INTERNATIONAL INDIGENOUS FORUM ON BIODIVERSITY

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

Agenda Item 5.
Task 15 of the Multi-Year Programme of Work on the implementation of Article 8(j) and related provisions: best-practice guidelines for the repatriation of indigenous and traditional knowledge.

Thank you Mr. Chairman for this opportunity for the IIFB to comment on the implementation of Item 5 on Task 15 of the Multi-Year Programme of Work on the development of Voluntary Best-Practice Guidelines for the Repatriation of Indigenous and Traditional Knowledge. We take note with great appreciation of the document UNEP/CBD/WG8J/9/INF4 of the Report of the Expert Group on Traditional Knowledge Relevant to the Repatriation to the Conservation and Sustainable Use of Biodiversity. This has provided the basis of a set of principles that can serve as a basis for further work on this agenda item.

In its current form the set of principles and guidance does not form a fully articulated basis for guidelines. The Report of the Expert Group contains a richer set of principles and measures that can be used to expand the current list, as noted by the Secretariat in the draft decision. The draft principles in the current document only reflect issues for which there was clear understanding and consensus. Other recommendations from that document should be brought forward as options for further consideration at COP 13.

For example, we see the need for a new element to address respect for the protocols of indigenous peoples and local communities in the repatriation of traditional knowledge, among others.

We recommend a contact group at this meeting and take up the proposed way forward in the draft decision, with added elements. This is to have the Secretariat receive information from parties, other governments and relevant organizations and entities, indigenous peoples and local communities. The process should be designed to present a wide range of options to Parties that represent best practices for repatriation activities. Submissions should be solicited from communities beyond the biological diversity community for relevant best practices. There is a wealth of experience on repatriation from the museum, library, archaeological and intangible cultural heritage communities that take into account the aspirations, values, rights and interests of indigenous peoples and local communities. Additionally, parties could call upon interested Parties and organizations to fund another AHTEG and or regional meetings to develop case studies of best practices that can more comprehensively inform the development of principles for repatriation.
Mr. Chair, the Guidelines should consider repatriation in the widest relevant context possible. Repatriation is not simply a process of transferring a copy of information to source communities. Traditional knowledge has sacred and spiritual meaning to indigenous peoples and local communities. It may be thought of by its holders as a living, breathing and feeling entity that is crying or longing for return to its rightful place. This is reflected in the proposed name of Rutzolijijirisaxik, which means the significance of returning things to their place of origin. A number of issues are associated with repatriation, as noted in [Considerations for Developing Technical Guidelines for Recording and Documenting Traditional Knowledge and the Potential Threat of Such Documentation] (UNEP/CBD/WG8J/5/3/Add.2) prepared by the Secretariat during negotiations over the documentation of traditional knowledge in traditional knowledge databases in 2006-2008. That document brought forward the OCAP assessment framework - the ownership, control, access, and possession of traditional knowledge by indigenous peoples and local communities. This is compatible with Article 31 of the United Nations Declaration on the Rights of Indigenous Peoples, that states "Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions . . . " Expanded guidelines could also provide guidance to the Intergovernmental Governmental Committee of the World Intellectual Property Organization that is negotiating related issues.

The elements of a set of voluntary guidelines should encompass the full range of best practices, and need not be limited to the repatriation of knowledge per se. Traditional knowledge may be embodied in materials (e.g. reports, films, videos, objects, physical models). Although the focus of the guidance is on traditional knowledge itself, many countries have addressed issues related to repatriation of ceremonial objects and human remains, and other cultural objects in which traditional knowledge is embodied. Indigenous peoples often do not separate the intangible from the material. Recognizing that this is a complex issue, it is a real context of repatriation which should be addressed as part of a portfolio of voluntary measures.

Finally, we are confused by para 12 under Purpose on censorship, and do not understand the scope of the work and application it is trying to achieve. Of course repatriation should not interfere with fundamental human rights and freedoms, but it can involve non-arbitrary regulation of use, which some might view as censorship. This term should be narrowly tailored or removed.

We have a few grammatical recommendations to improve the text that we will submit in writing.

Thank you, Mr. Chair.