



HIGHLIGHTS FROM THE WORKING GROUP ON ARTICLE 8(J) THURSDAY, 30 MARCH 2000

Delegates met for a brief Plenary session at noon to hear reports of the Sub-Working Group Co-Chairs regarding Wednesday's deliberations on the work programme elements. During the afternoon and evening sessions delegates considered recommendations on: the development of the work programme; application and development of legal and other forms of protection; and measures to strengthen cooperation. Plenary also briefly considered agenda items on the implementation of Article 8(j) and related provisions, and priorities and opportunities for collaboration and implementation of the work programme.

PLENARY

Chair Juan Luis Muriel (Spain) opened the Plenary, noting distribution of a conference room paper (CRP) integrating the results of both Sub-Working Groups' deliberations on work programme elements. Co-Chair Damaso Luna (Mexico) noted SWG-I's extensive debates on work programme elements regarding participatory mechanisms, equitable-sharing of benefits and legal elements. He highlighted a recommendation stating that the Indicative List of Activities contained in background document (UNEP/CBD/WG8J/1/INF.1) and comments provided during working sessions could serve as a basis for further development of the work programme. He noted the concerns of indigenous and local communities over their territories and the integration into the CBD of concepts from other international instruments, and requested that they be noted in the meeting's report. Co-Chair John Herity (Canada) reported on SWG-II's contribution to the draft recommendations on the work programme. He noted the inclusion of overarching ideas about capacity-building and highlighted concerns such as the need for full and effective participation of indigenous and local communities, involvement of women, respect for traditional knowledge and the holistic approach. SWG-I Co-Chair Antonio Jacanamijoy (COICA) highlighted the spirit of cooperation and mutual support, and noted that Chair Muriel allowed the participation of two additional indigenous and local community representatives of SWG-I in the Bureau meetings. He stated that the recommendations could not reflect all concerns raised in the discussions, and said they would be emphasized in future discussions. Aroha Mead (Te Puni Kokiri) highlighted the increased indigenous attendance in CBD discussions, and noted that the recommendations do not reflect all indigenous and government views. She added that open discussion is a significant way to bridge different understandings.

Development of a Work Programme: At the start of the afternoon Plenary, Chair Muriel explained that the session would address the CRP on the work programme elements (UNEP/CBD/

WG8J/1/SWGI&II/CRP.1/Rev.1) with discussion on: the preamble; recommendations; general principles; tasks of the first and second phases; and ways and means. On the preamble, CAMEROON, SENEGAL and TOGO stressed that rural communities be addressed under Article 8(j). CANADA, supported in principle by ECUADOR, proposed a paragraph noting the views of indigenous and local communities on: the link between control over territories and traditional knowledge; a moratorium on bioprospecting; and the recognition of indigenous "peoples" and local communities. SWG-I Co-Chair Luna (Mexico) noted his intention to include these aspects in the meeting's report, and the proposal was withdrawn. TEBTEBBA suggested language noting the existence of other international instruments, such as the TRIPs Agreement, and their synergies and conflicts with Article 8(j) implementation. ETHIOPIA, supported by EL SALVADOR, proposed including language from Decision IV/9 on the influence of international instruments, IPR, current laws and policies on traditional knowledge. ECUADOR asked for reference to regional and international strategies in language on integrating Article 8(j) into national strategies, policies and action plans. The COLOMBIAN INDIGENOUS MOVEMENT asked for reference to ILO Convention 169.

Regarding operational recommendations, COLOMBIA and ECUADOR called for a chapeau asking the COP to oversee their fulfillment. SPAIN proposed, and COSTA RICA, ECUADOR, EL SALVADOR, GUATEMALA and MEXICO supported, reinstatement of a provision on financial support. SAMOA called for reference to funding for capacity-building. The UNITED KINGDOM agreed, but did not support specific references to funding sources. SWEDEN, supported by GERMANY and ARGENTINA, proposed language recognizing the work of the Intergovernmental Forum on Forest on traditional forest-related knowledge. CANADA also suggested reference to the Proposals for Action of the Intergovernmental Panel on Forests. ECUADOR suggested reference to relevant initiatives under other conventions. NEPAL called for inclusion of language on intellectual property rights (IPR). BRAZIL, supported by ETHIOPIA, proposed a provision on equitable benefit-sharing. The ORGANIZATION OF INDIGENOUS PEOPLES OF SURINAME (OIS) called for reference to prior informed consent (PIC).

CANADA, supported by ARGENTINA, ECUADOR and the US, suggested the deletion of a paragraph on use of the Indicative List of Activities and comments provided by the meeting's participants. OIS opposed this, and HAITI noted there was no consensus on elements in the Indicative List. The UNITED KINGDOM and GERMANY preferred reference to the annex of the CRP, which includes the actual programme of work.

ETHIOPIA and ECUADOR noted that text on a provision on existing instruments, guidelines, codes of conduct and other relevant activities is not consistent with COP language and proposed its

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deletion or modification. BRAZIL suggested, and ECUADOR opposed, that government assistance with identification of indigenous and local communities' capacity needs be subject to national legislation. Regarding language on capacity-building for communication, CANADA proposed reference to the Indigenous Biodiversity Information Network. BRAZIL suggested, and ARGENTINA supported, language referring to national focal points in a reference to the Clearing-House Mechanism.

Development of a Work Programme: Delegates discussed the CRP on the development of a work programme for Article 8(j) contained in UNEP/CBD/WG8J/1/SWG.I&II/CRP.1/Rev.1. Regarding timeframes, CANADA suggested postponing the task on development of participation mechanisms to the second phase. The INTERNATIONAL ALLIANCE OF INDIGENOUS PEOPLES OF TROPICAL FORESTS stressed that the text should adequately reflect indigenous views and not be weakened by qualifying language. NEW ZEALAND, supported by the UK, proposed adding language on appropriate initiatives with regard to tasks on participation, benefit-sharing and legal frameworks, to allow flexibility for specific national characteristics and requirements. The EU and NORWAY suggested that the task on establishing legal frameworks to implement Article 8(j) should take into account other international work. DENMARK called for a focus on developing guidelines for such a framework, which was supported by the ASIAN INDIGENOUS ORGANIZATION, who called for full and effective participation of indigenous and local communities for the development of guidelines. The PROGRAMME FOR INDIGENOUS KNOWLEDGE called for reference to collective or community property rights rather than *sui generis* rights. ETHIOPIA, HONDURAS and INDIA proposed inclusion of references to IPR systems and their assessment.

MEXICO and OIS called for inclusion of PIC in a task on assessing benefit-sharing. The UK questioned the need for including PIC in a task on participatory mechanisms. ECUADOR noted that the task was too restrictive. PERU suggested a review of potential measures to ensure the fulfillment of PIC. ARGENTINA called for deletion of a task on monitoring elements, as national laws should suffice, although NORWAY and OIS disagreed. SAINT LUCIA suggested that a task on status and trends should include tourism. MEXICO and the US suggested higher prioritizing for a task on developing standards and guidelines on the illicit appropriation of traditional knowledge.

Regarding the element on information exchange and dissemination, the CANADIAN INDIGENOUS CAUCUS stressed the development of non-Internet based mechanisms. CHINA and the SAAMI COUNCIL questioned reference to the ecosystem approach, while CANADA supported its retention. The COLOMBIAN INDIGENOUS MOVEMENT said a task on establishing a roster of indigenous and local community experts should include the contribution of the Indigenous Caucus. INDIA and MEXICO suggested that funding mechanisms be reflected in the ways and means section. EL SALVADOR and HONDURAS called for clarity regarding responsibility for implementing tasks in the work programme.

Application and Development of Legal and Other Appropriate Forms of Protection: Referring to the SWG-I CRP (UNEP/CBD/WG8J/1/SWG.1/CRP.1), DENMARK, supported by ARGENTINA, SPAIN and the UNITED KINGDOM, proposed a paragraph on making Article 8(j) and related CBD provisions and provisions of international IPR-related agreements mutually supportive. ETHIOPIA suggested postponing the review of Article 27.3(b) of the TRIPs Agreement until after the establishment of a *sui generis* system to protect biodiversity-related traditional knowledge. NEW ZEALAND and ARGENTINA supported language referring to *sui generis* systems and other appropriate mechanisms. The UNITED KINGDOM suggested inclusion of "or other measures" in a reference to the development of national legislation

for the protection of traditional knowledge. SPAIN, supported by ARGENTINA, proposed recommendations requesting Parties to support national registries of traditional knowledge through participation programmes and consultation, and inviting Parties to ensure participation of indigenous and local communities when negotiating conditions for access to and commercialization of traditional knowledge. The ORGANIZACION NACIONAL INDIGENA DE COLOMBIA stated territories should be clearly identified and supported a moratorium on bioprospecting.

Measures to Strengthen Cooperation: Chair Muriel introduced the CRP on measures to strengthen cooperation among indigenous and local communities at the international level (UNEP/CBD/WG8J/1/CRP.1). GUATEMALA and CHINA sought clarification of indigenous and local community control over a mechanism for cooperation and information exchange, and BRAZIL recommended that wording regarding conformity with national legislation be added to this provision. BRAZIL also suggested adding role of governments to text regarding an inter-agency task force of representatives of international institutions. CANADA, GUATEMALA and the UNITED KINGDOM stated that references to an inter-agency task force were superfluous. The COLOMBIAN INDIGENOUS MOVEMENT sought clarification of text concerning compilation of information on existing initiatives, and suggested elaborating text on capacity-building and participation. CANADA proposed adding language on "effective" participation in a provision on capacity-building. PERU suggested adding a reference to representative organizations in a paragraph on participation, and ZAPOTECA called for a reference to cooperation and establishment of networks. EL SALVADOR suggested inclusion of a reference to IPR and valuing traditional knowledge in text concerning release of this knowledge into the public domain. BRAZIL agreed with EL SALVADOR that language on release of traditional knowledge should omit references to public domain. BRAZIL, FRANCE, SENEGAL and the UNITED KINGDOM suggested deleting a reference to harmonizing use of the term indigenous "peoples."

Implementation of Article 8(j) and Priorities and Opportunities for Collaboration and Implementation: Chair Muriel raised agenda items on the implementation of Article 8(j) and related provisions, and priorities and opportunities for collaboration and implementation of the work programme. GUATEMALA called for prioritization of a recommendation calling for the GEF and other competent organizations to provide financial support for the work programme's implementation.

Chair Muriel noted that proposals and comments regarding the specific agenda items would be synthesized into recommendations for consideration in the final Plenary.

IN THE CORRIDORS

In the hopes of concluding discussions on the draft recommendations before noon on Friday, delegates worked industriously into the night on various long-awaited conference room papers. Some delegates noted difficulties tracking the flurry of proposed changes, eagerly awaiting the final distillation. Some participants wondered whether the work programme would have enough structure and prioritization for COP-5 to adopt. One delegate noted that while concluding with a text agreeable to all was an impossibility, it should not overshadow the amount of progress made during the week.

THINGS TO LOOK FOR TODAY

PLENARY: Plenary will convene at 10:00 am to review draft recommendations.

CORDOBA: Buses for Cordoba will depart the Melia Sevilla Hotel at 12:00 pm.