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WORKING GROUP ON ARTICLE 8(j) AND
RELATED PROVISIONS OF THE CONVENTION
ON BIOLOGICAL DIVERSITY

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Item 7 of the provisional agenda*

CONSIDERATION AND DEVELOPMENT OF TERMS OF REFERENCE FOR TASK 15 OF THE PROGRAMME OF WORK FOR ARTICLE 8(j) AND RELATED PROVISIONS

Note by the Executive Secretary

INTRODUCTION

1. In paragraph 8 of decision IX/13 A, the Conference of the Parties decided to initiate task 15¹ of the programme of work for Article 8(j) and related provisions, in order to facilitate the recovery of traditional knowledge of relevance to biological diversity; invited Parties, Governments and international organizations, indigenous peoples and local communities and other stakeholders to provide to the Secretariat their views; and requested the Executive Secretary to compile these views and make them available to the Working Group at its sixth meeting for its consideration and the development of terms of reference in order to address this issue. Accordingly, this and further to paragraph 9 of the same decision, the United Nations Educational, Scientific and Cultural Organization (UNESCO), the World Intellectual Property Organization (WIPO) and the United Nations Permanent Forum on Indigenous Issues (UNPFII) were also contacted in order to enhance synergies, avoid duplication, and take fully into account the work of these organizations of relevance to this issue.

2. Following notification 2009-003, of 12 January 2009, views were received from the Government of Australia and from the European Union. Those views are collated and made available in an information document (UNEP/CBD/WG8J/6/INF/1). Based on the limited views received, the present document seeks to propose draft terms of reference for further consideration and development by the Working Group.

* UNEP/CBD/WG8J/6/1.

¹ "The Ad Hoc Working Group to develop guidelines that would facilitate repatriation of information, including cultural property, in accordance with Article 17, paragraph 2, of the Convention on Biological Diversity in order to facilitate the recovery of traditional knowledge of biological diversity."

3. To that end, section I below summarizes the views received. Initial terms of reference for further consideration and development by the Working Group are annexed to the note. Section II provides draft recommendations to assist the Working Group in taking this matter forward.

I. VIEWS RECEIVED

4. **Australia** suggested in its submission that task 15 should be initiated through a request to Parties to submit national approaches for compilation and then consideration, in order to establish best practices learned. Australia also notes that it has a national programme on the return of indigenous cultural property (RICP) and is happy to share information about this programme including the principles and processes. However, Australia also emphasizes that the initiation of task 15 should be fully considered within the in-depth review of the programme of work for Article 8(j) and related provisions.

5. Australia goes on to explain the nature of the domestic programme which represents a collaborative effort between the Australian and State/Northern Territory governments and the Australian museums sector to resolve the issues surrounding collections of ancestral remains and secret sacred objects held in Australian Government museum collections.

6. The programme aims to expedite the repatriation of indigenous human remains and secret sacred objects from their collections to indigenous communities of origin.

7. The return of indigenous cultural property programme is intended to enhance existing repatriation activities undertaken by museums and does not apply to holdings overseas. The programme 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.

8. The structure of the national repatriation programme includes two funding sub-categories:

(a) The Museum Support Programme 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;

(b) The Community Support Programme 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 Programme. Australian Government funding is contingent on matched funding from the states and the Northern Territory.

9. The practical experience of countries such as Australia may be extrapolated for the international context and may also provide practical advice, based on a working programme.

10. The **European Union** observes in its submission that the issue should be addressed in the ongoing negotiations of the international regime on access and benefit-sharing which the European Union hopes will be adopted by the tenth meeting of the Conference of the Parties. The European Union expresses a desire to consider at the sixth meeting of the Working Group on Article 8(j), how work on this task might usefully complement the effective implementation of the international regime with a view to preparing the upcoming in-depth review of the Article 8(j) programme of work and also considering work on the related work in other international forums such as WIPO or UNESCO.

Annex

**DRAFT TERMS OF REFERENCE FOR TASK 15 OF THE PROGRAMME OF WORK ON
ARTICLE 8(j) AND RELATED PROVISIONS**

1. The purpose of task 15 is to develop guidelines that would facilitate repatriation of information, including cultural property, in accordance with Article 17, paragraph 2, of the Convention on Biological Diversity, in order to facilitate the recovery of traditional knowledge of biological diversity.
2. Task 15 is to be interpreted in accordance with the provisions of the Convention and, in particular in light of Article 8(j) and related provisions.
3. Task 15 is intended to build on, and enhance, existing repatriation activities undertaken by Parties, Governments and other entities including museums, data-bases, registers, gene-banks, etc.
4. Stakeholders include:
 - (a) Parties and Governments;
 - (b) Museums and other collections containing information on the knowledge, innovations and practices of indigenous and local communities relevant for conservation and sustainable use;
 - (c) Relevant international organizations (and in particular UNPFII, UNESCO, WIPO);
 - (d) Representatives of indigenous and local communities;
 - (e) Relevant NGOs with expertise on these issues.
5. The Secretariat shall:
 - (a) Compile and analyse submissions by Parties and other relevant organizations on national and/or international approaches for repatriation relevant to task 15, for consideration by the Working Group on Article 8(j) at its seventh meeting, in order to establish best practices learned;
 - (b) Based on best practices, and advice from the Working Group, the Secretariat may develop for the consideration of the Working Group on Article 8(j) and related provisions:
 - (i) Best-practice guidelines for the initiation of national repatriation of information, including cultural property, in accordance with Article 17, paragraph 2, of the Convention on Biological Diversity, in order to facilitate the recovery of traditional knowledge of biological diversity; and
 - (ii) Best-practice guidelines or a framework for the initiation of international repatriation of information, including cultural property, in accordance with Article 17, paragraph 2, of the Convention on Biological Diversity, in order to facilitate the recovery of traditional knowledge of biological diversity.
6. Parties, Governments, international organizations, indigenous and local community organizations and non-Governmental organizations shall communicate to the Secretariat information on best-practice models for the repatriation of information and cultural property relevant to task 15.
7. The Working Group on Article 8(j):

(a) Based on information received, will consider, at its seventh meeting, how this task can be taken forward in both the domestic and international contexts, taking into account information and advice received, the in-depth review of the programme of work for Article 8(j) and related provisions and the international regime on access and benefit sharing;

(b) Further determine how task 15 should be considered within the in-depth review of Article 8(j) and incorporated in the multi-year programme of work, and also how work on this task might usefully complement the effective implementation of the international regime on access and benefit-sharing.

II. DRAFT RECOMMENDATIONS

The Working Group on Article 8(j) and related provisions may wish to recommend that the Conference of the Parties *decides* to adopt the terms of reference (annexed to the present note) as a useful process to advance task 15 in the light of other related and ongoing activities.
