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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**

Seventh meeting
Montreal, 31 October-4 November 2011

**COMPILATION OF VIEWS ON TASK 15 OF THE PROGRAMME OF WORK ON
ARTICLE 8(j) AND RELATED PROVISIONS**

Note by the Executive Secretary

INTRODUCTION

1. As requested by the Conference of the Parties in decision X/43, the Executive Secretary is circulating herewith, for the consideration of participants in the seventh meeting of the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions, a submission provided to the Secretariat regarding task 15 in the programme of work on Article 8(j) and related provisions, to assist the deliberations of the Working Group on how this task can be taken forward in both domestic and international contexts.
2. The submission has been reproduced in the form and language in which they were provided to the Secretariat.

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SUBMISSION

Submission by Canada on the Development of Best Practice Guidelines for the Repatriation of Information Relevant to the Conservation and Sustainable Use of Biological Diversity

Task 15. 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.

Introduction

With respect to Task 15, in keeping both with Canada's long-standing position, Canada does not consider that cultural property falls within the scope of the Convention on Biological Diversity. Article 8 (j) concerns "knowledge, innovations and practices" and Article 11 concerns information including "indigenous and traditional knowledge." Clearly, the drafters intended that the concept of "cultural property" is outside the scope and mandate of the Convention.

Canada's view is that amongst United Nations organizations, the United Nations Educational, Scientific and Cultural Organization including its treaties has the mandate and competencies to lead on cultural issues including cultural property. As a multilateral environmental agreement, the Convention on Biological Diversity does not have a mandate or specific competencies on cultural issues. This explains why the Parties in COPIX/13 requested that the Secretariat cooperate with UNESCO and others on initiating Task 15 in order to enhance synergies, avoid duplication, and respect the work of these organizations.

The distinction that Canada makes between the repatriation of information related to conservation and sustainable use of biological diversity, and repatriation of relevant cultural objects, is significant. Within the community of custodial institutions such as museums in Canada, accepted policies and practices for the repatriation of information differ in key ways from those related to cultural property. Nevertheless, from a policy and practical perspective, repatriation of cultural property is more advanced as a common practice in Canada's museums and may hold useful principles that can be adapted to the practice of repatriation of information relevant to the conservation and sustainable use of biodiversity.

In both cases, however, Canada wishes to stress that established policies and best practices exist in the Canadian heritage community as a result of decades of evolution of the heritage profession in Canada and the relationship between institutions and the Canadian public, both Aboriginal and non-Aboriginal, and researchers in Canada and abroad, and that similar situations exist in other countries.

It is Canada's position that the Ad Hoc Working Group need only compile information about best practices and policies on the repatriation of information that already exist in order to arrive at a set of best practice guidelines, rather than duplicating effort and resources to develop guidelines that are intended for use only in the context of the CBD. Canada believes that the acceptance and implementation of any guidelines will be more successful if they build on existing practice.

Based on Canada's interpretation of the scope and mandate of the Convention, Canada's input to the Ad Hoc Working Group focuses primarily on repatriation of information not found in cultural property. Canada acknowledges that, in some instances, information may only be fully recovered through access to relevant cultural objects and that there may therefore be implications for the repatriation of cultural property.

The following input provides an overview of current practice in Canada with respect to requests from indigenous peoples, and where appropriate, makes concluding recommendations that may prove useful to the Ad Hoc Working Group in articulating guidelines and best practices.

Canadian practice in the repatriation of information relevant to the conservation and sustainable use of biological diversity

1. The nature of the activity

Consultation with the natural history museum community in Canada has indicated that while collecting practice involves the participation of keepers of traditional knowledge in indigenous communities, most repatriation of information to date has not arisen in connection with indigenous communities and traditional knowledge. Rather, repatriation requests have come from scientific researchers in other countries in relation to non-Canadian holdings in Canadian museums. This is particularly true for the Canadian Museum of Nature, Canada's national museum of natural science, where as much as 13% of its collection, which exceeds 10 million specimens, originates outside Canada. The Museum has responded on many occasions to digital repatriation requests from foreign countries. Such requests routinely arise from biologists and taxonomists, and may involve modern collected examples taken under permit, or historical specimens that reside in public collections as a legacy of earlier activity.

An important characteristic of the repatriation of information by natural history museums – in the event that requests arise from indigenous communities – is that the relative abundance of nature is in contrast to the characteristics of museums with cultural collections. An object or artefact may, by its rarity, be deemed sacred and subject to physical repatriation. Natural specimens may equally hold sacred significance within a belief system, but their relative abundance limits the likelihood of their being subject to recall or repatriation. It is often the information about such holdings, rather than the specimens themselves that is requested.

In contrast, Canadian museums holding cultural history collections that represent the heritage of indigenous peoples – primarily but not exclusively in Canada – deal with requests for the repatriation of objects (and associated documentation) from indigenous groups on a regular basis. Practice and policies in this area in Canada are characterized by the development and nurturing of ongoing relationships with communities of origin, not just with respect to repatriation. It is within that context that repatriation, when it is undertaken, can result in positive outcomes for both the requesting community and the museum.

In the case of natural history collections, at the Canadian Museum of Nature, for example, scientific staff routinely collaborate with keepers of traditional knowledge when seeking to document or collect specimens in the field. Knowledge transferred through oral tradition about where a species can be found (or once lived and is no longer there) is considered important by the Museum to cross tabulate or substantiate observations made from collected specimens. Traditional knowledge keepers are routinely engaged by the Museum as key personnel in field parties. Research personnel at the Museum are equally committed to sharing their findings and observations within a community at the end of a field event or at a later date.

Recommendation #1: In order to facilitate the repatriation of information relevant to biodiversity when such repatriation involves indigenous communities, efforts should be made to establish and nurture ongoing relationships with those communities, and keepers of traditional knowledge, for the ultimate benefit of both parties.

2. Response to requests

Whether in a natural history collection context or in repatriating objects and associated documentation, the approach of Canada's museums is to consider all requests on a case-by-case basis, taking into consideration the specific nature and details of each request.

In terms of best practices in repatriation of information, the ability of institutions to respond is often directly related to the state of digitization of collection information. In contrast to the repatriation of physical objects, repatriation of information by natural history museums may be undertaken completely electronically. As a consequence, this activity is resource-intensive, either in the costs associated with digitization overall, or, when a request for information deals in whole or in part with information not yet digitized, to collect and make the data available to a requester.

In responding to requests for information, the Canadian Museum of Nature, for example, seeks to provide all requested information when it is available in digital form and to ascertain if additional data exists in the collection in physical, analogue formats that are not readily transferable. Requesters are invited to consult the collections in person; they are appropriately oriented, trained and/or supervised if they wish to work in the collections area. When it is necessary for the requester rather than the Museum to compile data from the collections, the Museum provides access and, as necessary, computer resources to assist in the data gathering. In return, the Museum benefits from the requester's efforts by receiving a copy of the dataset to incorporate into its collections database, thereby contributing to the institution's data entry objectives.

Recommendation #2: All requests for repatriation should be considered on a case-by-case basis, and responses should take into consideration the specifics of each request.

Recommendation #3: Since effective response to repatriation requests can often be more easily made when collections data is available electronically, efforts should be made to digitize collections records.

Recommendation #4: Where data is not in electronic format, efforts should be made to facilitate appropriate physical access by researchers to collections information and the training, supervision and, where possible, electronic resources to allow retrieval of information.

As collecting institutions move toward the provision of data in an Internet-based open catalogue of distributed databases, however, their ability to exercise copyright and to ensure "fair use" of the data becomes more of a challenge. In the end, the potential risk of loss of some control must be weighed against the issue of public good. But this must be balanced with the fact that museums in Canada share

information first and foremost to generate new knowledge and therefore the need for openness – particularly when research has been financed by public funds, which makes the risk of less control largely acceptable.

3. Purpose of request and subsequent use

With reference to repatriation of information related to biodiversity, Canada's museums, as demonstrated by the Canadian Museum of Nature, differentiate between requests for commercial and non-commercial (academic, educational or cultural) purposes, an approach reiterated in the "Buffon Declaration", the concluding message from a symposium held in Paris in October 2007 that represents consensus among 93 natural history institutions from 36 countries. The Canadian Museum of Nature, for example, will "repatriate" information through licensing agreements. Fees or royalties may be charged for the licensed use of data, but these may be waived in the case of requests for non-commercial use. Requests from indigenous communities for repatriation of information, even if some form of commercial benefit might ultimately result, is not considered a request "for commercial purposes". Data licensed for a specific purpose cannot be redistributed in a way that would compromise the museum's ability to do research, or in a manner that would reduce the museum's ability to control the data and/or generate revenue. Datasets are released or licensed for specific use and are not to be re-sold.

While from the outset natural history museums distinguish, and treat differently, all requests on the basis of whether the material is being sought for non-commercial or commercial use, in cases of requests received by other museums for repatriation of objects and related documentation, no such consideration of the reason behind the request takes place. This is because such requests are only ever considered at all when they are made by indigenous group who can demonstrate a specific historical link to the objects in question. In such cases the museum does not charge fees or exercise any control over the object after its repatriation.

In the case of natural history collections, only a copy of the information, not the original, or the relevant specimen itself, is repatriated. As such, ownership of the data and copyright is usually retained by the institution. In the case of use by indigenous communities, reproduction rights may be granted in exchange for appropriate acknowledgement of the museum. In contrast, repatriation requests by indigenous communities to human history museums relate almost always to objects and associated documentation, and it is the object itself, not a copy of it, that is repatriated. In this case, museums in Canada will often retain a record, including a visual record, of the document, and copies of associated documentation. Museums may retain the right to reproduce records for purposes related to their mandate, under conditions that comply with Canadian copyright law.

Recommendation #5: A distinction should be made between repatriation for commercial purposes and non-commercial purposes, but requests for repatriation from indigenous communities that can demonstrate a historical connection to the object of their request should not be considered to be for commercial purposes, even if commercial benefits may eventually result.

Recommendation #6: Fees or royalties that might otherwise be charged in connection with requests for collections data should be waived in instances where the request is made by an indigenous community with a demonstrated historical connection with the object of the request.

Recommendation #7: Repatriation of information relevant to conservation and

sustainable use of biodiversity, whether or not related to recovery of traditional knowledge, and conditions associated with it, should be specified in an agreement acceptable to both parties, and should include details such as the following, where applicable:

- **retention of copies or originals by institutions**
- **costs**
- **copyright over data or documentation**
- **confidentiality and any other restrictions over subsequent use.**

4. Confidentiality

Examination of existing practice in Canadian museums indicates an acknowledgment of the sensitivity of certain types of information, either from a sacred/ceremonial perspective for indigenous communities or, in the case of natural history collections, information connected with rare or endangered species. In both circumstances, measures are used to avoid the inappropriate sharing of such sensitive information in a way that would have detrimental cultural or environmental consequences.

Recommendation #8: Repatriation of information relevant to conservation and sustainable use of biodiversity should take into consideration potential cultural sensitivities as well as the potential for adverse consequences for rare or endangered species.

5. Policies

In all cases examined, collecting institutions in Canada have adopted formal policies in this area, either for release/repatriation of scientific data or for repatriation approaches specific to indigenous communities. With respect to the latter, every formal policy examined uses as its basis, or one of its references, the report and recommendations of the Task Force on Museums and First Peoples. This initiative was undertaken in the early 1990's jointly by the Assembly of First Nations and the Canadian Museums Association. Recommendations of the Task Force with respect to repatriation emphasized partnerships between collecting institutions and indigenous communities, a case-by-case approach, the advisability of use of replication of materials for use by one or the other of the parties to a request, and the need for indigenous communities to demonstrate a direct prior cultural connection and ownership with regard to the museum collections in question. Clearly several aspects of this approach are relevant for use in the repatriation of both objects and documentation/data when it involves indigenous communities.

Recommendation #9: Collecting institutions should adopt formal policies for the repatriation of their collections and collections documentation either generally or with specific reference to indigenous communities. These formal policies should be publicly available and, in the case of policies specific to repatriation to indigenous communities, be developed as far as possible in consultation with those communities.