role of languages in the intergenerational transmission of traditional knowledge, innovations and practices”: Co-Chair Liu introduced the final recommendation (CBD/WG8J/12/L.2), which was adopted with no objections.

Joint programme of work on the links between biological and cultural diversity: review and update of the four adopted traditional knowledge indicators: Co-Chair Liu introduced CBD/WG8J/12/L.3. COLOMBIA, supported by CHILE and CUBA, suggested including a reference to environmental rights defenders. The RUSSIAN FEDERATION, ESWATINI, and TOGO opposed, and the reference was not included. Following minor editorial amendments, the document was adopted.

Development of a new programme of work and institutional arrangements on Article 8(j): Co-Chair Liu introduced the CRP (CBD/WG8J/12/CRP.5). The Secretariat noted two minor editorial issues.

Contact Group Co-Chairs, Lucy Mullenkei (Indigenous Information Network) and Matilda Wilhelm (Sweden), reported on productive discussions during Wednesday night’s session, noting that: the programme of work had been addressed in full, with some remaining brackets; common understanding was found for many of the elements under consideration; and two tasks previously included under the elements were moved to draft recommendation. She stressed that the draft recommendation had not been fully addressed.

NORWAY, supported by BRAZIL, the DRC, TOGO, GUATEMALA, COLOMBIA, and ESWATINI, reiterated their support for establishing a new permanent subsidiary body for Article 8(j) issues. BRAZIL, supported by GUATEMALA, welcomed additional opportunities for discussions on this body’s *modus operandi*.

NORWAY lamented the plenary could not consider clean text on the new programme of work, further noting that its content has been “watered down,” and should be given further consideration at the 16th meeting of the Conference of the Parties (COP 16).

The RUSSIAN FEDERATION, supported by TOGO, noted concern on this “unprecedented situation,” whereby several parties’ proposals for amendments were not reflected in the text. BRAZIL, the DRC, the EU, TOGO, and CHILE highlighted

amendments, both suggested and agreed, which were not reflected in the CRP and requested their inclusion. The DRC, ESWATINI, and others submitted written comments.

COLOMBIA, CUBA, the DRC, the RUSSIAN FEDERATION, and others stressed the need for the CRP to better reflect the various discussions held on the programme of work in the Contact Group, and the divergent views on the options for institutional arrangements. CHILE, COLOMBIA, and CUBA urged for regional and gender-balance and IPLC representation to ensure fair and equitable participation in any future intersessional work.

CANADA, supported by the DRC, the EU, COLOMBIA, AUSTRALIA, and SWITZERLAND, suggested addressing the draft recommendation in plenary in an effort to reach consensus. ESWATINI proposed adopting the CRP in its current form, with a view to enable further discussions at COP 16.

COLOMBIA requested the Secretariat to provide guidance on whether the decisions that established the Subsidiary Body on Scientific, Technical, and Technological Advice (SBSTTA) and the Subsidiary Body on Implementation (SBI) could inform or be applied to the process to establish the proposed Article 8(j) subsidiary body. CUBA emphasized the need for an analysis on legal implications before taking any decision on establishing a new subsidiary body.

INDONESIA underscored that any decision should be based on existing mandates and urged parties not to prejudice COP decisions, particularly on institutional arrangements. BRAZIL emphasized the need to address potential cost implications of establishing a new subsidiary body. JAPAN requested the Secretariat to examine the resource requirements for the implementation of the programme of work on a biannual basis.

Following brief consultations with the Secretariat, Co-Chair Liu invited written submissions of interventions not included in the document for an updated CRP.

The RUSSIAN FEDERATION, supported by INDONESIA, stressed his disagreement on the establishment of a permanent subsidiary body on Indigenous issues. He further called for allocating sufficient time for discussions on matters of relevance to IPLCs during the next SBSTTA and SBI meetings, encouraging parties to provide additional support for participation of IPLC representatives. INDONESIA and TOGO emphasized that there is no consensus on distinguishing between Indigenous Peoples and local communities.

CANADA suggested that parties report on progress on the programme of work in their national reports as part of the broader assessment of progress in the GBF's implementation. The EU noted that a task under the element on conservation and sustainable use (on engaging and collaborating with IPLCs to improve the outcomes of management actions) should include two distinct options on "the drivers of biodiversity loss" and on "invasive alien species, pollution, and climate change mitigation and adaptation," suggesting reflecting both in the CRP.

In the afternoon, delegates reviewed an updated CRP (CBD/WG8J/12/CRP.5/Rev.1). COLOMBIA requested adding reference to "with particular focus on protecting women from all forms of violence," in a task under the element on the human rights-based approach, noting consensus had been reached in the Contact Group. BRAZIL noted a minor editorial amendment.

INDONESIA and TOGO requested the deletion of a task on the review and update of the "Voluntary Glossary of Key Terms and Concepts Within the Context of Article 8(j)" taking into account the language of the UN Declaration on the Rights of Indigenous Peoples, as well as the task on a legal and political analysis of issues related to the implementation of the recommendations from the three UN mechanisms on the rights of Indigenous Peoples.

Acknowledging time constraints, Co-Chair Liu proposed bracketing the entire draft decision and, with this understanding, he invited further comments. INDONESIA and the RUSSIAN FEDERATION stressed that the aforementioned tasks on the rights of Indigenous Peoples should not merely be bracketed but should be deleted, which was included as a footnote.

The RUSSIAN FEDERATION, CANADA, BRAZIL, AUSTRALIA, COLOMBIA, and the DRC reiterated prior proposals, which were included in the bracketed document.

Delegates adopted the document with the entire draft text in square brackets.

Adoption of the report: Working Group Rapporteur Hlob'sile Sikhosana, eSwatini, introduced the draft report of the meeting (CBD/WG8J/12/L.1). Following a minor addition by COLOMBIA, the report was adopted.

Closure of the meeting: CBD Acting Executive Secretary David Cooper reviewed progress made during the Working Group's deliberations. He informed participants that the Second Committee of the UN General Assembly has approved a draft resolution on the CBD and its contribution to the Sustainable Development Goals that highlighted the important role played by IPLCs. Cooper drew attention to the discussions on the development of the new programme of work and institutional arrangements, emphasizing that negotiations will continue at COP 16.

The INTERNATIONAL INDIGENOUS FORUM ON BIODIVERSITY expressed hope that parties will extend their support for language revitalization, while referring to the GBF, which recognizes the roles and rights of IPLCs for biodiversity conservation and sustainable use. She stressed that "the GBF will not happen without us" and urged parties to support the full and effective participation of IPLCs in GBF implementation and decision making.

Co-Chair Liu congratulated participants for making progress in all agenda items. He applauded the progress made despite differences in opinions. He concluded that this was achieved due to a sense of cooperation and compromise "as we march on the road to the implementation of the global biodiversity vision of living in harmony with nature by 2050."

Contact Group on Benefit-Sharing from the Use of DSI on Genetic Resources.

Inviting delegates to maintain the "friendly spirit we had so far," Co-Chair Salima Kempenaer (Belgium) presented a revised non-paper with the Co-Chairs' reflections on discussions in the Contact Group. She stressed it contains delegates' suggestions and areas for further work, pointing out it must be considered as a list of elements and not as a draft decision.

Co-Chair Nneka Nicholas (Antigua and Barbuda) guided discussions under each cluster, to capture new views on the multilateral mechanism and the global fund, as well as clarifications and issues requiring further discussion. Participants worked through the clusters sequentially, with speakers highlighting priority areas needing better understanding, including on definitions, and exchanging opinions on the potential advantages and disadvantages of elements and options under consideration.

In the Corridors

The final plenary sessions of the Working Group on Article 8(j) were eventful, with delegates expressing diverging opinions that led to two fully bracketed recommendations forwarded to COP 16. Among the disagreements, one stood out. Springing from a recommendation by the UNPFII to distinguish between Indigenous Peoples and local communities, delegates were engaged in a challenging, yet interesting, discussion on the issue.

Some underscored the years-long struggles of Indigenous Peoples for the recognition of their rights, lamenting that some states have been denominating Indigenous Peoples as local communities to reduce those rights. Others highlighted the centuries-old role local communities have played, and will continue to play, in preserving biological resources and transmitting knowledge, stressing that while Indigenous Peoples and local communities may be "different entities," separating them is out of the question.

As the Co-Chairs suspended plenary multiple times for informal consultations, one participant offered useful insights, noting that the controversy stems from different understanding of, and experiences with, colonialism. "While a collective trauma exists, this trauma is not identical in different regions of the world," he explained. Developing this common understanding will not be easy, and most delegates agreed that COP 16 will certainly be no walk in the park.