



SUMMARY OF THE OPEN-ENDED *AD HOC* INTER-SESSIONAL WORKING GROUP ON ARTICLE 8(J) AND RELATED PROVISIONS: 27-31 MARCH 2000

The first meeting of the *Ad Hoc* Open-Ended Inter-Sessional Working Group on Article 8(j) and Related Provisions of the Convention on Biological Diversity (CBD) met in Sevilla, Spain, from 27-31 March 2000. Over 380 participants, representing governments, indigenous and local community organizations, non-governmental organizations and the academic community, attended the meeting.

During the week-long meeting, delegates met in two Sub-Working Groups. Sub-Working Group I (SWG-I) considered: the application and development of legal and other appropriate forms of protection for traditional knowledge; and work programme elements on participatory mechanisms for indigenous and local communities, equitable sharing of benefits and legal elements. Sub-Working Group II (SWG-II) reviewed work programme elements on: status and trends in relation to Article 8(j) and related provisions; traditional cultural practices for conservation and sustainable use; exchange and dissemination of information; and monitoring elements. The Plenary briefly discussed international cooperation among indigenous and local communities and priorities and opportunities for collaboration and implementation of the work programme, as well as recommendations resulting from the work of the Sub-Working Groups. The recommendations from the Working Group will be forwarded to the fifth Conference of the Parties (COP-5) of the CBD, to be held in Nairobi, Kenya, from 15-26 May 2000.

The Working Group's deliberations brought out fundamental philosophical differences regarding the protection of traditional knowledge as a cultural right or as an economic right. Ideological complexities were revealed in talks on equitable benefit-sharing, information dissemination and protection systems. Nevertheless, in the spirit of cooperation and with a general desire to advance understanding of these issues, delegates made progress in addressing the agenda items and were able to draft a set of recommendations for consideration by COP-5.

A BRIEF HISTORY OF THE CBD AND ARTICLE 8(J)

The Convention on Biological Diversity, negotiated under the auspices of the United Nations Environment Programme (UNEP), entered into force on 29 December 1993. To date, 176 countries have become Parties. Article 8(j) of the CBD specifically states that Parties will, subject to 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 biodiversity; promote their wider application with the approval and involvement of such knowledge-holders; and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices.

Article 10(c) calls upon Parties to protect and encourage customary use of biological resources in accordance with traditional cultural practices. Article 17.2 addresses scientific and technical information exchange with specific reference to indigenous and traditional knowledge. Finally, Article 18.4 states that Parties shall encourage and develop methods of cooperation for the development and use of technologies, including indigenous and traditional technologies, pursuant to the objectives of the Convention.

Additionally, discussions on cross-cutting themes, such as the ecosystem approach, access and benefit-sharing, the Clearing-House Mechanism (CHM) and the specific ecosystem themes have also addressed the integration of considerations relating to Article 8(j) and indigenous and local communities.

IN THIS ISSUE

A Brief History of the CBD and Article 8(j)	1
Report of the Working Group	2
Measures to Strengthen Cooperation Among Indigenous and Local Communities	3
Application and Development of Legal and Other Appropriate Forms of Protection for the Knowledge, Innovations and Practices of Indigenous and Local Communities	4
Development of a Work Programme on Article 8(j)	5
Closing Plenary	8
Things To Look For	8

This issue of the *Earth Negotiations Bulletin* © <enb@iisd.org> is written and edited by Stas Burgiel <stas@iisd.org>, Michael Davis <mdavis@pcug.org.au>, Wendy Jackson <wendy@iisd.org> and Jessica Suplie <jsuplie@iisd.org>. The Digital Editor is David Fernau <david@iisd.org>. The Editor is Pamela S. Chasek, Ph.D. <pam@iisd.org> and the Managing Editor is Langston James Goree VI <kimo@iisd.org>. The Sustaining Donors of the *Bulletin* are The Netherlands Ministry of Foreign Affairs, the Government of Canada (through CIDA and DFAIT), the United States (through USAID), the Swiss Agency for Environment, Forests and Landscape (SAEFL), the United Kingdom Department for International Development (DFID) and the European Commission (DG-ENV). General Support for the *Bulletin* during 2000 is provided by the the German Federal Ministry of Environment (BMU) and the German Federal Ministry of Development Cooperation (BMZ), the Danish Ministry of Foreign Affairs, the Ministry of Environment of Austria, the Ministries of Foreign Affairs and Environment of Norway, the Ministry of Foreign Affairs and Ministry of Environment of Finland, the Government of Sweden, the Government of Australia, the United Nations Development Programme (UNDP), the Global Environment Facility (GEF) and BP Amoco. Specific funding for this meeting was provided by the Ministry of the Environment of Spain, the Canadian Department of Foreign Affairs and International Trade (DFAIT) and Environment Canada. The *Bulletin* can be contacted by e-mail at <enb@iisd.org> and at tel: +1-212-644-0204; fax: +1-212-644-0206. IISD can be contacted by e-mail at <info@iisd.ca> and at 161 Portage Avenue East, 6th Floor, Winnipeg, Manitoba R3B 0Y4, Canada. The opinions expressed in the *Earth Negotiations Bulletin* are those of the authors and do not necessarily reflect the views of IISD and other funders. Excerpts from the *Earth Negotiations Bulletin* may be used in non-commercial publications only and only with appropriate academic citation. For permission to use this material in commercial publications, contact the Managing Editor. Electronic versions of the *Bulletin* are sent to e-mail distribution lists and can be found on the Linkages WWW server at <http://www.iisd.ca/linkages/>. The satellite image was taken above Sevilla ©2000 The Living Earth, Inc. <http://livingearth.com>. For information on the *Earth Negotiations Bulletin*, send e-mail to <enb@iisd.org>.



SBSTTA-1: The first session of the Subsidiary Body for Scientific, Technical and Technological Advice (SBSTTA) met in Paris, France, from 4-8 September 1995, and referred to indigenous and local communities and their knowledge in recommendations on the implementation of Article 6 on general measures for conservation and sustainable use and marine and coastal biodiversity.

COP-2: The second Conference of the Parties (COP) met in Jakarta, Indonesia, from 6-17 November 1995. Discussion of traditional knowledge was limited to Decision II/12 on intellectual property rights (IPR). The decision calls for consultation with all stakeholders, particularly indigenous and local communities, to improve the understanding of the needs and concerns of such groups, as well as a preliminary analysis of IPR systems, which could focus on the preservation and maintenance of traditional knowledge and practices of indigenous and local communities.

SBSTTA-2: The second session of SBSTTA met in Montreal, Canada, from 2-6 September 1996. Delegates discussed indigenous knowledge with regard to: preserving the knowledge, innovations and practices of indigenous communities; promoting their wider application; and encouraging the equitable sharing of benefits arising from their use. Recommendation II/4 encourages representatives of indigenous communities to prepare information on their views regarding the implementation of Article 8(j), and recommends that the COP request advice from the SBSTTA on relevant technical and scientific issues.

COP-3: The third COP met in Buenos Aires, Argentina, from 4-15 November 1996. Delegates adopted Decision III/14, which, *inter alia*: requests Parties to develop national legislation to implement Article 8(j); invites case studies on the implementation of Article 8(j) and related provisions; requests the interim financial mechanism to examine support of capacity-building projects for indigenous and local communities; and establishes an intersessional process to advance work on the implementation of Article 8(j) with specific goals for organizing an inter-sessional workshop.

SBSTTA-3: The third session of SBSTTA met in Montreal, Canada, from 1-5 September 1997. Discussions and recommendations on inland water biodiversity, forest biodiversity and environmental assessments addressed the role and knowledge of indigenous and local communities.

WORKSHOP ON TRADITIONAL KNOWLEDGE: The Workshop on Traditional Knowledge and Biological Diversity was convened in Madrid, Spain, from 24-28 November 1997, to produce recommendations for the COP on how to proceed further with the implementation of Article 8(j). The workshop produced a report on the implementation of Article 8(j), which contains an extensive list of options and recommendations in the following areas: participatory mechanisms; status and trends in relation to Article 8(j); traditional cultural practices for conservation and sustainable use; equitable sharing of benefits; exchange and dissemination of information; monitoring; and legal elements. The report also includes recommendations for actions at the national and international levels, and suggests terms of reference for establishing an open-ended working group or a subsidiary body on Article 8(j).

COP-4: The fourth COP met in Bratislava, Slovakia, from 4-15 May 1998. Delegates discussed the development of a work programme on Article 8(j) and the formation of an *ad hoc* working group. Decision IV/9 establishes a working group to provide advice on the development of a work programme and its implementation based on the report of the Madrid meeting. The decision also calls for, *inter alia*: representation from indigenous and local communities to the widest possible extent; annual working group meetings in conjunction with SBSTTA; short- and medium-term work programmes; case studies relating to Article 8(j); and application for observer status to and development of

a memorandum of understanding with the World Intellectual Property Organization (WIPO). COP-4 decisions on the CHM, inland waters, marine and coastal biodiversity, access and benefit-sharing, and relations with other biodiversity-related agreements also included references to indigenous and local communities.

SBSTTA-4: The fourth session of SBSTTA met in Montreal, Canada, from 21-25 June 1999. SBSTTA recommendations on dryland biodiversity, the control of plant gene expression and environmental impact assessments addressed the role and knowledge of indigenous and local communities. Additionally, discussions on sustainable use and tourism highlighted the potential socioeconomic and cultural impacts on such groups.

ISOC: The first Inter-sessional Meeting on the Operations of the Convention (ISOC) met in Montreal, Canada, from 28-30 June 1999. Discussion of traditional knowledge and indigenous and local participation arose in deliberations on the review of access to genetic resources and benefit-sharing, as well as IPR and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs).

REPORT OF THE WORKING GROUP

The *Ad Hoc* Open-Ended Inter-Sessional Working Group on Article 8(j) and Related Provisions opened on Monday, 27 March 2000, and addressed agenda items on organizational matters, and international cooperation among indigenous and local communities. At the invitation of CBD Executive Secretary Hamdallah Zedan, indigenous and local community representatives conducted an opening ceremony.

Fernando Riquelme, Minister for Special Affairs of Spain, highlighted his Government's commitment to indigenous participation. Isabel Tocino, Environment Minister of Spain, referred to previous meetings such as the Madrid Workshop on Traditional Knowledge, stated the need to protect collective indigenous rights in traditional knowledge, and supported the development of *sui generis* systems. Juan Luis Muriel, Ministry of the Environment of Spain, was nominated as Chair of the meeting. Delegates then paid respect to the life and work of Arthur Campeau, Canada's first Ambassador for the Environment and Sustainable Development, who recently passed away.

Delegates then adopted the provisional agenda (UNEP/CBD/WG8J/1/1) and briefly discussed organizational matters.

A representative of the Fourth Indigenous Forum on Biodiversity held in Sevilla, Spain, from 24-25 March 2000, read out a statement prepared by the Forum calling for, *inter alia*: recognition of collective rights in indigenous knowledge; the right to participate in decision-making processes; prior informed consent (PIC) and the right to deny access to knowledge; repatriation of genetic resources and traditional knowledge; and the role of indigenous women's knowledge. The Forum's representative proposed recommendations on, *inter alia*: maintaining the Working Group on Article 8(j); providing resources for participation and securing funding for future sessions; and establishing an indigenous clearing-house mechanism.

Chair Muriel announced that the Plenary would address: strengthening cooperation among indigenous and local communities at the international level; implementation of Article 8(j) and related provisions; and priorities and opportunities for collaboration and implementation of the work programme. Delegates agreed that SWG-I should discuss the application and development of legal and other appropriate forms of protection of traditional knowledge, and work programme elements dealing with: participatory mechanisms for indigenous and local communities, equitable sharing of benefits, and legal elements. Delegates agreed that SWG-II would discuss work programme elements on: status and trends in relation to Article 8(j) and related



provisions; traditional cultural practices for conservation and sustainable use; exchange and dissemination of information; and monitoring elements.

The rest of Monday's Plenary session discussed the agenda item on measures to strengthen cooperation among indigenous and local communities at the international level. In Tuesday's Plenary Chair Muriel announced Co-Chairs for the Sub-Working Groups. He stated that Damaso Luna (Mexico) and Antonio Jacanamijoy (COICA) would chair SWG-I and John Herity (Canada) and Aroha Mead (Te Puni Kokiri) would chair SWG-II. Chair Muriel also announced the indigenous and local community representatives to participate in the Group of Friends of the Bureau: Alfred Abora Ilenke (Ethnic Minority and Indigenous Rights Organization of Africa), Nils Ole Gaup (Saami Council), José Nain Perez (Council of All Mapuche Lands), Hubertus Samangun (ICTI-Tanimbar), Stephen Schnierer (Southern Cross University), and Rhonda Weitzel (Traditional Indigenous Healers). The COP Bureau, with numerous replacements, served as the Bureau for the Working Group meeting and included Juan Luis Muriel (Spain), Jürg Bally (Switzerland), Soumayila Bance (Burkina Faso), Ntorana Regina Gata (Zimbabwe), John Herity (Canada), Mariangela Rebuá (Brazil) and Jonathan Tillson (the United Kingdom). Bance was approved by Plenary as the meeting's rapporteur.

The Sub-Working Groups then convened for the remainder of that day and on Wednesday.

At a brief Plenary on Wednesday delegates heard a presentation by Jaime Hurtubia of the Intergovernmental Forum on Forests (IFF) Secretariat on the outcomes of the IFF process, and summary reports from the Co-Chairs of the two Sub-Working Groups. The meetings of the two Sub-Working Groups resumed for the remainder of the day to continue their discussions, which resulted in draft recommendations submitted by the respective Co-Chairs (UNEP/CBD/WG8J/1/SWG.I/CRP.1 and UNEP/CBD/WG8J/1/SWG.II/CRP.1).

The Plenary resumed on Thursday around noon when the conference room paper (UNEP/CBD/WG8J/1/SWG.I&II/CRP.1/Rev.1) became available, consolidating the recommendations from both Sub-Working Groups on the agenda item dealing with the development of a programme of work on Article 8(j) and related provisions. Following brief reports from the Sub-Working Group Co-Chairs, the Plenary considered recommendations on: the development of the work programme; application and development of legal and other forms of protection; and measures to strengthen cooperation among indigenous and local communities. Plenary 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. Only Guatemala intervened, calling for prioritization of a recommendation on financial support for the work programme's implementation from the Global Environment Facility (GEF) and other competent organizations. No recommendations were developed.

In Friday morning's Plenary session, Chair Muriel introduced a representative of the World Bank, who noted the institution's work on biodiversity and indigenous issues. He highlighted the Bank's operational directive on indigenous people, which notes the need for their consultation and participation in Bank projects that may impact them.

The Plenary then discussed: the revised draft report of the Working Group meeting (UNEP/CBD/WG8J/1/L.1/Rev.1); measures to strengthen cooperation among indigenous and local communities (UNEP/CBD/WG8J/1/L.3); legal and other forms of protection (UNEP/CBD/WG8J/1/L.4); and the development of a programme of work (UNEP/CBD/WG8J/1/L.2).

MEASURES TO STRENGTHEN COOPERATION AMONG INDIGENOUS AND LOCAL COMMUNITIES

In Monday's Plenary session, the Secretariat introduced the agenda item on cooperation among indigenous and local communities, noting the background document (UNEP/CBD/WG8J/1/4). The document reviews: existing initiatives and activities for cooperation among indigenous and local communities at the international level; opportunities, support and obstacles to this cooperation; and proposals for strengthening their cooperation at the international level. Such cooperation includes items such as international meetings, networking opportunities, consensus building activities and communication among international organizations.

The INTERNATIONAL ALLIANCE OF INDIGENOUS PEOPLES OF TROPICAL FORESTS (INTERNATIONAL ALLIANCE) called for the CBD to include recognition of indigenous "peoples." ZIMBABWE, LESOTHO, JAMAICA and SENEGAL stressed the need to prioritize the role of local communities. GEORGIA sought clarification of the definition of indigenous and local communities embodying traditional lifestyles. A number of delegates, including the COUNCIL OF ALL-MAPUCHE LANDS and CANADA, called for measures to facilitate increased indigenous participation in international fora and improved information provision. Many delegates supported capacity building and financial support for indigenous and local communities in areas such as improved coordination, attendance at international meetings, specialized training for project development, and negotiating access to genetic resources. The INTERNATIONAL ALLIANCE stated that technical and financial assistance should be provided on the basis of self-defined needs. CANADA and JAMAICA expressed support for the development and strengthening of networks.

On communication and information exchange and the role of the CHM in strengthening cooperation, SRI LANKA proposed that an expert committee prepare a communication model and strategy. HAITI, LESOTHO and MADAGASCAR noted that information exchange should not be limited to the Internet, while GERMANY and PERU called for alternative mechanisms to ensure wider distribution of information. SWEDEN supported the creation of an inter-agency task force, while CANADA preferred to await the outcome of deliberations underway in the UN Commission on Human Rights regarding a permanent forum. The US questioned the contribution of a task force given the existence of the Working Group. GERMANY called for more information on existing initiatives before considering an inter-agency task force. The EUROPEAN COMMISSION also questioned the added value of a task force to the process and called for a clear and well-defined mandate if such a group was established. The ASIAN INDIGENOUS AND TRIBAL PEOPLES NETWORK noted the problem of overlapping mandates of international agreements and processes. ARGENTINA cautioned against creating new mechanisms.

With regard to synergies and cooperation between fora, INDIA noted WIPO's fact-finding mission. On the role of indigenous and local peoples, the GLOBAL FORUM OF INDIGENOUS PEOPLES stressed that national recognition of indigenous peoples by governments is a prerequisite to discussing any mechanisms. MADAGASCAR and NAMIBIA highlighted the importance of integrating local and indigenous communities into the identification and formulation of conservation and sustainable use strategies. NEPAL TAMANG WOMEN GHEDUNG and PERU highlighted the crucial role of indigenous women in sustainable development and conservation of biodiversity. TEBTEBBA called attention to work on IPR in other fora, noting that some international agreements undermine efforts to



preserve knowledge. The AUSTRALIAN INDIGENOUS DELEGATION called for legal frameworks at the national and international levels to protect traditional knowledge.

In Thursday's Plenary, Chair Muriel introduced the conference room paper containing the draft recommendation (UNEP/CBD/WG8J/1/CRP.1) on strengthening cooperation at the international level. Delegates discussed the role of governments, indigenous participation, capacity building and national legislation. GUATEMALA and CHINA sought clarification of indigenous and local community control over a mechanism for cooperation and information exchange, and BRAZIL recommended that language on conformity with national legislation be added to this provision. BRAZIL also suggested governments should be included in an inter-agency task force, while CANADA, GUATEMALA and the UK stated that references to an inter-agency task force were superfluous. The COLOMBIAN INDIGENOUS MOVEMENT suggested elaborating text on capacity building and participation. 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 the public domain. BRAZIL, FRANCE, SENEGAL and the UK suggested deleting a reference to harmonizing use of the term indigenous "peoples."

In Friday's Plenary session, delegates continued their discussion of measures to strengthen cooperation among indigenous and local communities at the international level, considering a revised version (UNEP/CBD/WG8J/1/L.3) of the draft recommendation based on Thursday's deliberations. BRAZIL suggested, and many delegations opposed, language on conformity to national legislation in paragraphs on: arrangements controlled and determined by indigenous and local communities for cooperation and information exchange; compilation of information on existing initiatives; and networking opportunities. Text proposed by ECUADOR on capacity building for collaborative projects was adopted for inclusion in a paragraph on strengthening international cooperation. Delegates accepted a suggestion by ECUADOR to include other international institutions and the GEF in language on exploring funding options.

FINAL RECOMMENDATION: The final recommendation on measures to strengthen cooperation:

- emphasizes the need for Parties to increase participation of indigenous and local community organizations in COP meetings;
- requests Parties to strengthen international cooperation among indigenous and local communities and assist them in identifying networking opportunities;
- emphasizes the need for culturally appropriate arrangements controlled and determined by indigenous and local communities to facilitate cooperation and information exchange;
- requests Parties to strengthen the capacity of indigenous and local communities to promote their full and effective participation in the development and implementation of national biodiversity strategies and action plans and other activities carried out by the Convention; and
- requests Parties, other institutions and the GEF to explore ways of providing necessary funding.

The final recommendation also requests the Executive Secretary to cooperate closely with indigenous and local communities to explore ways to address such needs, and to compile information on existing initiatives by indigenous and local communities.

APPLICATION AND DEVELOPMENT OF LEGAL AND OTHER APPROPRIATE FORMS OF PROTECTION FOR THE KNOWLEDGE, INNOVATIONS AND PRACTICES OF INDIGENOUS AND LOCAL COMMUNITIES

The Secretariat introduced background document UNEP/CBD/WG8J/1/2 in SWG-I's Tuesday morning session. Binding legal forms of protection identified include: conventional IPR regimes; *sui generis* systems; national access and benefit-sharing legislation embodying prior informed consent (PIC); contractual agreements; and customary and common-law regimes. The main non-legally binding forms of protection include voluntary guidelines, codes of conduct and traditional resource rights.

Delegates expressed general support for the recommendation on the need for case studies that enable assessment of the effectiveness of existing and other appropriate forms of protection. Many of the indigenous and local community organizations, supported by some government delegations, underlined the importance of an integrative and participatory approach to the development of case studies, stating that the direct involvement of indigenous and local communities in this effort should be ensured and duplication of work avoided through networking and coordination.

BOLIVIA, CHAD, SURINAME and the COMISIÓN JURÍDICA supported a task force for the implementation of Article 8(j) and harmonization of related activities. Many other delegations expressed reservations, stating that this measure would be premature and should be based on an assessment. HAITI, INDIA, JAMAICA and NEW ZEALAND asked for a clear and well-defined mandate for a task force. The AUSTRALIAN INDIGENOUS DELEGATION and the ORGANIZACIÓN NACIONAL INDÍGENA DE COLOMBIA proposed direct participation and inclusion of indigenous and local communities in the development and the work of a task force.

With regard to the task force's objectives, the US questioned the need to harmonize all ongoing activities, and ETHIOPIA stressed the need to go beyond coordination and harmonization of processes. Many delegates supported the development of national legislation. Some participants emphasized the need for the development and application of protective mechanisms and supported consultation with indigenous and local communities in this process. COICA proposed the development of international guidelines, including: principles of self-determination; strategies addressing the impacts and threats to traditional knowledge; and effective participation in decision-making and registration mechanisms. DENMARK stressed the need for guidelines and noted the legal vacuum between international IPR regimes and Article 8(j). NEW ZEALAND, expressing the general concerns of many participants, said guidelines should be voluntary.

TEBTEBBA, ETHIOPIA and JAMAICA highlighted the implications of conforming with the TRIPs Agreement's obligations in the context of Article 8(j)'s implementation by the end of 2000. DENMARK, the CRUCIBLE GROUP and the INTERNATIONAL ALLIANCE stated the importance of PIC in protection systems. SPAIN highlighted the need to apply *sui generis* systems and, with the ASIAN INDIGENOUS TRIBAL NETWORK and the INTERNATIONAL ALLIANCE, supported collective property rights. The COLOMBIAN INDIGENOUS MOVEMENT, ETHIOPIA, the INTERNATIONAL INDIAN TREATY COUNCIL (IITC), KAMAN PASURAN and the ORGANIZACIÓN NACIONAL INDÍGENA DE COLOMBIA supported a moratorium on bioprospecting until effective protection systems are in place. On activities carried out in other fora, WIPO offered expertise and assistance to the Secretariat.

These deliberations were reflected in a conference room paper (UNEP/CBD/WG8J/1/SWG.I/CRP.1), which was discussed briefly during Thursday's evening Plenary. DENMARK, supported by



ARGENTINA, SPAIN and the UK, 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. SPAIN, supported by ARGENTINA, proposed recommendations requesting Parties to support national registries of traditional knowledge. These comments were incorporated into a draft recommendation (UNEP/CBD/WG8J/1/L.4), which was briefly discussed in Friday's afternoon Plenary. There were no significant changes to the recommendation.

FINAL RECOMMENDATION: The final recommendation includes, *inter alia*:

- a call for case studies to enable an assessment of the effectiveness of legal instruments and other forms of protection;
- a request to the Executive Secretary to review activities of other international organizations and agencies;
- the recognition of *sui generis* systems and transmission of COP findings to the World Trade Organization (WTO) and WIPO;
- a reaffirmation of the importance of making Article 8(j) and other international IPR agreements mutually supportive;
- an invitation to review or develop national legislation, including *sui generis*, interim or other systems to protect traditional knowledge, incorporating the recommendations of the Panel of Experts on Access and Benefit-sharing;
- an invitation to share information and experiences;
- a request for support to develop national registers of traditional knowledge; and
- reference to ensuring the participation of indigenous and local communities in the negotiation of conditions for access and use of their knowledge.

DEVELOPMENT OF A WORK PROGRAMME ON ARTICLE 8(J) AND RELATED PROVISIONS

The proposed work programme contained in (UNEP/CBD/WG8J/1/3) identifies seven programme elements drawn from the Madrid Workshop on Traditional Knowledge (UNEP/CBD/COP/4/10/Add.1). The seven elements include:

- participatory mechanisms for indigenous and local communities;
- status and trends in relation to Article 8(j) and related provisions;
- traditional cultural practices for conservation and sustainable use;
- equitable benefit-sharing;
- exchange and dissemination of information;
- monitoring elements; and
- legal elements.

Specific tasks are listed under each programme element. Discussions on the work programme elements were divided between the two Sub-Working Groups. The results of the Sub-Working Groups' deliberations were compiled into one conference room paper (UNEP/CBD/WG8J/1/SWG.I&II/CRP.1/Rev.1), which was discussed in Thursday's Plenary. The results of these deliberations were reflected a draft recommendation (UNEP/CBD/WG8J/1/L.2), which was discussed in Friday morning's Plenary.

SUB-WORKING GROUP I: Delegates to SWG-I discussed the agenda item on the development of the work programme (UNEP/CBD/WG8J/1/3 and Inf.1) and its programme elements on participatory mechanisms, equitable benefit-sharing and legal elements in the morning and afternoon sessions on Wednesday.

General Comments: Regarding a task on enhancing the capacity of indigenous and local communities to promote application of their knowledge, ECUADOR supported preparation of guidelines on capacity-building activities as opposed to their identification. INDIA and the UK urged that capacity-building issues be given priority. COICA called for improved access to the CBD's financial mechanism for indigenous peoples. MEXICO proposed that benefits and funding be considered before guidelines for the compilation and dissemination of information. The COLOMBIAN INDIGENOUS MOVEMENT recommended references to education, public awareness and training.

Participatory Mechanisms for Indigenous and Local Communities: Regarding the programme element on participatory mechanisms for indigenous and local communities, CANADA, INDIA, INDIGENOUS WOMEN AND BIODIVERSITY, NORWAY/SAAMI PARLIAMENT and SPAIN called for increased recognition of women. The AUSTRALIAN INDIGENOUS DELEGATION and the ASIAN INDIGENOUS AND TRIBAL NETWORK called for an indigenous body, similar to SBSTTA, to advise the COP. BRAZIL noted concern about lack of reference to national authorities. NORWAY/SAAMI PARLIAMENT supported a task on developing mechanisms and guidelines to ensure the full participation of indigenous and local communities in decision-making and policy planning. JAMAICA suggested reference to implementation of plans and programmes. INDIA, SWEDEN and the UK stated that guidelines should not be developed through SBSTTA. Regarding a roster of indigenous and local community experts, CANADA and MEXICO stressed that its mandate be well-defined. COICA and ECUADOR proposed that indigenous and local communities appoint the roster. WIPO offered expertise resulting from its recent work.

Equitable Sharing of Benefits: Regarding the programme element on equitable benefit-sharing, CANADA suggested that the Secretariat compile and analyze existing codes of conduct regarding access to and use of traditional knowledge. BOLIVIA called for a review of case studies and identification of key elements for benefit-sharing among and within communities. MEXICO and COSTA RICA highlighted the need to assess benefits derived from traditional knowledge and the conditions for their creation. COSTA RICA proposed benefit-sharing mechanisms allowing indigenous and local communities to review options appropriate to their needs. The ORGANIZACIÓN NACIONAL INDÍGENA DE COLOMBIA proposed two additional programme elements on: national legislation, demarcation and management of indigenous territories; and access to genetic resources. The ASIAN TRIBAL AND INDIGENOUS NETWORK and ECUADOR noted that guidelines are not legally enforceable and suggested including reference to development of national legislation. ASOCIACIÓN NAPGUANA said that minimum standards should ensure direct participation and consultation of indigenous and local communities before defining benefits and their distribution. The WTO outlined relevant activities regarding the ongoing review of the TRIPs Agreement and liaison with the CBD and other relevant international organizations.

Legal Elements: Regarding the programme element on legal elements, the ASIAN TRIBAL AND INDIGENOUS NETWORK, DENMARK, ECUADOR and the EUROPEAN COMMISSION noted tasks were interrelated and could be merged or streamlined. ETHIOPIA and TEBTEBBA called for inclusion of relevant international regimes in the development of legal frameworks on traditional knowledge. MEXICO and ASOCIACIÓN NAPGUANA proposed analyzing the establishment of commitments or forms of protection for traditional knowledge at the international level. HONDURAS called for examination of existing national and international legislation before implementing Article 8(j). DENMARK, ECUADOR and the



EUROPEAN COMMISSION supported establishing an inter-agency task force to recommend legal and other forms of protection. HAITI and the ASIAN TRIBAL AND INDIGENOUS NETWORK disagreed. CANADA, COLOMBIA and the US suggested the Secretariat convene roundtables with concerned international institutions and indigenous and local communities. The US called for information on available legal tools such as trade secrets, trademarks, common law and contractual arrangements.

SUB-WORKING GROUP II: Delegates to Sub-Working Group II met in two sessions on Tuesday and one session on Wednesday to discuss the agenda item on the development of the work programme (UNEP/CBD/WG8J/1/3), specifically regarding programme elements on status and trends, traditional cultural practices for conservation and sustainable use, exchange and dissemination of information, and monitoring.

General Comments: NEW ZEALAND proposed merging overlapping tasks. FRANCE said that the tasks are too vague, called for a more realistic work programme and cautioned against duplicating the work of the COP and SBSTTA. BRAZIL advocated focusing the work programme according to regional and national legislation. PERU, supported by NORWAY and CANADA, drew attention to gender issues. SAMOA called for specific reference to funding for environment management. The MESO-AMERICAN PROGRAMME ON INDIGENOUS KNOWLEDGE suggested a new element based on: indigenous peoples' declarations, including, *inter alia*, the Kari Oca Declaration, the Mataatua Declaration, the Santa Cruz Declaration, and the Leticia Declaration and Plan of Action; and synergies, conflicts and gaps between the CBD, international treaties, agreements and policies administered by UN bodies and other international organizations, including, *inter alia*, FAO, UNESCO, WIPO and the WTO.

Status and Trends in Relation to Article 8(j) and Related Provisions: BURKINO FASO underscored the importance of taking an inventory of traditional knowledge before it is lost. CANADA, supported by the TULALIP representative, pointed out the inconsistency between the Western view of property and indigenous worldviews of cooperation and respect for community as a collective, noting that few knowledge-holders had been consulted prior to the Working Group's meeting. SENEGAL emphasized that some traditional knowledge is banned from dissemination or purchase, and stated that communities have not been compensated for knowledge already taken.

Traditional Cultural Practices for Conservation and Sustainable Use: The UK, supported by ARGENTINA, ECUADOR, FRANCE, GERMANY, NEW ZEALAND, NORWAY and the UKRAINE, stressed the importance of a task proposing the development of guidelines for the respect, preservation and maintenance of traditional knowledge. NIGER suggested adding reference to valuing and upgrading traditional knowledge. NEW ZEALAND and ARGENTINA supported distribution of a questionnaire on task prioritization. CANADA highlighted the preservation and control of access to traditional knowledge and, supported by NORWAY, suggested voluntary and universal guidelines as a means of reconciling worldviews. BRAZIL, supported by PERU, emphasized the importance of equitable benefit-sharing. MALAWI, supported by ITALY and the ORGANIZATION OF INDIGENOUS PEOPLES OF SURINAME (OIS), highlighted holistic and ecosystem approaches.

Exchange and Dissemination of Information: The CANADIAN INDIGENOUS CAUCUS proposed conducting a gap analysis for capacity-building and suggested that information dissemination include media other than the Internet. SOLEGRAL-IUCN recommended that information registers remain the property of those who provide the knowledge. PERU stated that capacity-building needs

should be identified, with technical support from governments, before they are addressed. The US called for the analysis of information by indigenous people.

Monitoring Elements: Regarding a task proposing development of criteria and indicators, the OIS proposed a reference to patenting in text on monitoring access to genetic resources. The MESO-AMERICAN PROGRAMME ON INDIGENOUS KNOWLEDGE suggested that the application of criteria be based on the participation of indigenous and local communities and the creation of an international database on bioprospecting contracts. Regarding a task on strategic, environment and social impact assessments, ARGENTINA suggested that conflict resolution could address illicit appropriation of traditional knowledge. The US, supported by SAINT LUCIA, suggested indigenous and local communities be consulted in final decisions on impact assessments. The IITC and SAMOA supported the inclusion of cultural impact assessment. Regarding a task calling for the development of internationally applicable standards and guidelines, the CANADIAN INDIGENOUS CAUCUS stated that traditional knowledge is not protected under existing guidelines, and, with the IITC, suggested a moratorium on the access to and utilization of traditional knowledge until appropriate guidelines are in place. BRAZIL suggested retroactive compensation for use of traditional knowledge prior to the CBD's entry into force.

PLENARY: The development of a work programme was discussed in Plenary on Thursday and Friday. The results of the two Sub-Working Groups' discussions on the work programme were merged into one document (UNEP/CBD/WG8J/1/SWG.I&II/CRP.1/Rev.1). Thursday's discussions focused specifically on this draft of the work programme, which contained elements on: the preamble; recommendations; general principles; tasks of the first and second phases; and ways and means. Friday's discussion focused on a revised document including the recommendation for the work programme's development and the work programme itself, which is contained as an annex to that recommendation (UNEP/CBD/WG8J/1/L.2).

Discussions on the preamble generally focused on minor edits and additions. Regarding the operational recommendations, in Thursday's Plenary CAMEROON, SENEGAL and TOGO stressed that rural communities be addressed under Article 8(j), which was not incorporated. Requests by TEBTEBBA, ETHIOPIA and EL SALVADOR to include references to other IPR-related international instruments were not incorporated. ECUADOR proposed a reference to regional and international strategies regarding integration of Article 8(j) into national strategies, policies and action plans, which was included. CANADA, supported by ARGENTINA, ECUADOR and the US, suggested deleting a paragraph on use of the Indicative List of Activities and comments provided by the meeting's participants. 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. Both were removed. SPAIN proposed, and COSTA RICA, ECUADOR, EL SALVADOR, GUATEMALA and MEXICO supported, reinstatement of a provision on financial support. ARGENTINA, GERMANY and SWEDEN proposed reference to the IFF, and CANADA suggested including the Proposals for Action of the Intergovernmental Panel on Forests (IPF). BRAZIL and ETHIOPIA supported a provision on equitable benefit-sharing, which was included.

On Friday, discussion focused on a revised version (UNEP/CBD/WG8J/1/L.2). PERU, on behalf of the Latin American and Caribbean Group (GRULAC), proposed language stating that the work programme be subject to periodic review during its implementation, which was accepted. ECUADOR, supported by the OIS and the INDIGENOUS KNOWLEDGE PROGRAMME, called for removal



of references to specific indigenous and local community organizations, stating that such references could be construed as favoring some groups over others.

In Friday's discussion, regarding the objective of the work programme itself, PERU, on behalf of GRULAC, proposed additional language mirroring the contents of Article 8(j), to which the UK, INDIA, DENMARK and ETHIOPIA objected. Regarding the general principles, SURINAME proposed replacing a reference to the ecosystem approach with reference to a "natural steps" approach, which the UK opposed. The OIS proposed reference to a "just" implementation of Article 8(j) and ensuring full and effective participation at all levels and stages of implementation, which was accepted. ETHIOPIA, with ECUADOR and the AUSTRALIAN INDIGENOUS DELEGATION, proposed revised text stating that traditional knowledge be given the same respect as other forms of knowledge, which was accepted.

In Thursday's sessions, regarding the tasks of the first and second phases of the work programme, NEW ZEALAND, supported by the UK, proposed adding language on appropriate initiatives with regard to tasks on participation and benefit-sharing. The EU and NORWAY suggested that the task on establishing legal frameworks to implement Article 8(j) should take into account other international work. Both were included. ETHIOPIA, HONDURAS and INDIA proposed inclusion of reference to assessment of IPR systems. MEXICO and OIS called for inclusion of PIC in a task on assessing benefit-sharing. ARGENTINA called for deletion of a task on monitoring elements, stating national laws should suffice, and with disagreement by NORWAY and the OIS, the element was retained. 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. Some delegations objected, and the proposal was not accepted. EL SALVADOR and HONDURAS called for clarity regarding responsibility for implementing tasks in the work programme.

In Friday's discussions on the revised recommendation, the EUROPEAN COMMISSION, the UK and NEW ZEALAND asked for deletion of a task referring to the harmonization of instruments impacting the protection of traditional knowledge with the objectives of Article 8(j). ECUADOR, ETHIOPIA and the OIS opposed this. SWITZERLAND and the EU proposed replacement language on making agreements mutually supportive. The original wording was maintained, and objections were recorded in the meeting's report. PERU, on behalf of GRULAC, proposed language calling for a conflict resolution mechanism and possible measures to provide support for PIC requirements. Some delegations objected, and the proposal was not accepted.

Regarding a task on women's participation, delegates accepted ECUADOR's proposed wording on strengthening their access to biodiversity and capacity in its conservation and sustainable use. EL SALVADOR presented, and delegates accepted, text on the roster of experts, to be based on methodologies established by the COP and with a goal to assisting with the implementation of the work programme. Regarding tasks in the second phase, the OIS called for including PIC into a task on the application of traditional knowledge in national strategies for the conservation and sustainable use of biodiversity. Some delegations objected, and the proposal was not accepted.

In Thursday's Plenary, in the section on ways and means, INDIA and MEXICO suggested inclusion of reference to funding mechanisms. On Friday, ARMENIA proposed another provision on providing financial support for implementation, which the UK opposed. After the adoption of the recommendation, COLOMBIA

called for a note in the record stating that it could not endorse the work programme to the COP, given the need for more time to review the proposals and lack of consensus on some issues.

FINAL RECOMMENDATION: The final recommendation is divided into the operational provisions and an annex containing the work programme. The work programme includes objectives and general principles, tasks organized according to topical elements, and a section on ways and means. The operational section, *inter alia*:

- takes into account existing instruments, guidelines and other relevant activities;
- recognizes the results of the IPF and IFF, and the role of women;
- extends the Working Group's mandate to include review of the work programme's implementation;
- requests financial support from governments, the financial mechanism and other relevant organizations; and
- urges facilitation of the full and effective participation of indigenous and local communities in CBD implementation.

The objective of the work programme is to promote a just implementation of Article 8(j), ensuring the participation of indigenous and local communities at all levels and stages. The general principles address full and effective participation, the role of women, respect for traditional knowledge, a holistic approach and the ecosystem approach.

In the programme's first phase, elements and their tasks include the following.

- Participatory mechanisms, *inter alia*, strengthening capacity in decision-making regarding the use of traditional knowledge; development of mechanisms for participation in decision-making, planning and implementation; a roster of indigenous and local communities experts; and mechanisms to promote the participation of women.
- Status and trends: Preparation of a report on the status and trends regarding traditional knowledge.
- Traditional cultural practices: Development of guidelines to respect, preserve and maintain traditional knowledge.
- Equitable benefit-sharing: Development of guidelines for the creation of mechanisms, legislation or other initiatives ensuring equitable benefit-sharing in the use of traditional knowledge, PIC, and identification of the obligations of countries of origin.
- Exchange and dissemination of information: Identification of a focal point within the CHM to liaise with indigenous and local communities.
- Monitoring elements: Development of guidelines and recommendations for cultural, environmental and social impact assessments and standards for reporting.
- Development of standards and guidelines for preventing illicit appropriation of traditional knowledge.
- Legal elements: An assessment of instruments, particularly IPR instruments, that may impact traditional knowledge with a view to ways of harmonizing these instruments with Article 8(j);
- Development of guidelines in the establishment of legal mechanisms to implement Article 8(j), which could include *sui generis* systems.

Tasks for the work programme's second phase include developing:

- guiding principles to strengthen the use of traditional knowledge in the conservation and sustainable use of biodiversity;
- guidelines and proposals for establishing national incentive schemes to preserve and maintain traditional knowledge;
- guidelines to facilitate the repatriation of information;
- identification and analysis of customary codes of ethical conduct; and
- methods and criteria to assist in the implementation of Article 8(j).



The ways and means section calls for, *inter alia*:

- developing a questionnaire addressing existing instruments relevant to the work programme's tasks, gaps and needs, and priorities for the programme's further development;
- an invitation to other relevant international organizations to contribute to the programme's implementation; and
- provision of financial support for the programme's implementation by Parties, the financial mechanism and other organizations.

CLOSING PLENARY

After discussion and adoption of the recommendations, delegates addressed the meeting's report. ZAPOTECA suggested reference to the term "indigenous peoples," which was accepted. The report was then adopted. Mariangela Rebuca (Brazil), on behalf of the Bureau, proposed a recommendation giving tribute to the Government and people of Spain. In a closing statement, the INDIGENOUS CAUCUS expressed its appreciation for the improved participatory mechanisms of the Working Group and highlighted some key points, including recognition of: the rights of indigenous peoples as contained in ILO Convention 169; the expression "indigenous peoples;" and rights to lands and territories. She further underscored the role of women and asked for assistance from the CBD's regular budget and voluntary funds to support the participation of indigenous peoples and local communities at COP-5.

CBD Executive Secretary Hamdallah Zedan thanked the Government of Spain and its people, along with the Chairs, Co-Chairs, Bureau and Friends of the Bureau. He noted the spirit of trust built among participants and highlighted positive progress on developing the work programme. CANADA expressed its gratitude, especially to the indigenous and local community representatives for sharing their wisdom. Chair Muriel noted that while everyone might not be happy with the final documents, the amount of material contributed and the developments in the work programme signals progress toward COP-5. Two indigenous participants then led a prayer giving thanks and respect to Mother Earth. Chair Muriel then adjourned the meeting at 4:30 pm.

THINGS TO LOOK FOR

BIODIVERSITY AND BUSINESS – PUTTING PRINCIPLES INTO ACTION: This meeting will be held from 3-4 April 2000 in London and will be hosted by the Royal Institute of International Affairs and Flora and Fauna International. For more information, contact: Georgina Wright, RIIA, London, England; tel: +44-171-957-574; fax: +44-171-321-2045; e-mail: gwright@riia.org.

FIFTH MEETING OF THE CBD CONFERENCE OF THE PARTIES (COP-5): COP-5 of the CBD will meet in Nairobi, Kenya, from 15-26 May 2000, to: adopt reports from, *inter alia*, SBSTTA, the *Ad Hoc* Working Group on Article 8(j) and the Panel of Experts on Access and Benefit-Sharing; discuss review of the implementation of the programme of work; and consider priority issues for review and guidance. For more information, contact: CBD Secretariat, World

Trade Centre Building, 292 Saint-Jacques Street, Suite 300, Montréal, Québec, Canada H2Y 1N9; tel: +1 (514) 288-2220; fax: +1 (514) 288-6588; e-mail: secretariat@biodiv.org; Internet: <http://www.biodiv.org/cop5/index.html>

MEDICINAL PLANTS – TRADITIONAL MEDICINES AND LOCAL COMMUNITIES IN AFRICA: This meeting, to be held in Nairobi, Kenya, from 16-19 May 2000, will explore challenges and opportunities regarding traditional medicines and local communities. For more information, contact: Ernest Rukangira, Programme Coordinator, Environmental Liaison Centre International, P.O. Box 72461, Nairobi, Kenya; tel: +254 (2) 576 114/25; fax: +254 (2) 562 175; e-mail: erukangira@iconnect.co.ke; Internet: <http://www.elci.org/>

COUNCIL FOR TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS (TRIPS): This meeting, hosted by the World Trade Organization, will be held from 26-30 June 2000, in Geneva. For more information, contact: World Trade Organization, Centre William Rappard, Rue de Lausanne 154, CH-1211 Geneva 21, Switzerland; tel: +41 (22) 739 51 11; fax: +41 (22) 739 54 58; Internet: <http://www.wto.org/>

18TH SESSION OF THE WORKING GROUP ON INDIGENOUS POPULATIONS: The Working Group, which meets annually, has a two-fold mandate: to review developments pertaining to the promotion and protection of human rights and fundamental freedoms of indigenous peoples and to give attention to the evolution of international standards concerning indigenous rights. The eighteenth session will be held from 19-28 July 2000, in Geneva. For more information, contact: UN High Commissioner for Human Rights; tel: +41 (22) 917 90 00; e-mail: webadmin.hcr@unog.ch; Internet: <http://www.unhchr.ch/>

FIGHTING POVERTY – SOCIAL INNOVATIONS AND NEW COALITIONS: This meeting, hosted by the Hannover EXPO-2000 and the German Agency for Technical Cooperation (GTZ), will be held from 25-27 July 2000, in Hannover, Germany. For more information, contact: GTZ GmbH, Dag Hammarskjold-Weg 1-5, Postfach 51 80, 65726 Eschborn, Germany; tel: +49 (61 96) 79 33 54; fax: +49 (61 96) 79 73 69; e-mail: gdialogue@gtz.de; Internet: <http://community.expo2000.de/forum>

ETHNOBIOLOGY, BIOCULTURAL DIVERSITY AND BENEFIT-SHARING: The International Society of Ethnobiology's (ISE) Seventh Congress will be held from 23-27 October 2000, in Athens, Georgia, USA. The theme of the Congress is ethnobiology's role in maintaining biocultural diversity and ensuring equitable benefits sharing and open dialogue with traditional and indigenous research collaborators. For more information, contact: 7th International Congress of Ethnobiology, c/o LaBau Bryan, Department of Anthropology, the University of Georgia, 250 Baldwin Hall, Athens, Georgia, USA 30602-1619; tel: +1 (706) 542-3922; fax: +1 (706) 542-3998; e-mail: lbryan@arches.uga.edu; Internet: <http://guallart.dac.uga.edu/ConReg.html>