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AD HOC OPEN-ENDED INTER-SESSIONAL
WORKING GROUP ON ARTICLE 8(j) AND
RELATED PROVISIONS OF THE
CONVENTION ON BIOLOGICAL DIVERSITY

Sixth meeting
Montreal, 2-6 November 2009

**COMPILATION OF VIEWS ON TASKS 7, 10, 12 AND 15 AND VIEWS ON THE
DESIRABILITY AND THE POTENTIAL ELEMENTS OF A STRATEGY FOR
CONSERVATION AND SUSTAINABLE USE, AS WELL AS VIEWS ON THE IN-DEPTH
REVIEW OF THE PROGRAMME OF WORK FOR ARTICLE 8(j)**

Note by the Executive Secretary

INTRODUCTION

1. As requested by the Conference of the Parties in paragraphs 7, 8, 10 and 11 of decision IX/13 A, the Executive Secretary is circulating herewith, for the consideration of participants in the sixth meeting of the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions, a compilation of views and comments submitted to the Secretariat regarding tasks 7, 10, 12, 15 of the programme of work on Article 8(j) and Related Provisions, as well as views received on the desirability and potential elements of a strategy for conservation and sustainable use.
2. Submissions have been reproduced in the form and language in which they were provided.

SUBMISSIONS

A. *Submissions from Parties*

1. *Australia*

AUSTRALIAN GOVERNMENT RESPONSE TO NOTIFICATION 2009-003: PROGRAMME OF WORK IN ARTICLE 8(j) AND RELATED PROVISIONS

1. PROGRESS REPORT ON THE IMPLEMENTATION OF THE PROGRAMME OF WORK ON ARTICLE 8(j) AND RELATED PROVISIONS

a. Initiation of Tasks 7, 10 and 12

b. Initiation of Task 15

6. Initiation of Tasks 7, 10 and 12

Australia supports the development of a best practice International Regime for Access and Benefit-sharing (ABS) to assist states implement Article 8(j) of the Convention on Biological Diversity (CBD). Australia notes that the Program of Work on Article 8(j) and related provisions were created and endorsed prior to the agreement towards a new International Regime. This means work is now being done by the Working Group on ABS (WG-ABS) which may address issues previously relevant to Tasks 7, 10 and 12. The Working Group on Article 8(j) (WG8J) needs to ensure that its work focuses on the implementation of Article 8(j), without duplicating, or overlapping with, work already being done elsewhere. Australia would like to see the Sixth Meeting of the Working Group on Article 8(j) and related provisions (WG8J-6) consider the essential elements for inclusion in the International Regime on ABS which will provide guidance for national implementation of Article 8(j) and for the Meeting to provide this guidance to the ABS Working Group.

Australia suggests that Tasks 7, 10 and 12 be progressed through a request from the Secretariat for Parties to submit national approaches to the WG8J and for these to be compiled with the objective of considering best practices/lessons learned. This work should also include a stocktake of what is being done in other I such as the World Trade Organisation (WTO) and the World Intellectual Property Organisation (WIPO).

Australia has a number of pieces of legislation and numerous mechanisms in place to implement Article 8(j) of the CBD. We would be pleased to share our experiences when appropriate.

b. Initiation of Task 15

Australia suggests that, subject to our comments below regarding the need for an indepth review of the Program of Work on Article 8(j), Task 15 be initiated through a request from the Secretariat for Parties to submit national approaches for compilation for consideration of best practices/lessons learned. Australia would be pleased to share information on Australia's Return of Indigenous Cultural Property (RICP) program including the principles and processes.

Return of Indigenous Cultural Property Program

The Return of Indigenous Cultural Property Program is an initiative of the Cultural Ministers Council administered by the Department of Environment, Water, Heritage and the Arts. The program represents a collaborative effort between the Australian and State/Northern Territory governments and the museums sector to resolve the issues surrounding collections of ancestral remains and secret sacred objects held in Australian government museum collections.

The program aims to expedite the repatriation of Indigenous human remains and secret sacred objects from their collections to Indigenous communities of origin. The National Museum of Australia, the Australian Museum, the Museum and Gallery of the Northern Territory, Museum Victoria, the Queensland Museum, the South Australian Museum, the Tasmanian Museum and the Art Gallery and Western Australian Museum are eligible to participate in the program.

The Return of Indigenous Cultural Property program is intended to enhance existing repatriation activities undertaken by museums and does not apply to holdings overseas.

The Return of Indigenous Cultural Property program supports the repatriation of provenanced ancestral remains and secret sacred objects and/or the transfer of ownership where the community may ultimately decide to leave cultural property in the custody of the museum. It also supports provenance research and improved national coordination of repatriation activity. It has two funding sub-categories:

- The Museum Support Program provides funds for museums to prepare collections for return to Indigenous communities and includes activities such as engagement of consultants; appointment of staff; research of collections; liaison with other museums and communities; field visits; visits by community representatives for identification purposes; transportation costs; freight; and packing materials.
- The Community Support Program provides funds for Indigenous communities to participate in the repatriation process including: travel and accommodation for community representatives to collect cultural property; community meetings (including travel and accommodation); consultants to assist communities in coordinating returns; reburial expenses; and ceremonies. In the 2007-08 Budget the Australian Government committed \$4.716 million over four years as part of its contribution to the Return of Indigenous Cultural Property program. Australian Government funding is contingent on matched funding from the states and the Northern Territory.

2. European Community

European Commission

EU SUBMISSION in response to CBD NOTIFICATION No. 2009-003

I. PROGRESS REPORT ON THE IMPLEMENTATION OF THE PROGRAMME OF WORK ON ARTICLE 8(j) AND RELATED PROVISIONS:

Initiation of Tasks 7, 10 and 12

The EU welcomes decision IX/13 A, paragraph 7 to initiate task 7, 10 and 12, in accordance with the programme of work on the implementation of article 8j and related provisions of the CBD. The EU also acknowledges the linkages of these tasks to Article 10© and the need for its effective implementation and submits the following views on how to take these tasks forward.

Task 7

Task 7 under element 4 “equitable sharing of benefits” suggests that the 8j WG develop guidelines for the development of mechanisms, legislation or other appropriate initiatives to ensure: (i) that indigenous and local communities obtain a fair and equitable share of benefits arising from the use and application of their knowledge, innovations and practices; (ii) that private and public institutions interested in using such knowledge, practices and innovations obtain the prior informed approval of the indigenous and local communities; (iii) advancement of the identification of the obligations of countries of origin, as well as Parties and Governments where such knowledge, innovations and practices and the associated genetic resources are used.

The EU observes that all the issues mentioned are currently addressed in the ongoing negotiations to an international ABS regime that the EU hopes will be adopted by CBD COP10. It furthermore notes that many of the proposals under negotiation in the ABS Working Group aim at more ambitious results than non-binding guidance which would be the agreed result of this task. The EU also recalls that, in line with Decision VII/19 D, paragraph 1, the Ad Hoc Open ended Inter-Sessional Working Group on Article 8(j) is mandated to collaborate with the ABS WG in the negotiation of the international ABS regime. The EU expects that a significant part of the discussions during the Sixth Meeting of the Ad Hoc Open ended Inter-Sessional Working Group on Article 8(j) will be devoted to this collaboration. The EU furthermore observes that the COP has decided in Decision IX/13, paragraph 11 to undertake at its tenth meeting an in-depth review of the tasks in the programme of work of Article 8(j) and related provisions. On this basis, the EU submits to consider at Article 8j WG6 how work on task 7 might usefully complement the effective implementation of the international ABS regime with a view to preparing the upcoming in-depth review of the Article 8j programme of work.

Task 10

Task 10 suggests that the Ad Hoc Working Group on Article 8(j) develop standards and guidelines for the reporting and prevention of unlawful appropriation of traditional knowledge and related genetic resources.

The EU observes that the “misappropriation” of traditional knowledge associated with genetic resources is explicitly addressed in the ongoing negotiations of an international ABS regime in addition to a range of concrete proposals for preventing that traditional knowledge associated with genetic resources is acquired without the free prior and informed consent of indigenous and local communities. The EU hopes that Parties will adopt the international ABS regime by CBD COP10. The EU also recalls that, in line with Decision VII/19 D, paragraph 1, the Ad Hoc Open ended Inter-Sessional Working Group on Article 8(j) is mandated to collaborate with the ABS WG in the negotiation of the international ABS regime. The EU expects that a significant part of the discussions during the Sixth Meeting of the Ad Hoc Open ended Inter-Sessional Working Group on Article 8(j) will be devoted to this collaboration. The EU furthermore observes that the COP has decided in Decision IX/13, paragraph 11 to undertake at its tenth meeting an in-depth review of the tasks in the programme of work of Article 8(j) and related provisions. On this basis, the EU submits to consider at Article 8j WG6 how work on task 10 might eventually complement the effective implementation of the international ABS regime with a view to preparing the upcoming in-depth review of the Article 8j programme of work.

Task 12

Task 12 suggests that the Ad Hoc Working Group on Article 8(j) will develop guidelines to assist Parties and Governments in the development of legislation or other mechanisms, as appropriate, to implement Article 8(j) and its related provisions (which could include sui generis systems), and definitions of relevant key terms and concepts in Article 8(j) and related provisions at international, regional and national levels, that recognize, safeguard and fully guarantee the rights of indigenous and local communities over their traditional knowledge, innovations and practices, within the context of the Convention.

The EU observes that the scope of this task is very broad. It is partially addressed in guidelines and decisions already adopted by the COP, such as the 2004 Akwe Kon Guidelines. Relevant aspects of task 12 are addressed through the draft Ethical Code of Conduct that the EU hopes to finalise at Article 8(j) WG6 for its adoption by CBD COP10. Further aspects are addressed, as mentioned above, in the ongoing negotiations to an international regime on access to the genetic resources and the fair and equitable sharing of benefits derived from their use.

Considering the above, the EU suggests to review in the run-up to CBD COP10, and in light of results of Article 8j WG6 and the ongoing negotiations on Access and Benefit-sharing, which aspects of work set out in Task 12 remain relevant so as to give focus and meaning to the full and effective implementation of this task.

The EU also wants to underscore the importance and relevance for the CBD of ongoing work in the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (WIPO IGC), and in particular its consideration of the protection of traditional knowledge as important for the international work on traditional knowledge, regardless of the context of application. WIPO IGC is considering the protection of traditional knowledge through three related and complementary processes: (i) consideration of an agreed List of Issues concerning the protection of TK; (ii) consideration of a draft set of "Revised Objectives and principles for the Protection of Traditional Knowledge" and (iii) a gap analysis on the protection of TK. The Committee has extensively reviewed legal and policy options for the protection of TK. This work has built on extensive international, regional and national experience with the protection of TK. This review has covered comprehensive analyses of existing national and regional legal mechanisms, panel presentations on diverse national experiences and case studies. The EU continues to hold the view that matters concerning intellectual property rights aspects of the protection of traditional knowledge must primarily be addressed in WIPO. Therefore, where appropriate, the CBD work on article 8j should seek guidance in the agreements and experience achieved under the WIPO IGC.

The EU also acknowledges the ongoing discussions in WTO TRIPS on a potential requirement to disclose the origin or source of genetic resources and associated traditional knowledge in patent applications. It is important that the international processes in WTO TRIPS, WIPO and the CBD are mutually supportive; the EU proposals in WIPO and on this basis in the WTO TRIPS on disclosure of origin of genetic resources in patent applications aim at enhancing such mutual supportiveness.

2. Initiation of Task 15: Guidelines for repatriation of information, including cultural property, in accordance with Art 17.2

The EU observes that the issue is addressed in the ongoing negotiations to an international ABS regime which the EU hopes will be adopted by CBD COP10. On this basis, the EU submits to consider at Article 8j WG6 how work on this task might usefully complement the effective implementation of the international ABS regime with a view to preparing the upcoming in-depth review of the Article 8j programme of work and also considering work on the related work in other international © such as WIPO or UNESCO.

3. Desirability and the potential elements of a strategy for conservation and sustainable use including customary use, of biodiversity by ILCs aimed at empowering and strengthening the role of ILCs in decision-making processes at local, national and international levels

The EU continues to give priority to the effective implementation of already agreed policy instruments and the finalisation of ongoing negotiations. A new strategy on conservation and sustainable use of biodiversity by ILCs could, depending on its nature and scope, add to internationally agreed efforts made to protect and strengthen traditional knowledge, including those recognised in the UNDRIP. However, before embarking on developing such strategy, it is important to clearly establish how it would interact with and complement existing instruments and decisions adopted in the framework of the CBD.

The EU considers that lack of progress in the protection and strengthening of traditional knowledge results to a significant extent from effective implementation of existing tools and policies, rather than from a deficiency of international instruments, strategies or tools. Relevant instruments, strategies or tools

adopted or currently developed in the CBD framework include the Ecosystem Approach, the Addis Ababa principles and guidelines for sustainable use of biodiversity, the Akwé: Kon Voluntary Guidelines, and tools in progress: Code of ethical conduct and elements of Sui generis systems for the protection of traditional knowledge, innovations and practices.

The EU will consider with particular interest the submitted views of representatives of indigenous peoples and local communities embodying traditional life styles on the desirability of developing such strategy. We also note that there are certain overlaps in the EU's proposal to initiate a new task focuses on Article 10(c) and this proposal for a new strategy.

4. In-depth Review of the Programme of Work of Article 8(j) and related provisions

Ecosystems worldwide have evolved with humans as one of the important shaping factors. For instance, European ecosystems and landscapes are the result of millennia of human presence and their traditional knowledge, innovations and practices. Present ecological research underscores the importance of customary use of biological resources in the formation of areas of high nature and biodiversity value. The traditional human activities in forming the natural and cultural heritage may contribute to human well-being and consolidate peoples identity. In the northern part of Europe, the cultural landscapes of the Saami people provides an example as an indivisible part of human well-being and consolidation of the Saami identity.

In Europe, recent policy development has led to the emergence of the concept "Traditional Agricultural Landscapes" (TAL). In the Final Report for the Study on HNV (High Nature Values) Indicators for Evaluation, prepared by the Institute for European Environmental Policy for DG Agriculture, it is explained that "these farming systems are characterised by the presence of features, whose distribution is regionally and/or locally specific, which contribute to the landscape's aesthetic qualities and to its ecological integrity". It is important to note here that agricultural landscapes encompass a wide range of habitats such as cultivated fields, grazing areas in fields and forests, other parts of forests, bogs and other wetlands, etc. The same can be said about pastoral landscapes such as e.g. forest and mountain areas in Scandinavia where reindeer grazing is one of the shaping ecological factors, or in the Iberian Peninsula where the management of the "dehesas" provide valuable habitats for wildlife. Traditional knowledge, innovations and practices have formed these landscapes together with geological, hydrological and ecological processes.

The EU would like to emphasise that "the protection of traditional knowledge, innovations and practices and the conservation and sustainable use of biological diversity, and the fair and equitable sharing of benefits arising from the utilization of traditional knowledge innovations and practices" are very closely interlinked and interdependent. It is the EU's conviction that the most fundamental realization of fair and equitable sharing of benefits arising from the utilization of traditional knowledge innovations and practices will come through enabling and empowering indigenous and local communities to recover, uphold, strengthen and practice their traditional knowledge, innovation and practices.

The Programme of Work of Article 8(j) and related provisions needs to work from the close interlinkages of the protection of traditional knowledge, innovations and practices and the conservation and sustainable use of biological diversity and, the fair and equitable sharing of benefits arising from the utilization of traditional knowledge innovations and practices. Hence, the EU warmly welcomes the placing of greater emphasis on the interlinkages between these elements in decision IX/13 A, paragraph 10. The EU believes the outcomes of the Programme of Work of Article 8(j) and related provisions can be very useful at the local, national and international level with this direction. In this context, the EU also sees a need for an integration of the work towards the effective implementation of Article 10c, and therefore proposes the addition of a new task focusing on 10(c) to the Programme of Work on Article 8(j).

The EU would also like to emphasise that Parties need to support the practical and broad implementation of the results from the Programme of Work of Article 8(j) and related provisions, for instance by translating to local languages and widely disseminating the Akwe: Kón Guidelines, and by e.g. holding national level seminars to spread information about their existence and usefulness.

Measures to ensure the effective participation and involvement of indigenous and local communities holding traditional knowledge associated with genetic resources is of high importance in the conservation of biological diversity and the sustainable use of its components. The EU is one of the main proponents of the inclusion of such elements in the international regime on ABS. In that context, the EU sees the need for codes of conduct and best practice guidelines that specifically addresses these issues and welcomes the deliberation of the Technical Group on Traditional Knowledge and the WG8j 6 as a fundamental starting point for further discussion during ABS WG8.

Future collective efforts of Parties to identify those codes and guidelines that constitute best-practice are needed and the EU welcomes the opportunity to further discuss this issue.

At last, the EU holds that the future programme of work of Article 8(j) must reflect and complement efforts of Parties to effectively implement the international regime on access and benefit-sharing that the EU hopes will be adopted by CBD COP10.

B. Submissions from relevant organizations

1. Ms. Joji Carino and Tebtebba Foundation

[...] These are general directions, rather than the specific information, which will be compiled for submission to SCBD.

1. I think that WG8j will need to be more creative in thinking about its work in the coming period, in the light of COP10 and post-2010 targets. At the High Level Meeting held in Bonn in March also attended by Johan Bodegard, there was a stronger focus on the role of ecosystem services and biodiversity, also in relation to climate change and MDGs. This will put a premium on serious implementation of the ecosystem approach, which puts indigenous peoples and local communities, and TK at the very centre. Looking at national implementation, a large weakness continues to be the vertical and horizontal linkages between sectors, but more importantly, what is being said by central government and local realities. Unless full and effective participation of society is engaged, then problems of achieving the CBD goals will continue.

2. Therefore, there needs to be a more holistic and forward-looking programme of work, than just rehashing the list of tasks, which were developed more than 10 years ago, at the start of WG8j. What is being discussed in the contemporary global crisis is major shifts and transformations in economy, politics and environment, in which indigenous and local communities, in or diversity will have a vital and major contribution.

3. Therefore, there will need to be a big focus on implementing the ecosystem approach, which is very aligned with Article 10c implementation. If this is to happen, we need to have the relevant indicators in place, to really monitor what is happening on the ground. So the indicators work, has to keep in step with the review of 2010 Biodiversity target and also post 2010 targets. In the earlier period, the indicators for TK were not yet in place, but they need to be by 2010.

4. CEPA programmes will become important, including the contributions of Indigenous and local communities.

5. In relation to the negotiation of the International Regime on ABS, 2009 and 2010 will require strong engagement by indigenous peoples, and so technical and expert workshops will need to be prioritized to refine inputs by ILCs. These can be carried out under 8(j), but as inter-sessional work. For example, tasks 7, 10 and 12, could do well to have a focused technical seminar to take the way forward. This could be similar to the Indicators process - have regional and international expert workshops, which could bring recommendations to 8(j).

5. The same process could also be initiated with respect to 10c work. Indigenous peoples need some focused activities and mechanisms to input their experience into CBD. Notifications to provide case studies and experiences do not usually result in many inputs, because very few indigenous peoples' organizations are geared for this type of submissions. Therefore, indigenous peoples' organizations need some support in terms of financial resources and mechanisms, or events to channel their inputs. I think we need to have a learning network about ecosystem approach and 10c implementation.

6. Tebtebba has prioritized the issues of Biodiversity and Climate, ABS, and ecosystem approach, and work on Indicator and CEPAs, in its current phase 2. I think that these will continue to be the critical issues, and need to be brought together into a coherent plan, under bold thinking about post-2010 targets.
