



Convention on Biological Diversity

Distr.
GENERAL

UNEP/CBD/WG8J/9/5
14 September 2015

ORIGINAL: ENGLISH

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 7 of the provisional agenda*

IN-DEPTH DIALOGUE ON THEMATIC AREAS AND OTHER CROSS-CUTTING ISSUES

“Challenges and opportunities for international and regional cooperation in the protection of shared traditional knowledge across borders for the strengthening of traditional knowledge and the fulfilment of the three objectives of the Convention, in harmony with nature/Mother Earth”

Note by the Executive Secretary

INTRODUCTION

1. In order to contribute to the incorporation of Article 8(j) and related provisions, as a cross-cutting issue, across the areas of work of the Convention, the Conference of the Parties, in paragraph 12 of its decision X/43, decided to include a new agenda item at future meetings of the Ad Hoc Open-ended Working Group on Article 8(j) and Related Provisions, entitled: “In-depth dialogue on thematic areas and other cross-cutting issues”. Furthermore, the Conference of the Parties, at its twelfth meeting decided, in paragraph 16 of its decision XII/12 A, that the topic of the in-depth dialogue to be held at the ninth meeting of the Working Group would be:

“Challenges and opportunities for international and regional cooperation in the protection of shared traditional knowledge across borders for the strengthening of traditional knowledge and the fulfilment of three objectives of the Convention, in harmony with Nature/Mother Earth.”

2. Through notification 2015-012 (ref. No. SCBD/MPO/AF/JS/VF/84296) of 5 February 2015, the Executive Secretary invited Parties, indigenous and local communities and stakeholders to provide views on this matter in advance of the ninth meeting of the Working Group on Article 8(j) and Related Provisions. Views were received from Australia, Bolivia, Brazil, Canada, Ecuador, Finland, Honduras, New Zealand, Peru, Sweden, the Inuit Circumpolar Council, Red Pacari, Redcam, and the Sami Parliament and have been issued in an information document (UNEP/CBD/WG8J/9/INF/2).

3. The present background document is meant to facilitate and guide the dialogue: section I provides an overview of the submissions received; section II contains some possible elements for discussion during the dialogue; and section III contains a possible draft recommendation for the consideration of the Working Group. Additional background information is available in UNEP/CBD/WG8J/9/INF/2/Add.1.

* UNEP/CBD/WG8J/9/1.

4. It is expected that the methodology of the in-depth dialogue will involve presentations by a panel of experts followed by an interactive dialogue with meeting participants, chaired by the representative of a Party. Taking into account that the ninth meeting of the Working Group will take place in six sessions, or three working days, over four days, with a very full agenda, the in-depth dialogue will be shortened to one hour. The outcomes expected from the in-depth dialogue may include possible recommendations and/or advice directed towards the relevant programme(s) of work, and relevant regional and/or international bodies, which by practice are annexed to the report of the meeting for information and advice.

I. OVERVIEW OF SUBMISSIONS RECEIVED

5. In its submission, *Australia* mentions that it has launched the World Indigenous Network (WIN)¹ in 2012, as a response to a call by indigenous land and sea managers to strengthen community exchanges, and as an outcome of an international conference, held in Darwin in May 2013. WIN was created in order to facilitate the exchange of knowledge and practices in managing ecosystems, protecting the environment and supporting sustainable livelihoods. As a result, a number of exchanges occurred prior to and following the 2013 Conference between Australia and other nations, including Canada, Mexico and New Zealand as well as Solomon Islands and some African countries. The WIN framework provided opportunities for further exchanges between interested communities at the regional and international levels and is now managed by the Equator Initiative of the United Nations Development Programme. The WIN–Equator Initiative will continue to maximize opportunities for indigenous peoples and local communities around the world to address the challenges of land degradation, biodiversity conservation and livelihood improvements in a socially equitable manner.

6. At the national level, the Minister for the Environment of Australia has announced the establishment of a National Land and Sea Managers Network.

7. In its submission, *Bolivia* draws attention to the challenges and opportunities that can be associated with transfers of technology, financing and capacity-building development to States and peoples. In addition, Bolivia considers that international and regional cooperation should take into account the dialogue and integration between States and specific agreements must take into consideration the rights of Nature/Mother Earth within the framework of the three objectives of the Convention.

8. In its submission, *Brazil* mentions that the existing mechanism for regional cooperation should be considered in any international processes. In the Latin American context, existing regional organizations, such as Mercosur, the Community of Latin American and Caribbean States (CELAC), and the Amazon Cooperation Treaty Organization (ACTO), should play a central role.

9. In its submission, *Canada* explains that the issue is of considerable significance to Aboriginal Peoples of Canada and the National Aboriginal organizations.

10. In its submission, Ecuador mentions the importance of the national process on the protection of traditional knowledge, and that the country is initiating a formal process of gathering information about its traditional knowledge and genetic resources in the field, in order to have tools that allow regulation of access to the resource. Taking into account issues of intellectual property and specifically of patents, such activity (information gathering) helps to verify the proper use of the genetic resource and the future steps.

11. In its submission, *Finland* notes that, during the preparatory process for the ratification of the Nagoya Protocol, it was agreed that Sami² traditional knowledge and the associated genetic resources are issues that should be resolved and decided by the Sámi as a people, regardless of State boundaries. This view was at odds with the reality that each country processes and implements international conventions

¹ For additional information, see <http://www.winism.net/>.

² Also Sámi or Saami.

and agreements (such as the ratification of the Nagoya Protocol) in its own way and according to its own timetable.

12. As example, Finland mentions that the purpose of the Nordic Sami Convention is “to confirm and strengthen such rights for the Sámi people as to allow the Sámi people to safeguard and develop their language, culture, livelihoods and way of life with the least possible interference by national borders” (article 1). In practice, Finland considers that the Nordic Sami Convention, currently under discussion, could resolve some issues concerning the Sámi people. However, the process of achieving the agreement has been very slow and there is no common view between the parties on the content of the agreement.

13. In its submission, *Honduras* mentions that, in many cases, traditional knowledge is shared in the Central American and Mesoamerica regions between countries, and that there is a regional tool, which is referred to as the draft “Central American agreement on access to genetic resources and bio-chemicals and related traditional knowledge”.

14. In its submission, *New Zealand* noted that the sharing of traditional knowledge does not only happen across land borders, but also across “ocean borders”. The Pacific region is an excellent example of traditional knowledge shared among different island communities and cultures. One example provided is the Pacific Traditional Knowledge Action Plan,³ which emerged from the third International Conference on Small Island Developing States. This is a joint initiative between the World Intellectual Property Organization and the Pacific Islands Forum Secretariat. Another useful Pacific example in this regard is the use of shared traditional knowledge to better understand current and emerging issues related to conservation and sustainable use of biodiversity. For example, the Secretariat of the Pacific Community (SPC) has observed links between the existence of traditional knowledge and the state of coastal fisheries.⁴

15. In its submission, *Peru* mentions that it is supporting initiatives to strengthen the institutional framework that reinforces the protection of traditional knowledge, both in public institutions and with organizations of indigenous peoples. In this regard, the Ministry of Culture has established the permanent Working Group on Indigenous Policies to coordinate, propose and monitor public policies involving indigenous peoples or requiring intercultural approaches, in a participatory manner, between representatives of the Deputy Minister for Interculturality and Indigenous Peoples (GTPI), by Ministerial Resolution No. 403-2014-MC. Apart from the Deputy Minister for Interculturality, the GTPI is also made up of the seven national organizations of indigenous peoples, which have established five areas of work to prioritize policies.

16. In its submission, *Sweden* mentions that lands of the Sami people cover a large part of the territories within Sápmi — Sweden, Norway and Finland as well as the Kola Peninsula in the Russian Federation. For example, in most of the border regions, reindeer husbandry among the Sápmi people is the basis for the traditional governance and management of biological resources. The reindeer will roam through their landscape regardless of national borders.

17. Sweden also mentioned that it is negotiating with Finland and Norway a Nordic Sami Convention. The aim of the draft Convention is to confirm and strengthen the rights of the Sami people so that they can keep and develop their own language, their culture, their livelihood and social life with the least possible amount of hindrance from national borders. The draft Convention covers the whole range of rights, and one of its advantages is that, unlike United Nations conventions, it is adapted to the particular regional situation of the Sami people. An important and special aspect of the Convention is that it seeks to deal with the rights of a people across State borders.

³ See <http://www.sids2014.org/index.php?page=view&type=1006&nr=2572&menu=1507>

⁴ See for example the press release from this workshop - <http://www.spc.int/en/media-releases/2014-future-of-coastal-fisheries-lies-between-science-pacific-tradition-and-a-song.html>

18. The landscape perspective is consistent with the traditional Sami land use in the area, where large areas of land and water combine with plant and animal resources traditionally used within the Sami culture; gathering, fishing and hunting have always been an essential part of the Sami reindeer herding culture. As an indigenous people, the Sami value collaboration with other, non-neighbouring, indigenous peoples and their experiences.

19. In its submission, the *Inuit Circumpolar Council* draws attention to challenges and opportunities regarding the topics. It identifies the following challenges:

(a) *Jurisdiction*: The Inuit span four circumpolar borders. Inuit share traditional knowledge across borders and this may create challenges of jurisdiction. How jurisdiction issues will be addressed across and between regions is a key concern. In an Inuit context, issues of jurisdiction brought by the Party may be subject to the jurisdiction of Inuit decision-making processes when such access and benefit sharing for associated traditional knowledge is occurring on their lands. Therefore, any prior informed consent to be established has to occur early on in the process and on mutually agreed terms;

(b) *Scope*: Closely linked to the jurisdictional issue is the issue of scope of the traditional knowledge that is to be protected across borders. The protection of traditional knowledge associated with arctic genetic resources and transboundary arctic resources will need to be addressed;

(c) *Lack of legislation*: The protection of traditional knowledge held by Inuit does not meet the criteria under existing intellectual property rights regimes. Neither do the existing intellectual property regimes reflect the values and beliefs which Inuit hold. These gaps illuminate the need for a more adequate form of protection which will respond to the beliefs and values of Inuit;

(d) *Other laws*: Legal pluralism across Arctic States may create challenges for Inuit traditional knowledge protection. Another issue surrounding challenges involves the extent of the strengthening of traditional knowledge in the light of the broader challenges, such as existing international instruments, including the European Union Seal Regime and other instruments that prevent Inuit from strengthening their traditional knowledge.

20. The Inuit Circumpolar Council's submission identifies the following as opportunities:

(a) *Traditional protocols/Customary laws*: Before the type of protection is determined, the issues surrounding the ownership of the traditional knowledge should be established according to community established processes of ownership/customary laws and will take into account such questions as what is commonly owned by the community and what is individually owned. Questions such as how and by whom such protection is to be managed are necessary pre-requisites to any protection scheme;

(b) *Self-Government arrangements*: Opportunities for Inuit traditional knowledge to be protected through regional cooperation may be available through the existence of Inuit self-government arrangements and other self-determination processes, such as Greenland home rule.

21. In its submission, *Rede Pacari de Plantas Medicinais* suggested inviting the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) and the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) to the dialogue.

22. In its submission, *Redcam* drew attention to the importance of International Labour Organization Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.

23. In its submission, the *Sami Parliament* mentioned that the national borders in Sápmi⁵ pose complications for the Sami, especially concerning reindeer herding. The Sami have a saying that reindeer will roam throughout the landscape regardless of regional or national borders. This situation can just as easily lead to conflict than cooperation in many situations. The different laws and practices in the

⁵ The traditional territories of the Sami or Sampi indigenous people.

countries concerned make it difficult for communities and traditional knowledge holders to transfer knowledge, innovations and practices concerning their traditional lifestyles and reindeer herding and for the Sami people in different countries to support and seek support from each other.

24. The Sami Parliament views taking joint responsibility for the protection of Sami traditional knowledge as the challenge in Sápmi. The landscape, including water areas, should be considered as an indivisible whole in which natural and cultural values are associated. The importance of the Sami knowledge of biodiversity should also be considered. The landscape perspective is also consistent with the traditional Sami use of the area, where large areas of land, water, and plant and animal resources have been the go-to resource and habitat of the Sami gatherers as part of their fishing and reindeer-herding culture. The opportunities internationally are that Parties and indigenous peoples learn lessons from each other and strengthen each other when the common objectives are obvious for the Sami and part of their way of life.

II. POSSIBLE ELEMENTS FOR DISCUSSION DURING THE DIALOGUE

25. Many indigenous peoples and local communities live in and across border areas, as for example the Sami peoples who live in Finland, Norway, Sweden, as well as in the Russian Federation. They share the same traditional knowledge relevant for the conservation of biodiversity.

26. The Convention on Biological Diversity recognizes the importance of international and regional cooperation, including on indigenous and traditional technologies (Article 18.4) and the contribution of traditional knowledge of indigenous peoples and local communities to the conservation and sustainable use of biodiversity (Articles 8 (j), 10 (c) and 17.2).

27. The Nagoya Protocol also takes into account the transboundary situation of traditional knowledge associated with genetic resources (Article 11).

28. Some regional intergovernmental organizations have developed model regional legislation on the protection of traditional knowledge that apply to many countries, while others have developed regional model legislation so that the member countries can be guided in the development of national legislation. In other cases, regional organizations have established programmes or mechanisms to address these situations.

29. Some challenges identified were: coordination between jurisdictions of different countries; scope of the protection of traditional knowledge; different national legislation; the need for technical and financial transfers as well as capacity-building.

30. Some opportunities identified were: (a) regional mechanisms for the protection of traditional knowledge may be able to ensure the uniformity and consistency as well as procedures for a region; (b) setting minimum requirements for national implementation, including taking into account transboundary occurrence of traditional knowledge; and (c) maximizing the opportunities for the conservation and sustainable use of biodiversity across borders. Community protocols for traditional knowledge can play an important role by allowing indigenous peoples and local communities to set minimum standards and may be useful for other purposes, including addresses such issues as access to traditional knowledge held across borders and/or within multiple jurisdictions.

31. Panellists, representatives of Parties, and representatives of indigenous and local communities may wish to consider, among other things, the following issues for dialogue within the context of access, use and application, and protection of traditional knowledge relevant to conservation and sustainable use of biological diversity:

- What are some examples of effective approaches at the regional level and/or national level to better protect and support traditional knowledge relevant to conservation and sustainable use of biological diversity, in a transboundary context?
- What are the potential roles of community protocols?

III. POSSIBLE RECOMMENDATION FOR THE CONSIDERATION OF THE WORKING GROUP

32. The Ad Hoc Open-ended Working Group on Article 8(j) and Related Provisions may wish to recommend that the Conference of the Parties at its thirteenth meeting adopt a decision along the following lines:

The Conference of the Parties,

Noting that the Ad Hoc Open-ended Working Group on Article 8(j) and Related Provisions at its ninth meeting conducted an in-depth dialogue on the topic “challenges and opportunities for international and regional cooperation in the protection of shared traditional knowledge across borders for the strengthening of traditional knowledge and the fulfilment of three objectives of the Convention, in harmony with Nature/Mother Earth”,

1. *Encourages* Parties, other Governments, indigenous peoples and local communities and relevant organizations, and requests the Executive Secretary, to consider the advice and recommendations of the dialogue, annexed to the present decision, when implementing the relevant areas of work of the Convention, including tasks 7, 10, 12 and 15 of the programme of work for Article 8(j) and related provisions;

2. *Decides* that the topic for the in-depth dialogue to be held at the tenth meeting of the Working Group on Article 8(j) and Related Provisions, shall be: [.....].
