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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

Ninth meeting

Montreal, Canada, 4-7 November 2015

Item 5 of the provisional agenda

REPORT OF THE EXPERT GROUP ON THE REPATRIATION OF TRADITIONAL KNOWLEDGE RELEVANT TO THE CONSERVATION AND SUSTAINABLE USE OF BIOLOGICAL DIVERSITY

INTRODUCTION

1. The Conference of the Parties, in its decision XII/12 C, paragraph 1, decided to convene a technical Expert Group meeting to develop draft voluntary guidelines to promote and enhance the repatriation of traditional knowledge of relevance to the conservation and sustainable use of biological diversity, for consideration at the ninth meeting of the Ad Hoc Open-ended Inter-sessional Working Group on Article 8(j) and Related Provisions, to be held in Montreal, Canada, from 4 to 7 November 2015, and with a view to consideration by the Conference of the Parties at its thirteenth meeting.
2. With the generous support of the Governments of Guatemala, through the National Council of Protected Areas (CONAP), and Japan, through the Japan Biodiversity Fund, as well as the European Commission and the Swedish International Development Cooperation Agency through SwedBio at the Stockholm Resilience Centre, the Secretariat organized the Expert Meeting on the Repatriation of Traditional Knowledge Relevant to the Conservation and Sustainable Use of Biological Diversity, which was held in Panajachel, Guatemala, on 14 and 15 June 2015. To ensure efficiency, the expert meeting was held immediately after the Dialogue Workshop on Assessment of Collective Action of Indigenous Peoples and Local Communities in Biodiversity Conservation and Resource Mobilization (11-13 June) and the International Training Workshop on Community-Based Monitoring, Indicators for Traditional Knowledge and Customary Sustainable Use and Community Protocols within the Strategic Plan for Biodiversity 2011-2020 (8-10 June).
3. In accordance with the same decision, the Executive Secretary, in notification SCBD/MPO/AF/JS/VF/84402 dated 10 March 2015, invited interested Parties and indigenous peoples and local community organizations to nominate representatives to the expert meeting. In completing the selection, the Executive Secretary took into account budgetary considerations, regional balance, gender, and expertise and made the results available in notification SCBD/MPO/AF/JS/DM/84402 dated 27 April 2015.
4. The meeting was attended by experts nominated by the Governments of Antigua and Barbuda, Belarus, Brazil, Guatemala, India, Malawi, Malaysia, Mexico, Norway and Sweden. The experts

nominated by the Governments of Benin, Canada, the Federated States of Micronesia, Peru and Uganda, who had been selected and invited to the meeting, were unable to participate. The Secretariat, together with the expert nominated by Canada, made strong efforts from both sides to link up to the meeting via the Internet, but technical circumstances made it impossible to do so.

5. Experts from the following organizations also participated in the meeting: Jabalbina Yalanji Aboriginal Corporation, Australia; Andes Chinchansuyo, Ecuador; Centre for Environmental Governance, Ghana; Sotzíl and Fondo Indígena, Guatemala; Centre for Support of Indigenous Peoples of the North (CSIPN/RITC), Center for Support of Indigenous Peoples of the North (CSIPN) Russian Federation; Asian Indigenous Peoples Pact (AIPP), Thailand; Tulalip Natural Resources, United States of America; Native Women's Association of Canada, Canada.

6. Furthermore, to assist the Expert Group in its work, and in accordance with decision XII/12 C, the Executive Secretary, in notification SCBD/MPO/AF/JS/VF/84296 dated 5 February 2015, requested Parties, international and non-governmental organizations and indigenous peoples and local communities to submit relevant information, including on best practices, and their views on the development of the draft voluntary guidelines to promote and enhance the repatriation of traditional knowledge relevant to the conservation and sustainable use of biological diversity. The Secretariat compiled the views received, having regard to the previous submissions on this topic compiled in UNEP/CBD/WG8J/8/INF/7, as well as the best practices summarized in section V of the note by the Executive Secretary on the development of best-practice guidelines for the repatriation of traditional knowledge relevant to the conservation and sustainable use of biological diversity (UNEP/CBD/WG8J/8/5). The most recent compilation of views received was made available to the Expert Group as UNEP/CBD/A8J/EM/2015/1/INF/1 and is made available to the Working Group on the website under "other documents". For ease of reference, documents UNEP/CBD/WG8J/8/INF/7 and UNEP/CBD/WG8J/8/5, including section V, are also available under "other documents". In addition, the Executive Secretary, taking into account the information and views received, prepared, as requested, draft elements of the voluntary guidelines for the consideration of the expert meeting and issued them as UNEP/CBD/A8J/EM/2015/1/2.

ITEM 1. OPENING OF THE MEETING

7. The representative of the Executive Secretary of the Secretariat of the Convention on Biological Diversity opened the meeting at 9.30 a.m. on Tuesday, 14 June 2015, by requesting the Spiritual Advisor of the local Mayan peoples to lead the group in an indigenous opening ceremony. The traditional opening was complemented by opening remarks by the representatives of the Government of Guatemala, CONAP, and Sotzíl, the indigenous host organization of the three workshops. The Secretariat provided some guidance on the procedures of an expert meeting before handing over to the two co-chairs, Ms. Pernilla Malmer of Sweden and Mr. Manuel Benedicto Lucas López of Guatemala.

8. The co-Chairs invited the participants to introduce themselves and their organizations.

1.1. Election of officers

9. In keeping with the rules of procedure and established practice, the meeting was chaired by the representatives of two Parties, one from a developing Party and one from a developed Party. The Chairs were assisted by the Secretariat in drafting the report of the meeting for the consideration of the participants.

1.2. Adoption of the agenda

10. The meeting considered and adopted the provisional agenda (UNEP/CBD/A8J/EM/2015/1/1) prepared by the Executive Secretary in accordance with decision XII/12 C.

ITEM 2. ORGANIZATION OF WORK

11. The co-Chairs provided some guidance on the work plan for the meeting. To ensure an efficient process and a consensus document with collective ownership as an output and taking into account the limited time available (two days), the co-Chairs proposed that the expert meeting would initially focus on determining a strong foundation for the guidelines by agreeing on some basic common principles. Thus,

the existing draft guidelines (UNEP/CBD/A8J/EM/2015/1/2) prepared by the Executive Secretary were momentarily put aside, and the meeting commenced its work by listening to six presentations by experts on repatriation, followed by a discussion in small groups on principles. After agreeing on some common principles, the co-Chairs suggested that the expert meeting might wish to propose some next steps in order to complete the task for the consideration of the Working Group. To ensure the full participation of experts and observers in the deliberations of the meeting, the Expert Group worked mainly in plenary and, where necessary, established small regional and/or language groups to examine specific issues and to consider regional perspectives. The co-Chairs strove for an interactive discussion and effective participation of all participants.

ITEM 3. INTRODUCTION TO TASK 15 OF THE MULTI-YEAR PROGRAMME OF WORK ON THE IMPLEMENTATION OF ARTICLE 8(j) AND RELATED PROVISIONS OF THE CONVENTION ON BIOLOGICAL DIVERSITY: BEST-PRACTICE GUIDELINES FOR THE REPATRIATION OF INDIGENOUS AND TRADITIONAL KNOWLEDGE

12. To assist in the discussions concerning task 15, the Secretariat provided an overview of the programme of work on Article 8(j) and related provisions, with a focus on Task 15 and responded to questions from the participants. The presentation assisted participants in familiarizing themselves with the terms of reference¹ and in focusing on the desired outcome of the expert meeting: to develop draft voluntary guidelines to promote and enhance the repatriation of traditional knowledge of relevance to the conservation and sustainable use of biological diversity for consideration by the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions at its ninth meeting, which would be held in Montreal, Canada, from 4 to 7 November 2015, and with a view to consideration by the Conference of the Parties at its thirteenth meeting.

13. Throughout the proceedings the co-Chairs called on the Secretariat to clarify technical issues that arose in the discussions, including on related issues, such as registers and databases and digitalisation of traditional knowledge. To paraphrase the most recent decisions of the Conference of the Parties related to the documentation of traditional knowledge, the Secretariat explained that a number of concerns and questions had been raised under the Convention about the documentation of traditional knowledge including its challenges and opportunities, of particular relevance to take into consideration while agreeing on common principles for repatriation, including recovery and revitalization of repatriated traditional knowledge. The Conference of the Parties had discussed (in decision VII/16) the use of databases and registers for recording traditional knowledge and had decided that while in some cases databases and registers may play a role in the protection of traditional knowledge, innovations and practices, such databases and registers were only one approach in the effective protection and promotion of traditional knowledge, innovations and practices and their establishment should be voluntary, not a requirement for protection, and established with the prior informed consent of indigenous peoples and local communities (IPLCs). The Secretariat had assisted the World Intellectual Property Organization in the finalization of the Traditional Knowledge Documentation Toolkit of the Organization, which provided essential information, including possible benefits and challenges, for indigenous peoples to consider when deciding whether or not they wished to pursue documentation of their knowledge. The Traditional Knowledge Documentation Toolkit² aimed to empower indigenous peoples and local communities to decide for themselves whether they wished to have their traditional knowledge documented or not, it provided diverse options for recording information, and assisted indigenous peoples and local communities in making appropriate and informed decisions regarding how to safeguard their interests and keep control of their intellectual property rights, interests and options.

¹ See decision XI/14 D on the consideration and development of terms of reference for task 15 of the programme of work on Article 8(j) and related provisions and decision XII/12 C on repatriation.

² Available at: <http://www.wipo.int/tk/en/resources/tkdocumentation.html>.

ITEM 4. PRESENTATIONS BY ENTITIES WORKING ON REPATRIATION ISSUES RELEVANT TO THE REPATRIATION OF TRADITIONAL KNOWLEDGE AND EXCHANGE OF BEST PRACTICES

14. Under the item, participants working on repatriation issues relevant to the repatriation of traditional knowledge and related information presented at the meeting. There were six presentations by experts as well as some short presentations and reflections from the floor. The presentations included broad consideration of various goals and approaches to knowledge restoration, including digitalization and the use of registers and databases, community-to-community exchanges, return of human remains, return of cultural property and the return on traditional knowledge and related information. The experts also reflected on “what is repatriation of traditional knowledge” and recommended a broad approach or definition, within the mandate of the Convention, inclusive of community-to-community exchanges and mutual support in efforts to repatriate, recover and revitalize traditional knowledge, and other forms of knowledge retrieval and restoration.

15. Mr. Nik Musa’adah Mustapha, presented on the Malaysian experience with knowledge retrieval and restoration. Malaysia had a rich cultural heritage and ancient scripts that over time had documented traditional knowledge. Because much knowledge was held in traditional scripts, which might no longer be understood or might not be transmittable in the original form, there was a need to translate them into modern Malay. Malaysia, inspired by the efforts of India with their Traditional Knowledge Digital Library (TKDL), was exploring a similar process to record their intangible cultural heritage. In the Malaysian context, traditional knowledge within communities was also being documented where those communities provided their consent for such processes. Consent was based on ensuring that communities had full awareness of the value of their knowledge and the processes involved in tentative commercialization. Where communities consented to document their knowledge, technical experts from the Government worked closely with the communities to ensure a rigorous process of documentation, identifying the communities as the knowledge holders. A memorandum of understanding between the relevant communities, the Government and the Department for Indigenous Peoples/Traditional Communities governed the documentation process. Additionally, IPLCs can participate in the technical committees and are actively involved throughout the process.

16. In the Malay model, everything depended on the consensus of the multi-stakeholder committee before any activities, such as publication, genetic research and access and benefit-sharing arrangements could be started. In the Malaysian context, the land belongs to the Government but the knowledge belongs to the communities.

17. Following the Malaysian presentation, Ms. Christine Teresa Grant, past co-Chair of the Advisory Committee for Indigenous Repatriation, presented an Australian perspective and experience with repatriation. Repatriation in the Australian context had theretofore focused mainly on human remains and cultural artefacts, much of which had been held in foreign collections. At the same time, there had been increasing interest among Aboriginal and Torres Strait Islander peoples in knowledge and cultural restoration dating back at least to the 1970s. In recent times, in partnership with, and supported by, the Government of Australia, there were increasing opportunities for community-to-community exchanges as exemplified at the local level by the Savannah Traditional Burning Project,³ the recognition of ICCAs and the indigenous ranger programme,⁴ and internationally by the establishment of the World Indigenous and Local Community Land and Sea Managers Network,⁵ among other initiatives. Ms. Grant provided a deep insight into the Australian indigenous context of repatriation: the establishment of Australian repatriation programmes; the establishment by Australia of guidelines and programmes for international indigenous repatriation; pressing issues, such as implementation; ongoing policy development, including on ancestral remains, grave goods, and cultural property, as well as the development of relevant information notes. Also in relation to ancestral remains, there was an ongoing conversation about a national resting place for

³ See <http://www.indigenous.gov.au/savanna-burning-a-cleaner-future>.

⁴ See <http://www.environment.gov.au/indigenous/ipa/>.

⁵ See <http://www.winism.net/>.

repatriated unattributed items and remains. Australia and its indigenous peoples continued negotiations with many countries for repatriation of Australian indigenous ancestral remains, cultural property and documentation about traditional knowledge. From 2009 to 2013, 216 items and ancestral remains had been repatriated from Austria, the Czech Republic, Germany, the United Kingdom of Great Britain and Northern Ireland, and the United States of America.

18. Ms. Grant also discussed in detail the cultural protocols surrounding repatriation and the need for a negotiated process. She noted that there was much goodwill among repatriating institutions, often creating ongoing beneficial connections. There was a need for communities also to be supported and resourced to establish safe-keeping places. Repatriation in general remained a sensitive subject for indigenous peoples and could be challenging; yet, it was a rewarding and enriching process for all involved. Indigenous peoples believed they had an obligation to the ancestor to bring them home according to their traditions so that the spirit could rest.

19. Ms. Yolanda Teran presented on her experiences with repatriation and on the National Museum of the American Indian. In her presentation, she covered various definitions or cultural concepts of repatriation which included: going back to the place of origin (*tigramuna*); returning something to its rightful place (*tigrachina*); or to help something to go back to the place of origin (*tigramupay*, *tigrapashun*). She noted that it could apply to cultural objects, genetic resources, traditional knowledge and related information (which could take the form of books, pictures, videos and audio recordings, among other things). The indigenous perspective was that, when objects were far from their lands, they suffered, cried and complained because they had spirits. Ms. Teran also considered reasons or contexts for repatriation, including cultural (such as beliefs that everything should go back to Mother Earth), or taken without prior informed consent of the relevant indigenous peoples; and various levels of actions including local, national and international, and the need for bilateral and multilateral negotiations around processes for repatriation and establishment of culturally appropriate mutually agreed terms to be followed during and after those processes. For indigenous peoples, their tangible and intangible cultural heritage had a spiritual presence, and when removed and kept in foreign places, they were like prisoners, pleading for freedom to return to their origins and to be treated respectfully. In her presentation, Ms. Teran included a discussion on possible places that might hold traditional knowledge and related information (places of repatriation), such as universities, government institutes, auction houses, private collections, and local, national and international museums. In her work examining collections in the National Museum of the American Indian, she had identified small golden figures representing the cult of coca, figures representing sacred exercises, gold crowns highlighting the biodiversity of the sixteenth century, photo collections (which revealed clothing, hairstyles, colours, social hierarchies and the like), human remains, sensitive, and secret and sacred materials (which required ceremonies each month, and protocols governing who could and could not touch them).

20. Ms. Teran also noted the challenges posed by repatriation, including: (a) the need for IPLCs to investigate sometimes large stored collections to identify items for possible repatriation; (b) the need to create and build technical expertise for the team working on repatriation, including consideration of spiritual processes and rituals and the need for spiritual guidance; (c) the need for legal support to assist the community in negotiating returns; (d) the need to safeguard the repatriated property, which may include the creation of databases for recipient communities to receive digitized copies of materials; and (e) the desirability of creating a broadly representative group, including women and youth, based on cultural considerations to steer the process and/or to negotiate mutually agreed terms.

21. On the basis of her work with the Shuar people in Ecuador and some of their experiences with repatriation, Ms. Teran had learned that that repatriation processes needed time, economic and human resources, some expertise in traditional knowledge and intercultural processes, command of another language (often English), prior and informed consent and mutually agreed terms, as well as consideration of intercultural and gender protocols, awareness within the host community and follow-up (access and benefit-sharing arrangements after repatriation).

22. Ms. Polina Shulbaeva made a presentation on repatriation from a Siberian Indigenous perspective with a focus on dealing with Siberian museums. She noted that the lack of national legislation recognizing and protecting traditional knowledge hampered the development of regulations or processes to facilitate the repatriation of tangible and intangible cultural heritage in the Russian context. In her work with the Siberian museum, she noted that the museum had more than 100,000 objects of archaeological significance and 11,000 ethnographic objects from different Siberian indigenous peoples. Also hampering repatriation efforts was the lack of capacity of indigenous peoples to deal with repatriating institutions and to negotiate mutually agreed terms for repatriation processes. Ms. Shulbaeva had worked directly with scientists and anthropologists and institutions with indigenous collections to raise their awareness of indigenous peoples and the issues with which they grappled regarding repatriation; there had been some good results, including the development of some basic access processes, such as submitting a written request two weeks in advance before investigating collections, indicating on an application the name of the indigenous people, for what part of the collection access is requested, and specifying the number of days of access requested. Visits were conducted with staff of the museum, and the relevant indigenous people could have access to all information available and were permitted to take copies and/or pictures, record a description, and make sketches. Since Ms. Shulbaeva had begun her work with museums, indigenous peoples from her region had: (a) worked with museums to find information about customary sustainable use of biodiversity, including identification of traditional restrictions on use, and to relearn or restore traditional calendars for traditional lands, waters and biodiversity, (b) identified elements of interactions between communities and nature, including spiritual beliefs; (c) restored knowledge about traditional medicines; and (d) restored missing segments of their knowledge system, leading to cultural restoration. In taking back knowledge and related information, and keeping it safe, communities were also facing challenges concerning the lack of formal protection of traditional knowledge in their efforts to maintain their knowledge systems.

23. The final presenter was Mrs. Myrle Ballard, representing the Native Women's Association of Canada, and also postdoctoral Fellow, University of Manitoba, Canada. She gave a presentation entitled "the repatriation of our indigenous knowledge from a perspective of Manitoba First Nations". The presentation covered governance over research and information, and highlighted the Canadian Indigenous Research Principles of Ownership, Control, Access and Possession (OCAP). She commenced by providing an overview and history of First Nations in Manitoba, which comprised 63 diverse and often remote communities, including the Ojibway, Cree, Dene, Sioux and Oji Cree peoples.

24. Mrs. Ballard then provided an overview of the First Nations Indigenous research agenda, which had grown in a context of First Nations being "researched to death" by outsiders and, yet, had few visible improvements in such areas as health. She noted that, in three national surveys (national population health, national longitudinal survey on children and youth, and the survey on labour and income dynamics) on-reserve First Nations had been excluded. First Nations had called for a national holistic survey based on the OCAP principles, in which First Nations had ownership, control, access and possession of their data.

25. Mrs. Ballard then went on to explain the principles guiding indigenous research, including free, prior and informed consent, which includes both agreement to participate in research at the community and individual levels. Concerning prior and informed consent processes, consent had to be freely given (voluntary – no pressure), prior (before any information was collected), and informed (First Nations and persons needed to know the purpose of the research as well as its methods and opportunities for participation).

26. First Nations had developed the following OPAC Principles:⁶

(a) *Ownership*, which covers: (i) the relationship of First Nations to their cultural knowledge/data/information; (ii) collective ownership of information by the Community/group just as individuals

⁶ For more information, refer to First Nations Information Governance Centre (www.fingc.ca).

own their personal information; and (iii) the distinction between ownership or stewardship and possession;

(b) *Control*, which means to maintain, regain control in all areas of their lives, including research, information and data. Control over all aspects and stages of research and information management projects and processes that impact them; this includes generating or validating research questions that are meaningful and important to First Nations, and extends to resources, policy, review processes, formulation of conceptual frameworks, data management, among other things;

(c) *Access*, which means that First Nations must have access to information, data about themselves and their communities, wherever it is held, and they must be able to manage the information and make decisions regarding access to their collective information;

(d) *Possession*. Possession is a mechanism to assert and protect ownership. When First Nations data is in the possession of others (such as government and universities), there may be risk of breach or misuse. Often, trust between owner and possessor may be lacking.

27. Mrs. Ballard gave a practical overview of the OCAP Principles in action in Manitoba, covering: (a) community involvement (leadership, health directors, First Nations members); (b) cultural considerations (gender balance, cultural customs, language); (c) community and regional feedback (lessons learned gatherings); (d) and possession of data (community profiles, assistance with data access requests, and the establishment of the Manitoba First Nations Research Server).

28. Mrs. Ballard ended her presentation by quoting a First Nations Elder who had said: “Research is a relationship based on respect and it takes time to build trust” (First Nations Workshop on Research Ethics, 2005).

29. Experts took the floor after the formal presentations to add to and enrich the exchange. Some indigenous representatives discussed possible definitions of repatriation and referred to a matrix of possibilities, including: (a) to keep the original and repatriate a copy; (b) to keep a copy and repatriate the original; (c) to repatriate the original and not keep a copy. Many participants intimated that principles of utmost good faith and goodwill were vital considering the historical contexts of dispossession and the desire for reconciliation in modern nation-building. Others noted the relevance of respect for the cultural rights, interests and values of IPLCs.

30. Some of the indigenous representatives noted relevant international treaties, declarations, and the recent Study on Cultural Heritage issued by the Expert Mechanism on the Rights of Indigenous Peoples,⁷ as well as IPLC customary laws and other instruments that emphasized specific cultural rights that could be related to the repatriation of traditional knowledge. The relevant international instruments included the United Nations Declaration on the Rights of Indigenous Peoples,⁸ in particular Article 31, and the International Covenant on Economic, Social and Cultural Rights.⁹ In addition, there had been growing recognition of cultural rights to privacy related to spiritual and sacred knowledge and customary laws. Under customary laws, IPLCs could be viewed as having permanent stewardship obligations for appropriate use of that knowledge, and any use outside traditional contexts could constitute violations. Others mentioned the principle of doing no harm (non-maleficence) to human dignity and other ways of being.

31. It was noted by an indigenous representative that specific cultural harm could result from misuse of traditional knowledge outside the context of indigenous peoples and local communities. IPLCs had expressed that traditional knowledge was often inextricably linked to and a core part of their dignity, identity and ways of being. Their misuse could lead to specific cultural harm that might not be generally recognized in national laws and dominant cultures. Misuse of traditional knowledge could also be associated with misuse of culturally significant biodiversity and could undermine the underpinnings of

⁷ See <http://www.ohchr.org/EN/Issues/IPeoples/EMRIP/Pages/Studyonculturalheritage.aspx>

⁸ General Assembly resolution 61/295, annex.

⁹ General Assembly resolution 2200A (XXI) of 16 December 1966.

traditional knowledge that support the sustainable use of biological diversity. Those effects could have an impact on fundamental human dignity and ways of being.

32. Participants debated the right or principle of free, prior and informed consent, but there was no common understanding of how that could be applied to a repatriation process in which IPLCs had initiated the request. There was strong common understanding, however, that a culturally appropriate process should be negotiated ahead of any repatriation activities. There was some debate about the need for repatriation to be built on negotiated processes, and some preferred the term “mutually agreed terms”. However, others felt that, given the use of that term in the Nagoya Protocol, where it had a legal meaning, it might not be appropriate to use it in the repatriation guidance. Those issues were left unresolved.

**ITEMS 5 AND 6. MEASURES AND ACTIONS TO PROMOTE AND ENHANCE THE
REPATRIATION OF TRADITIONAL KNOWLEDGE AND
IDENTIFICATION OF DRAFT ELEMENTS OF GUIDELINES FOR THE
REPATRIATION OF TRADITIONAL KNOWLEDGE**

33. In order to create firm group ownership of the final result and to find common ground on which all regions were prepared to work, the co-Chairs decided, under items 5 and 6, to arrive at basic principles to guide further work. They also suggested that in addition to basic principles, the Expert Group may wish to include a possible way forward to finalize the guidelines. The co-Chairs suggested that the experts should work in small regional and/or language groups to reflect on some basic principles that could guide further work on repatriation. Each group appointed a chairperson to report back to the plenary after a full discussion. That exercise allowed for a more diverse consideration of understandings of repatriation. The co-Chairs and the Secretariat moved actively among the groups to assist as needed.

34. Group A was composed of experts and observers from Australia, Belarus, Canada, Ecuador, the Russian Federation, Thailand and the United States of America. In reporting back to the plenary, the chair of the group suggested the following on behalf of the group:

(a) Parties should develop national policies based on the guidelines being developed, to facilitate repatriation;

(b) The primary principle was that of utmost respect, taking fully into account the United Nations Declaration on the Rights of Indigenous Peoples, including Article 31 and other relevant articles and instruments;

(c) Measures taken should respect the values, practices, customary law, community protocols, laws, rights and interests of IPLCs;

(d) Institutions engaged in repatriation were encouraged to develop permanent or ongoing relationships with IPLCs in order to build trust, good relations, mutual understanding, reciprocity, co-research and co-learning, create intercultural spaces and reconciliation;

(e) Repatriation should be based on negotiated agreements and free, prior and informed consent and mutually agreed terms, with further guidance to be developed for a common understanding of the terminology;

(f) Repatriation processes should be culturally appropriate and should include from the outset the effective participation of the relevant IPLCs with a view to promoting human dignity, wellbeing and happiness for everyone and everything involved;

(g) Repatriation could mean a matrix of possibilities from repatriation of the original, or access to a copy. The OCAP principles¹⁰ for research adopted by First Nations in Canada were ownership, control, access and possession. All outcomes should be possible, but the actual outcome should be based on principle 4 (possession);

¹⁰ See <http://www.ohchr.org/EN/Issues/IPeoples/EMRIP/Pages/Studyonculturalheritage.aspx>.

- (h) Special measures should be developed to address the repatriation of traditional knowledge that was already publicly available and widespread;
- (i) The guidelines should include and promote voluntary repatriation from private parties and institutions;
- (j) In repatriation efforts, participating parties, especially IPLCs, should be supported to develop consultative bodies, raise awareness (education) and acquire technical skills and resources, and should be provided with political support;
- (k) Repatriation processes can be supported through the development by IPLCs of mutually agreed terms for repatriation processes, such as protocols, ordinances, ethical guidelines and other relevant measures;
- (l) States may wish to voluntarily develop laws and regulations for repatriation and remedies for failure to repatriate;
- (m) States may wish to develop measures to prevent misappropriation of intangible heritage in order to reduce the need for future repatriations;
- (n) Institutions repatriating cultural heritage should be encouraged to employ culturally appropriate IPLC staff with specialized cultural skills;
- (o) IPLCs may need to work with community institutions and infrastructure in order to receive and curate repatriated traditional knowledge and related information, which may include written and digital materials;
- (p) IPLC staff should be trained and employed in the curating of ex situ materials containing traditional knowledge of IPLCs;
- (q) Institutions participating in repatriation, should establish processes to identify traditional knowledge and related information (repatriable materials), including by facilitating visits by IPLCs and employing and training IPLC staff;
- (r) IPLCs and repatriating institutions need to take into consideration culturally appropriate processes for accessing and repatriating materials, including issues related to gender, age, clan and other cultural matters;
- (s) Due to the spiritual beliefs of many IPLCs, repatriation is often accompanied by respectful ceremonies, with timing, scheduling and other relevant actions determined by those communities receiving repatriated property.

35. Group B was composed of experts and observers from Ghana and Malawi. In reporting back to the plenary, the chair of the group suggested the following on behalf of the group:

- (a) Further reflection was needed on various regional contexts for repatriation and, thus, the timeframe for the development of guidelines should take into account different regional contexts and priorities;
- (b) In the African context, there were diverse circumstances to consider, including the time during which the knowledge had been taken, which might have been during tribal wars or during colonization (timeframe);

Scope of guidelines

- (c) In general, it was agreed that the majority of knowledge had been lost prior to the existence of the Convention on Biological Diversity. Therefore, it was important to consider this within the context of the report and its recommendations;

Nature of repatriated traditional knowledge and related information

(d) Within this scope, there is a need to consider the nature of the repatriated property, which could be diverse and/or contained in biological or genetic resources. Considering the nature of repatriated property also can assist in considerations of quality as well as intangible elements such as dance, arts, music;

Governance

(e) Governance considerations in any repatriation guidelines need to take into account the intended audience – for example, whether the guidance is intended for IPLCs only, or also for State Parties to promote collaborative efforts;

Preparedness for repatriation

(f) Repatriation efforts should take into account the resources needed for IPLCs and Parties for safe storage and development of mutually agreed terms and consent processes;

Looking ahead

(g) Repatriation efforts should be forward-looking, should foster the building of relationships and should encourage the creation of intercultural spaces and the co-sharing of knowledge, including producing new knowledge.

36. Group C was composed of experts and observers from Antigua and Barbuda, Brazil, India, Malaysia, Mexico and Norway. In reporting back to plenary, the chair of the group suggested the following on behalf of the group:

(a) The priority of the Expert Group should be to develop and agree upon principles;

(b) The guidance under development for repatriation should apply to the knowledge, innovations and practices of indigenous peoples and local communities, and should assist Parties, Governments, and other entities, such as botanical gardens, museums, libraries, archives and private collections, in sharing information related to traditional knowledge associated with biodiversity with the original holders of such knowledge and Parties from which the information was originally obtained;

Definition — mandate

(c) Repatriation efforts should be made to facilitate the repatriation of information in order to facilitate the recovery of traditional knowledge that is relevant for the conservation and sustainable use of biological diversity.¹¹

37. Following the regional presentations, the co-Chairs agreed to work with the Secretariat in order to distil some general principles for the consideration of the Expert Group as well as a possible way forward to complete the guidelines. The co-Chairs also took note of the diversity of understandings of the issue and the need for an ongoing process to reflect on principles agreed upon and to develop a menu of possible actions based on good practices already operational and based on a further submissions process.

ITEM 7. OTHER MATTERS

38. Under this agenda item, participants were able to reflect on other relevant matters. In response to questions from participants about the way forward, the co-Chairs and the Secretariat outlined a proposal. The draft report would be circulated to participants to ensure accuracy before being finalized by the co-Chairs, who noted that the outcomes of the expert meeting would be considered by the Ad Hoc Open-ended Inter-sessional Working Group on Article 8(j) and Related Provisions at its ninth meeting, to be held in Montreal from 4 to 7 November 2015.

¹¹ See paragraph 23 of the Tkarihwaieri Guidelines.

ITEM 8. ADOPTION OF THE GUIDANCE

39. The Expert Group was invited to adopt by consensus the first section of the proposed draft voluntary guidelines to promote and enhance the repatriation of traditional knowledge relevant to the conservation and sustainable use of biological diversity, prepared by the co-Chairs, in the form of *guiding principles*. The co-chairs also proposed a way forward for the consideration of the experts regarding the next steps. The experts adopted the proposed guidance with the deletion of some principles for which there was no clear understanding and/or consensus. They agreed on the way forward proposed by the co-Chairs and to recommend it to the Working Group. At adoption, the spiritual guide and representatives of the local indigenous peoples proposed a local traditional indigenous word as a title for the guidelines: “Rutzolijirisaxik”.¹² The participants thanked the traditional hosts and accepted the title. Annex I contains the guiding principles along with a draft decision for the consideration of the Ad Hoc Open-ended Intersessional Working Group on Article 8(j) and Related Provisions.

40. The report of the meeting was circulated to the participants after the meeting, to ensure accuracy and agreement, and finalized by the Secretariat.

41. The guiding principles, as well as the next steps identified by the Expert Group, are issued for the Working Group as an official document on best-practice guidelines for the repatriation of indigenous and traditional knowledge (see UNEP/CBD/WG8J/9/3).

ITEM 9. CLOSURE OF THE MEETING

42. The meeting closed at 4.30 p.m. on Monday, 15 June 2015.

¹² Meaning “the significance of returning to the place of origin” in the Mayan Kaqchikel language.

*Annex***DRAFT RECOMMENDATION OF THE EXPERT GROUP**

The Ad Hoc Open-ended Working Group on Article 8(j) and Related Provisions,

Having considered the report of the Expert Group Meeting on the Repatriation of Traditional Knowledge Relevant to the Conservation and Sustainable Use of Biodiversity,

Recommends that the Conference of the Parties at its thirteenth meeting adopt a decision along the following lines:

The Conference of the Parties,

1. *Takes note* of the progress made in the development of the Rutzolojparxik¹³ Voluntary Guidelines for the Repatriation of Traditional Knowledge of Indigenous Peoples and Local Communities Relevant for the Conservation and Sustainable Use of Biological Diversity, in particular their objective, purpose, scope and guiding principles for repatriation, annexed to this decision;

2. *Requests* the Ad Hoc Open-ended Inter-sessional Working Group on Article 8(j) and Related Provisions, at its tenth meeting, to complete a draft of the guidelines for consideration by the Conference of the Parties at its fourteenth meeting;

3. *Invites* Parties, other Governments, relevant organizations and entities,¹⁴ and organizations of indigenous peoples and local communities, interested or involved in repatriation of traditional knowledge to make use of the advice and guiding principles for repatriation contained in the annex to this decision, and to submit to the Executive Secretary information on good practice actions undertaken at various levels, including through community-to-community exchanges, to repatriate, receive and restore traditional knowledge relevant for the conservation and sustainable use of biological diversity;

4. *Requests* the Executive Secretary to compile the information received on good practice actions undertaken at various levels as referred to in paragraph 3 above and submit the compilation to the Ad Hoc Open-ended Inter-sessional Working Group on Article 8(j) and Related Provisions at its tenth meeting;

5. *Also requests* the Executive Secretary to prepare a full draft of the Rutzolojparxik Voluntary Guidelines for the Repatriation of Traditional Knowledge of Indigenous Peoples and Local Communities Relevant for the Conservation and Sustainable Use of Biological Diversity, based on an analysis of the information received on actions undertaken at various levels as referred to in paragraph 3 above, and containing the objective, purpose, scope and guiding principles for repatriation included in the annex to the present decision, for consideration by the Ad Hoc Open-ended Inter-sessional Working Group on Article 8(j) and Related Provisions at its tenth meeting, with a view to their adoption at the fourteenth meeting of the Conference of the Parties.

¹³ In the local traditional language, Mayan Kaqchikel, this expression means “the significance of returning to the place of origin”.

¹⁴ May include international and regional organizations, museums, universities, herbaria and botanical and zoological gardens, data-bases, registers, gene-banks, libraries, archives and information services, public or private collections and other entities storing or housing traditional knowledge and related information, as well as IPLCs.

*Annex***PROGRESS IN THE DEVELOPMENT OF THE RUTZOLOJPARXIK¹⁵ VOLUNTARY GUIDELINES FOR THE REPATRIATION OF TRADITIONAL KNOWLEDGE OF INDIGENOUS PEOPLES AND LOCAL COMMUNITIES RELEVANT FOR THE CONSERVATION AND SUSTAINABLE USE OF BIOLOGICAL DIVERSITY**

Recalling that Parties to the Convention on Biological Diversity, pursuant to its Article 8(j), have, undertaken, subject to their national legislation, to 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 (hereafter referred to as “traditional knowledge”), and to promote its wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices,

Recalling that Parties to the Convention on Biological Diversity, according Article 17.2, shall facilitate the exchange of information on traditional knowledge and where feasible, include repatriation of such information, and in Article 18, promote scientific cooperation to develop methods of cooperation for the development and use of technologies, including indigenous and traditional knowledge,

Building on relevant decisions of the Conference of the Parties, including paragraph 23 of the Tkarihiwaieri Code of Ethical Conduct, as well as Conference of the Parties decision VII/16 on registries and databases;

Taking into account the United National Declaration on the Rights of Indigenous Peoples, in particular Article 31 and other relevant articles;

Bearing in mind the importance of international cooperation for the repatriation of traditional knowledge including providing access to traditional knowledge and related information for indigenous peoples and local communities to facilitate the repatriation of traditional knowledge relevant for the conservation and sustainable use of biological diversity,

Further taking into account the various international bodies, instruments, programmes, strategies, standards, guidelines, protocols, reports and processes of relevance and the importance of their harmonization and complementarity and effective implementation, and in particular the United Nations Educational, Scientific and Cultural Organization (UNESCO) and its mandate concerning cultural property, and the World Intellectual Property Organization (WIPO),

Objectives

1. The objective of Task 15 is to develop best practice guidelines to facilitate the repatriation of knowledge, innovations and practices (hereafter referred to as traditional knowledge) of indigenous peoples and local communities (hereinafter referred to IPLCs) embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity, including related information, in accordance with Article 8(j) and Article 17, paragraph 2, of the Convention, in order to facilitate the repatriation of traditional knowledge relevant for the conservation and sustainable use of biological diversity.
2. The guidelines may also assist in the effective implementation of the global Plan of Action on Customary Sustainable Use of Biological Diversity, adopted by the Conference of the Parties in its decision XII/12 B.

¹⁵ In the local traditional language, Mayan Kaqchikel, this expression means “the significance of returning to the place of origin”.

Purpose

3. The guidelines are intended to be practical guidance to Parties, Governments,¹⁶ international and regional organizations, museums, universities, herbaria and botanical and zoological gardens, databases, registers, gene-banks, libraries, archives and information services, private collections and other entities storing or housing traditional knowledge and related information, and IPLCs, in efforts to repatriate traditional knowledge and related information.
4. They are a guide to good practice which will need to be interpreted taking into account the political, legal, economic and cultural diversity, as appropriate, of each Party, entity and IPLCs, and applied in the context of each organization's mission, collections and the relevant communities, taking into account community protocols and other relevant procedures.
5. The guidelines are not prescriptive or definitive.
6. Given the political, legal, economic and cultural diversity of States and IPLCs, it is unlikely that these guidelines will cover all the issues that may arise in professional practice. However, they should provide a starting point for those wishing to pursue repatriation.
7. The guidelines do not promote censorship — materials now considered offensive or inappropriate still form part of the historical record and, as such, may possess a contextual contribution or value.
8. The guidelines should enable those working on repatriation, including information professionals to make sound judgments regarding appropriate responses to any issues, or provide some ideas about where to go for assistance if more expertise is required.
9. Assist IPLCs in strengthening and revitalization of their traditional knowledge related to conservation and sustainable use of biological diversity, including the repatriation of secret or sacred, gender-specific, or sensitive traditional knowledge or related information that is being held by others.

Scope of the subject matter

10. These guidelines apply to the knowledge, innovations and practices of IPLCs, embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity, including related information.

Guiding principles for repatriation

11. Repatriation is best facilitated building on the following principles and considerations:
 - (i) Developing ongoing relationships with IPLCs in order to build trust, good relations, mutual understanding, intercultural spaces, knowledge exchanges and reconciliation;
 - (ii) Recognition and respect for the world views, cosmologies, values, practices, customary laws, community protocols, laws, rights, and interests of IPLCs;
 - (iv) Preparedness of institutions holding traditional knowledge and related information relevant for conservation and sustainable use to repatriate;
 - (v) Assisting IPLCs in preparedness to receive and keep safe repatriated traditional knowledge and related information, in culturally appropriate ways;
 - (vi) Considering measures to address the repatriation of traditional knowledge that is already publicly available and widespread.

¹⁶ Including subnational governments and government departments which may hold indigenous and/or local community traditional knowledge and related information relevant for the conservation and sustainable use of biological diversity.

(vii) Recognition of the importance of repatriating secret or sacred, gender-specific, or sensitive traditional knowledge and related information, as a priority for IPLCs;

(viii) Repatriation can be enhanced through developing the awareness and professional practice of those working on repatriation, including information professionals on IPLCs, in accordance with best practice ethical standards, including the Tkarhwaie:ri Code of Ethical Conduct on Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities Relevant for the Conservation and Sustainable use of Biological Diversity;¹⁷

(ix) Repatriation includes recognition and support of community-to-community efforts to restore traditional knowledge relevant to conservation and sustainable use of biological diversity.

¹⁷ See decision X/42.