

## WORKING GROUP ON ARTICLE 8(J)

### HIGHLIGHTS:

#### THURSDAY, 18 OCTOBER

On Thursday, delegates met in two sub-working group (SWG) throughout the day. SWG I considered the action plan on traditional knowledge (TK), the composite report, and an international regime on access and benefit-sharing (ABS). SWG II adopted draft recommendations on mechanisms for participation, indicators for TK, and *sui generis* systems for TK protection; and continued deliberations on an ethical code of conduct. Contact groups met in the evening to continue work on the international ABS regime and the ethical code of conduct.

#### SUB-WORKING GROUP I

**TK ACTION PLAN:** Delegates discussed a revised recommendation (UNEP/CBD/WG8J/5/SWG.1/CRP.2). Noting the restrictive nature of the list of measures for future work, the EU, opposed by the INDIGENOUS PACIFIC CAUCUS, CUBA, and Uganda, on behalf of the AFRICAN GROUP, suggested deleting this specific list and instead emphasizing positive measures. BRAZIL proposed recommending that “future work on the TK action plan be carried out based on a compilation of submissions on positive measures to be considered at Article 8(j) WG 6.” ZAMBIA noted that negative aspects should also be taken into consideration. The INDIGENOUS PACIFIC CAUCUS called for emphasis on culturally appropriate curriculum development and implementation initiatives in indigenous and local communities. The INDIGENOUS WOMEN’S NETWORK FOR BIODIVERSITY called for inclusion of indigenous and local community initiatives. The SHUAR OF ECUADOR raised concerns about national reporting limitations. Delegates agreed to annex the list to the recommendation.

On financial mechanisms for the retention of TK, CAMEROON proposed “providing funding” and AUSTRALIA added “relating to the conservation and sustainable use of biodiversity.” A revised draft recommendation will be prepared.

**COMPOSITE REPORT:** Discussions continued on a draft recommendation (UNEP/CBD/WG8J/5/SWG.1/CRP.1). On the preamble, the EU, opposed by AUSTRALIA, the AFRICAN GROUP and BRAZIL, supported specifying that addressing climate change is within the CBD mandate and asked to also consider impacts of response activities. BRAZIL, opposed by the EU, CANADA and others, noted that UNFCCC and the Kyoto

Protocol are the sole instruments dealing with climate change. The AFRICAN GROUP underscored impacts on biodiversity beyond climate change such as deforestation. CAMEROON asked to specify that climate change is one of the main causes of biodiversity loss.

In the operative section, on a paragraph on publishing the composite report, BRAZIL suggested online publication, while NEW ZEALAND called for deletion of the reference. AUSTRALIA and CAMEROON requested deletion of a paragraph calling on the Executive Secretary to initiate work on phase two of the composite report, and with CANADA and the EU, of a paragraph calling on the Executive Secretary to analyze information regarding the Plan of Action.

AUSTRALIA, opposed by BRAZIL, proposed deleting a paragraph on vulnerability to climate change, while the EU, supported by the AFRICAN GROUP, proposed deleting the specific reference to “the Arctic, SIDS and high altitude communities,” only. The AFRICAN GROUP requested adding “other forms of environmental degradation” to each reference to climate change, and, with the EU, supported continued facilitation of research on climate change impacts. The AFRICAN GROUP, COLOMBIA, CANADA and the EU supported documenting TK.

CANADA asked to delete the paragraph on voluntarily isolated communities, noting other bodies deal with issues related to such groups, while MEXICO and the AFRICAN GROUP questioned the meaning of “no go areas.” BRAZIL suggested deleting text on a report on possible measures to protect such communities and, with the AFRICAN GROUP, text on establishing no go areas.

On documenting TK, CANADA objected to a reference to “private databases.” The AFRICAN GROUP stressed the importance of a reference to repatriation of TK, while BRAZIL asked to clarify the concept. On developing guidelines for documenting TK, MEXICO highlighted the need to take into account potential benefits and risks. AUSTRALIA, supported by the EU, said that the CBD was an inappropriate body to undertake this work. While ETHIOPIA argued that consideration of this item should wait until ABS 6, CHINA, supported by the TULALIP TRIBES, underscored the need for its inclusion. A revised draft recommendation will be prepared.

**INTERNATIONAL ABS REGIME:** Delegates discussed whether the Secretariat should prepare a draft recommendation on the basis of the composite report. Delegates agreed that the Secretariat would not prepare a CRP because views expressed

were too divergent and time was limited. A contract group, co-chaired by Carlos Novella (Germany) and Juanita Chavez (Colombia) was established to elaborate a common basis on which to continue work under this agenda item.

The contact group met throughout the evening and considered a number of elements on which the Article 8(j) WG could provide inputs to the development of an international ABS regime, including fair and equitable sharing of benefits, PIC, MAT, and compliance with regard to TK. Deliberations continued into the night.

**ADOPTION OF THE REPORT:** SWG I's draft report (UNEP/CBD/WG8J/5/SWG.1/L.1) was approved with amendments requested by BRAZIL, the AFRICAN GROUP, CANADA and AUSTRALIA to reflect proposals made earlier during the week.

### **SUB-WORKING GROUP II**

**SUI GENERIS SYSTEMS:** Delegates discussed proposals made on Wednesday by Malaysia, for the LMMC, to request the Executive Secretary to invite, compile and analyze for consideration by Article 8(j) WG 6 submissions on effective implementation of PIC and MAT relevant to TK. ARGENTINA, the CANADIAN INDIGENOUS BIODIVERSITY NETWORK (CIBN), and Malawi, for the AFRICAN GROUP, supported, and AUSTRALIA and CANADA opposed the reference, while the EU noted it was inconsistent and inadequate under this agenda item.

CANADA, opposed by the CIBN and the EU, requested deleting annexed elements of *sui generis* systems. Delegates agreed to retain the annex with a specification proposed by AUSTRALIA stating that TK protection must be interpreted in accordance with the provisions of Article 8(j).

In the afternoon, after informal consultations, the EU presented a compromise proposal including a reference to Decision VIII/5 (Traditional Knowledge). She specified that the recommendation "takes into account" rather than "endorses" the elements of *sui generis* systems and no longer makes reference to PIC. The EU, opposed by AUSTRALIA, proposed an additional paragraph, noting the interlinkage between effective *sui generis* systems and the implementation of ABS provisions. Language, proposed by the LMMC, on the prevention and misappropriation of TK associated with GR remained bracketed.

AUSTRALIA requested deletion of references to the Executive Secretary updating the progress report on implementation of the Article 8(j) work programme. The document was forwarded to plenary with several paragraphs remaining bracketed.

**MECHANISMS FOR PARTICIPATION:** Delegates approved the revised draft recommendation (UNEP/CBD/WG8J/5/SWG.2/CRP.1/Rev.1) with a minor amendment.

**INDICATORS:** Delegates discussed UNEP/CBD/WG8J/5/SWG.2/CRP.3, and agreed with NORWAY on noting the need for additional indicators specific to TK and indigenous and local communities, and recommending that a maximum of two additional indicators be selected for inclusion in the indicator framework at Article 8(j) WG 6. The EU proposed, and delegates agreed, to reference Decision VIII/15 on integration of indicators in the CBD work programmes to monitor the achievement of the 2010 target. The IIFB, the EU and MEXICO proposed, and delegates agreed, to request the Executive Secretary to maintain coordination with the UN Permanent Forum on Indigenous Issues and the Inter-Agency Support Group on Indigenous Issues.

The EU, opposed by BRAZIL and CANADA, suggested: adopting the proposed indicators relating to Target 4.3 (indigenous involvement in the CBD) of the Strategic Plan, subgoals 9.1 (TK protection) and 9.2 (indigenous rights) in annex 1 of the report of the international expert seminar (UNEP/CBD/WG8J/5/8); inviting parties to test them; and that Article 8(j) WG 6 evaluate progress in their usage. TANZANIA said that Article 8(j) WG 6 should also continue work on identifying a limited number of meaningful TK indicators. After informal consultations, the EU withdrew the amendment, noting that agreement on some issues could not be reached, and SWG II adopted the draft decision as amended.

**ETHICAL CODE OF CONDUCT:** NEW ZEALAND suggested specifying that the draft elements are voluntary and intended as guidance for developing codes of ethical conduct for research, access to, use, exchange, and management of information concerning TK protection and use. TANZANIA and others suggested referencing beneficiaries or actors. The EU supported by BRAZIL, CIBN, NORWAY and LESOTHO suggested specifying that the elements provide guidance in interactions with indigenous and local communities and for the development of local, national and regional codes in accordance with the CBD objectives. AUSTRALIA and NEW ZEALAND proposed adding references to TK, innovations and practices relevant for the conservation and sustainable use of biodiversity.

Regarding the section on general ethical principles, NEW ZEALAND reiterated its request to rename the "non-interference" principle "respect for existing settlements," and supported references that would recognize the "importance" rather than the "predominance" of mutually agreed settlements. CANADA specified that intellectual property applies to community concerns relevant to TK and is addressed in negotiations with knowledge holders. He opposed specifying that knowledge holders retain existing rights over TK.

After informal consultations, the PHILIPPINES proposed language specifying that indigenous and local communities have the right to deny intellectual property claims in appropriate circumstances. BRAZIL expressed concern with language denying IPRs, and the PHILIPPINES later withdrew its proposal.

A contact group chaired by Tone Solhaug (Norway) met during lunchtime and in the evening to consider different options for outstanding principles.

### **IN THE CORRIDORS**

On the penultimate day of what for most delegates has been a two-week meeting, many delegates seemed to share the feeling that both they and the Article 8(j) WG were running out of steam and wondered if a successful outcome could be achieved with so little time left and so many key issues unresolved. One delegate described SWG I as "stuck in the mud" and wondered whether the contact group could deliver them from "process stagnation." Frustrations seemed to be mounting, as some delegates commented that this week's discussions had further exemplified that a few countries did not wish for an international ABS regime to see the light of day. In turn, others said that their concrete proposals for involving the Article 8(j) WG in ABS deliberations had unmasked opposition to any participation of the Article 8(j) Working Group in the issue.

**ENB SUMMARY AND ANALYSIS:** The *Earth Negotiations Bulletin* summary and analysis of the fifth meeting of the Working Group on Article 8(j) and the fifth meeting of the Working Group on Access and Benefit-Sharing will be available on Monday, 22 October 2007, online at: <http://www.iisd.ca/biodiv/wg8j-5/>